
In the Matter of the Compensation of
DIANE L. POLICAR, Claimant
WCB Case No. 15-02138
ORDER ON REVIEW
Unrepresented Claimant
Cummins Goodman et al, Defense Attorneys

Reviewing Panel: Members Lanning and Curey.

Claimant, *pro se*,¹ requests review of Administrative Law Judge (ALJ) Wren's order that upheld the self-insured employer's denial of claimant's new/omitted medical condition claim for a left knee lateral meniscus tear. On review, the issue is compensability.

We adopt and affirm the ALJ's order with the following supplementation.²

On November 5, 2014, while at work, claimant fell onto her hands and knees. (Ex. 65). The employer accepted a right wrist sprain, left wrist sprain, right knee contusion, left knee contusion, left shin contusion, right shin contusion, and a right knee medial meniscus tear. (Exs. 88, 98, 127).

Prior to her November 2014 fall, claimant had lateral meniscal tearing in her left knee that had been treated surgically. (Ex. 53).

A February 2015 left knee MRI showed a full-thickness tear of the anterior horn of the lateral meniscus. (Ex. 91).

¹ Because claimant is currently unrepresented, she may wish to consult the Ombudsman for Injured Workers. She may contact the Ombudsman, free of charge, at 1-800-927-1271, or write to:

DEPT OF CONSUMER & BUSINESS SERVICES
OMBUDSMAN FOR INJURED WORKERS
PO BOX 14480
SALEM OR 97309-0405

² We acknowledge the ALJ's statement at hearing that "it's the Board's policy that claimants not attempt to represent themselves." (Tr. 4). Specifically, the Board's policy is expressed in OAR 438-006-0100(1), which provides as follows: "The Board encourages injured workers also to be represented in formal hearings." Notwithstanding this policy, if a worker chooses to proceed without legal representation, that "unrepresented party shall not be held strictly accountable for failure to comply with these rules." *See* OAR 438-005-0035(3).

In April 2015, claimant requested acceptance of a left knee lateral meniscus tear as a new/omitted medical condition. (Ex. 108). After the employer denied her claim, claimant requested a hearing.

In upholding the employer's denial, the ALJ concluded that claimant's left knee lateral meniscal tear preexisted and was unrelated to her November 2014 work injury. On review, claimant contends that Dr. Puziss's opinion persuasively establishes the compensability of her left knee lateral meniscus tear. For the following reasons, we disagree.

To prevail on her new/omitted medical condition claim for a left knee meniscal tear, claimant must establish that the work injury is a material contributing cause of her disability/need for treatment for that condition.³ ORS 656.005(7)(a); ORS 656.266(1). Because of the divergent medical opinions regarding the cause of the disability/need for treatment of the claimed condition, expert medical opinion must be used to resolve the compensability issue. *Barnett v. SAIF*, 122 Or App 279, 282 (1993); *Linda Patton*, 60 Van Natta 579, 582 (2008). In evaluating the medical evidence, we rely on those opinions that are both well reasoned and based on accurate and complete information. *Somers v. SAIF*, 11 Or App 259, 263 (1986).

Before claimant's November 2014 fall at work, she underwent MRIs on her left knee in 2009 and April 2014. She also had a July 2014 "[a]rthroscopy with partial lateral meniscectomy and chondroplasty." (Ex. 53).

Dr. Puziss reviewed claimant's April 2014 left knee MRI, finding that the "T2 sagittals demonstrate significant anterior horn lateral meniscus internal tearing or significant degeneration and there is a free margin tear of the posterior horn of the lateral meniscus." (Ex. 131-11). Dr. Puziss concluded that "there was no real change to the lateral meniscus between 09/29/2009 and 04/14/2014," observing that claimant "had ongoing complex tear of the lateral meniscus." (Ex. 131-12). Finally, after reviewing claimant's February 2015 MRI (which was administered after her July 2, 2014 left knee arthroscopic surgery), Dr. Puziss reported that the MRI "demonstrates a partial lateral meniscectomy, but about the same amount of tearing throughout the posterior horn and also anterior horn." (*Id.*)

³ The existence of the claimed condition is not in dispute. See *Maureen Y. Graves*, 57 Van Natta 2380, 2381 (2005).

After considering these findings, Dr. Puziss could not state “there was any significant change of the lateral meniscus following the 11/05/2014 work injury.” (Ex. 131-12). Thus, Dr. Puziss’s opinion does not persuasively attribute claimant’s left knee lateral meniscus tearing to her November 2014 work injury.

In reaching this conclusion, we acknowledge that portions of Dr. Puziss’s opinion support a causal connection between claimant’s disability/need for treatment of her overall left knee condition and the November 2014 work injury. For instance, Dr. Puziss suggests that claimant’s preexisting arthritis was aggravated. (Ex. 131-13). In addition, he opined that the presence of a Baker’s cyst following the November 2014 work injury “indicates some pathological worsening of her overall knee condition.” (*Id.*) Claimant’s current claim, however, is for a left knee lateral meniscal tear, not arthritis or a Baker’s cyst. As previously explained, Dr. Puziss’s opinion does not support the compensability of the claimed meniscal tear condition.

We also acknowledge Dr. Cowan’s opinion that “any injury to the left knee is due to the way you fell and landed on that knee” as a result of her fall at work. (Ex. 135). However, we agree with the ALJ’s conclusion that Dr. Cowan’s opinion is limited to the left knee sprain/strain he had previously diagnosed. (*Id.*) Thus, his opinion does not persuasively support a connection between claimant’s work injury and her need for treatment/disability for her currently claimed left knee lateral meniscal tear.

Finally, we acknowledge claimant’s contentions regarding the employer’s alleged “Safety Rule” violations and alleged failure to properly respond to prior work injuries. Our authority, however, is limited to workers’ compensation issues and does not extend to an employer’s alleged non-compliance with safety rules.⁴ Furthermore, even if prior alleged “mis-processed” injuries were considered, it is undisputed that claimant also sustained an “off-work” left knee injury and that she was experiencing complaints and receiving treatment for that left knee condition before her November 2014 work-related fall. (Exs. 35-5 through 44, 45, 48).

⁴ In *Randy M. Pedersen*, 53 Van Natta 815, 820 (2001), we addressed the effect of an employer’s alleged safety violations on the analysis of the compensability of a workers’ compensation claim. In doing so, we reiterated that the issue is compensability of the claim, not whether or not the employer was negligent. See *Fred Meyer, Inc. v. Hayes*, 325 Or 592, 595 n 4 (1997). Likewise, we explained that workers’ compensation is a no-fault system that compensates a worker for injuries that arise out of and occur in the course of the worker’s employment and that the issue of alleged “fault” by the employer is not part of the analysis for workers’ compensation purposes. See *Andrews v. Tektronix, Inc.*, 323 Or 154, 159-60 (1996).

Based on such circumstances, as well as the mechanism of claimant's work injury, several examining physicians, including Dr. Bowman, a former treating physician, did not attribute claimant's left knee lateral meniscus tear to her November 2014 work incident. (Exs. 101-4, 113-1, 130-35, 132-3). In light of contrary opinions, and for the reasons expressed above, we do not consider the opinions expressed by Drs. Puziss and Cowan to be persuasive in establishing the compensability of the claimed left knee lateral meniscus tear condition.

Accordingly, based on the aforementioned reasoning, as well as that expressed in the ALJ's order, we conclude that the claimed new/omitted medical condition claim is not compensable. Thus, we affirm.

ORDER

The ALJ's order dated January 28, 2016 is affirmed.

Entered at Salem, Oregon on June 7, 2016