

In the Matter of the Compensation of
AMY S. BRIGGS, Claimant
WCB Case No. 14-02270, 13-04194
ORDER ON REVIEW
Alvey Law Group, Claimant Attorneys
Gress & Clark LLC, Defense Attorneys
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Reviewing Panel: Members Johnson and Weddell.

Claimant requests review of those portions of Administrative Law Judge (ALJ) Mills's order that upheld Broadspire's denials of her new injury claim for right shoulder and right elbow conditions. On review, the issues are compensability and, potentially, responsibility.

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

On August 26, 2010, claimant, a physical therapist assistant, compensably injured her right shoulder. (Ex. 13). Sedgwick, the employer's workers' compensation claims administrator at the time, accepted a right shoulder strain and a right labral tear. (Exs. 23, 212).

Claimant subsequently had two right shoulder surgeries. In February 2011, Dr. Lamprecht performed a capsulorrhaphy and repaired a Hill-Sachs lesion. (Ex. 50). In February 2012, he performed a revision. (Ex. 139). His post-operative diagnosis was right shoulder tear with multidirectional instability. (*Id.*)

On December 20, 2012, claimant initiated a new/omitted medical condition claim for right arm and elbow pain and numbness. (Ex. 194). Dr. Denekas, a neurologist who performed an examination at Sedgwick's request, opined that claimant had ulnar neuritis in her right arm, unrelated to the work injury. (Ex. 198-13, -15).

On January 16, 2013, Sedgwick denied "right arm and elbow pain and numbness." (Ex. 200). On April 25, 2013, a prior ALJ upheld Sedgwick's denial. (Ex. 219).

Meanwhile, on February 15, 2013, Dr. Lamprecht released claimant to full duty work and reported that her right shoulder condition was medically stationary. (Ex. 208). He noted that her right shoulder pain persisted, but that

she had good shoulder motion and strength. (*Id.*) He attributed 100 percent of her impairment finding, which included some reduction in right shoulder range of motion, to the accepted conditions. (Exs. 208, 211-1). A March 19, 2013 Notice of Closure awarded two percent permanent disability (whole person impairment) for claimant's right shoulder condition. (Ex. 213).

On March 21, 2013, claimant consulted Dr. Woolley, a hand surgeon, for increased right shoulder pain and instability and right hand symptoms. (Ex. 214). Dr. Woolley assessed residual biceps tendinosis and cubital tunnel syndrome. (*Id.*)

In a March 25, 2013 telephone message for Dr. Lamprecht, claimant described increasing right shoulder pain and loss of motion. (Ex. 216). Dr. Lamprecht's office informed her that he was unavailable until April 3, 2013. (*Id.*)

On June 24, 2013, claimant notified her employer that she had a gradual onset of right upper extremity muscle pain at work that day. (Ex. 220-1). She also reported that the 2010 work injury was "completely healed" and denied previous elbow symptoms. (*Id.*)

On June 27, 2013, claimant told Dr. Braddock that, on June 24, 2013, she developed a sudden onset of right shoulder and right elbow pain, while providing resistance against a patient's leg during manual therapy. (Ex. 221-1). Dr. Braddock diagnosed a right shoulder strain and a right elbow strain. (Ex. 221-2).

On August 8, 2013, Broadspire, the employer's current workers' compensation claims administrator, denied compensability of claimant's "new injury" claim for her right shoulder/elbow conditions.¹ (Ex. 241). Claimant requested a hearing.

On August 21, 2013, claimant returned to Dr. Lamprecht. She told him that she had returned to work and was doing well until June 24, 2013, when she experienced a sharp pain in her right shoulder while assisting a patient. (Ex. 244-1). He diagnosed a right shoulder strain. (Ex. 244-2). On October 25, 2013, claimant told Dr. Lamprecht that she had also injured her right elbow on June 24, 2013. (Ex. 250-1). He diagnosed a right elbow strain. (*Id.*)

¹ On January 31, 2014, Broadspire also denied responsibility for the right shoulder condition. (Ex. 255).

On October 29, 2013, Dr. Thompson, an orthopedist, performed an examination at Broadspire's request. Claimant told Dr. Thompson that she was assisting a patient with hip flexion exercises when she suddenly felt pain in her right elbow and right shoulder. (Ex. 251-1). She said that the pain was "instantaneous" and developed in the shoulder and elbow simultaneously. (Ex. 251-2). Based on claimant's description, Dr. Thompson opined that the activity would not have caused a right shoulder injury. (Ex. 251-6). Acknowledging that claimant could have contracted her triceps muscle in lowering the patient's leg, Dr. Thompson diagnosed a possible triceps tendonitis, but questioned why she would have injured only the right elbow if she was using both arms. (Ex. 251-4, -6).

Claimant testified that she had "no shoulder issues at all" or problems performing her regular job duties between May 2013 and June 24, 2013. (Tr. 12, 18). She also testified that her right shoulder was "pain-free" at the end of 2012 and that she had never had any symptoms in her right elbow. (Tr. 20, 21). Regarding the incident on June 24, 2013, she said that she started having pain in her right shoulder and the back of her right arm while lifting and lowering a patient's leg. (Tr. 12, 13).

The ALJ considered claimant's testimony unreliable and concluded that the medical evidence supporting the compensability of the claim was based on an inaccurate history. Accordingly, the ALJ upheld Broadspire's denials.

On review, claimant disputes the ALJ's findings and relies on Dr. Braddock's opinion to support the compensability of her claimed conditions. Based on the following reasoning, we affirm the ALJ's findings and conclusion.

Claimant bears the burden of proving that the 2013 work incident was a material contributing cause of her disability or need for treatment of the right shoulder and right elbow conditions. ORS 656.005(7)(a); ORS 656.266(1); *Albany Gen. Hosp. v. Gasperino*, 113 Or App 411, 415 (1992). Considering the conflicting medical opinions regarding the nature and cause of claimant's conditions, the compensability issue presents a complex medical question that must be resolved by expert medical evidence. *See Uris v. State Comp. Dep't*, 247 Or 420, 426 (1967); *Barnett v. SAIF*, 122 Or App 279, 283 (1993). When presented with disagreement among experts, we give more weight to those opinions that are well reasoned and based on accurate and complete information. *Somers v. SAIF*, 77 Or App 259, 263 (1986).

Because the ALJ did not make a specific demeanor-based credibility finding, we are equally able to determine claimant's reliability based on an objective evaluation of the record. *Coastal Farm Supply v. Hultberg*, 84 Or App 282, 285 (1987). We proceed with our *de novo* review.

Claimant testified that her right shoulder became "pain-free" at the end of 2012. (Tr. 20). Yet, the record shows that she had aching/soreness in her right shoulder in January, February, and March 2013. (Exs. 198-1, 202, 208, 214). Furthermore, on February 15, 2013, Dr. Lamprecht noted ongoing right shoulder soreness and documented limited range of motion. (Ex. 208). Claimant also received a permanent disability award for right shoulder impairment attributable to her August 2010 injury claim with Sedgwick. (Ex. 213). In March 2013, she had increased right shoulder pain with her return to full duty work. (Exs. 214, 215). Given this record, we consider claimant's testimony concerning the status of her previous right shoulder condition to be unreliable.

Claimant argues that she did not seek treatment after March 2013, which shows that her right shoulder condition must have resolved. We decline to make such an inference from this record, which shows persistent symptoms after the 2010 injury, an award for permanent impairment, and, thereafter, worsened symptoms accompanying her return to full-duty work.

We turn to the medical evidence. Dr. Braddock opined that claimant's right shoulder and right elbow strains were consistent with a sudden onset of right shoulder and right elbow pain, while she was providing home therapy on June 24, 2013. (Ex. 267-1). Yet, on June 24, 2013, claimant reported to the employer that "nothing unusual happened" and that she developed pain gradually throughout the day. (Ex. 220-1). She attributed the pain to "repeated shoulder and elbow flexion with resistance probably," but she also stated that she was "not exactly sure why that caused pain." (*Id.*)

We consider claimant's report of a gradual onset of symptoms throughout the day, with "nothing unusual" occurring, to be materially inconsistent with her subsequent description of a sudden onset of symptoms while performing specific work activity. Claimant's testimony did not clarify this apparent inconsistency.

Under these circumstances, we are unable to conclude that Dr. Braddock had an accurate history. Therefore, we do not find his opinion persuasive. See *Miller v. Granite Const. Co.*, 28 Or App 473, 478 (1977) (medical opinion that rests on inaccurate information is not persuasive).

Accordingly, in the absence of a persuasive medical opinion supporting a causal relationship between claimant's need for treatment/disability and her work activities while Broadspire was administering coverage, we are unable to conclude that the "new injury" claim is compensable. Consequently, we affirm.

ORDER

The ALJ's order dated March 5, 2015 is affirmed.

Entered at Salem, Oregon on March 24, 2016