

In the Matter of the Compensation of  
**MARIA MATA, Claimant**

WCB Case No. 15-01780

**ORDER ON REVIEW**

Hollander & Lebenbaum et al, Claimant Attorneys  
Law Offices of Kenneth R Scarce, Defense Attorneys

Reviewing Panel: Members Weddell and Johnson.

The insurer requests review of Administrative Law Judge (ALJ) Fulsher's order that set aside its denial of claimant's new/omitted medical condition claim for a traumatic right shoulder rotator cuff tear. On review, the issue is compensability.

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

On August 11, 2014, claimant suffered a compensable injury when she tripped and fell. Dr. Connelly, an emergency room physician, sutured her forehead laceration. (Ex. 1). He also reported that a "detailed head to toe orthopedic exam reveal[ed] no other [evidence of] trauma[.]" (Ex. 1-2).

On August 14, 2014, claimant followed up with Dr. Carver, who became her attending physician. Dr. Carver documented tenderness and muscle tightness at the base of claimant's neck and in her right upper trapezius muscle, equal shoulder range of motion (ROM), and negative "Hawkins" and "Neer's" tests. (Ex. 3-2).

The insurer accepted a forehead laceration, right trapezius strain, left and right knee contusions, and lumbar strain. (Ex. 7).

Claimant also received treatment from Ms. Rohde, a physical therapist, and Dr. Saalfeld, a chiropractor. On August 26, 2014, Ms. Rohde noted limitations in claimant's right shoulder ROM, particularly her inability to perform internal rotation due to pain. (Ex. 5-3). On October 15, 2014, Dr. Saalfeld documented right shoulder pain, muscle tenderness, and rotator cuff weakness. (Ex. 9-3, -4). On October 17, 2014, Ms. Rohde further documented right shoulder pain and reduced right upper extremity strength. (Ex. 10-1, -3). Thereafter, Dr. Saalfeld noted persistent right shoulder complaints. (Exs. 12, 17A-1, 19, 22, 25).

On December 5, 2014, Dr. Carver documented that claimant was having increased shoulder pain at work. (Ex. 21-1). He observed that her right shoulder ROM was decreased, but became full with distraction, and that her "Hawkins"

and “Neer’s” tests were negative. (Ex. 21-2). His assessment was that the right trapezius strain was causing persistent tightness and tenderness, restricting her shoulder ROM. (*Id.*)

On January 9, 2015, Dr. Carver documented reduced right shoulder ROM and positive “Hawkins” and “Neer’s” tests. (Ex. 27-1). A January 27, 2015 right shoulder MRI showed a supraspinatus tendon tear. (Ex. 30-1). Dr. Carver diagnosed a traumatic right rotator cuff tear, which could be degenerative. (Ex. 31-2).

On February 6, 2015, claimant signed an 827 form, asking the insurer to “add” right rotator cuff tear to her claim. (Ex. 33).

On March 5, 2015, Dr. Harris, an orthopedic surgeon, performed an examination at the insurer’s request. Dr. Harris concluded that claimant’s right rotator cuff tear was not related to her work injury. (Ex. 34-10). He reasoned that claimant’s shoulder examination was normal after the work event and that an abnormal shoulder examination or significant shoulder pain was not documented until January 9, 2015. (Ex. 34-9). He also opined that the mechanism of injury “does not fit because [claimant] fell forward while holding objects and does not endorse catching herself with her upper extremities or striking her shoulder against any object.” (Ex. 34-10).

Dr. Carver did not concur with Dr. Harris’s opinion. (Ex. 39). Dr. Carver maintained that “a person would naturally raise [her] arms to protect against a fall.” (Ex. 40). He also noted that although claimant’s right shoulder ROM had been normal, she had had persistent right shoulder pain from the outset. (*Id.*) He opined that the right rotator cuff tear was preexisting, but that the work injury combined with the preexisting condition and was the major cause of the need for treatment of the combined condition. (*Id.*)

On March 6, 2015, Dr. Nasson, a surgeon, proposed an operative repair of the right rotator cuff tear. (Ex. 35-2). Based on claimant’s history and the information he was provided concerning the mechanism of injury (that claimant put out her hands to catch her fall), he concluded that the work injury was the major contributing cause of the right shoulder rotator cuff tear. (Ex. 47-2). Dr. Saalfeld concurred with Dr. Nasson’s opinion. (Ex. 48).

On April 10, 2015, the insurer denied “traumatic right shoulder rotator cuff tear” as a new/omitted medical condition. (Ex. 42). Claimant requested a hearing.

At the hearing, claimant testified that she landed on “all fours on the floor, my hands on the floor[.]” (Tr. 10). The items that she had been carrying were “splattered” in front of her. (*Id.*) Her whole body hurt, particularly her forehead, neck, and right shoulder. (Tr. 13).

Based on the opinions of Drs. Nasson, Carver, and Saalfeld, the ALJ set aside the insurer’s denial. On review, the insurer contends that the opinion of Dr. Harris was more persuasive. For the following reasons, we disagree with the insurer’s contention.

To establish the compensability of her new/omitted medical condition claim, claimant must prove that her work injury was a material contributing cause of the disability/need for treatment of the claimed condition.<sup>1</sup> ORS 656.005(7)(a); ORS 656.266(1); *Betty J. King*, 58 Van Natta 977 (2006). Because of the divergent medical opinions concerning the cause of claimant’s condition and need for treatment, expert medical opinion must be used to resolve this question. *Barnett v. SAIF*, 122 Or App 279, 282 (1993). In evaluating the medical evidence, we rely on those opinions that are well reasoned and based on accurate and complete information. *Somers v. SAIF*, 77 Or App 259, 263 (1986).

After conducting our review, we consider Dr. Nasson’s opinion to be well reasoned and based on accurate and complete information. His understanding of the mechanism of injury was consistent with claimant’s un rebutted testimony that she tripped and fell forward, dropping the objects she was carrying, and landing on her hands and knees. (Tr. 10). He acknowledged her equal shoulder motion on August 14, 2014, which he considered “unexpected, but not entirely inconsistent” with a shoulder injury several days before. (Ex. 47-2). He further observed that her right shoulder ROM was limited on August 26, 2014, and that subsequent treatment records (*i.e.*, physical therapy and chiropractic records) documented ongoing right shoulder symptoms. (*Id.*) Accordingly, we consider Dr. Nasson’s well-reasoned opinion to be based on a complete history.<sup>2</sup> *See Jackson County v.*

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<sup>1</sup> The parties do not dispute, and the record establishes, the existence of the claimed right rotator cuff tear condition. *See Maureen Y. Graves*, 57 Van Natta 2380 (2005). The insurer did not assert a “combined condition” defense. *See* ORS 656.005(7)(a)(B).

<sup>2</sup> We disagree with the insurer’s assertion that Dr. Nasson should have addressed the “implications” raised by Dr. Harris regarding the provocative tests. Dr. Harris stated that there are multiple places in the record where provocative testing was documented as normal and it was not until January 9, 2015, that an abnormal shoulder examination was documented. (Ex. 34-9). The record shows that claimant had negative “Hawkins” and “Neer’s” tests on August 14, 2014 and December 5, 2014, positive tests on January 9, 2015, and a positive “Hawkins” test and a negative “Neer’s” test in May 2015.

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*Wehren*, 186 Or App 555, 560-61 (2003) (a history is complete if it includes sufficient information on which to base the opinion and does not exclude information that would make the opinion less credible).

In contrast, Dr. Harris did not recognize that claimant fell on her hands. (Ex. 34-10; Tr. 10). His medical records review did not include Dr. Saalfeld's records. (Ex. 34-7). His description of the physical therapy notes (as "correlate[ing] with the remainder of the medical record") is inconsistent with his observation that there was decreased ROM in claimant's right shoulder at the initial physical therapy evaluation. (*Id.*) He also omitted Ms. Rohde's documentation of reduced upper extremity strength. (Exs. 10-2, 34-7). Therefore, we do not consider Dr. Harris's analysis persuasive. *See Miller v. Granite Construction Co.*, 28 Or App 473, 476 (1977) (opinion based on incomplete information found unpersuasive).

Based on Dr. Nasson's well-reasoned opinion, we conclude that claimant satisfied her burden under ORS 656.266(2)(a). Therefore, we affirm.

Claimant's attorney is entitled to an assessed fee for services on review. ORS 656.382(2). After considering the factors set forth in OAR 438-015-0010(4) and applying them to this case, we find that a reasonable fee for claimant's attorney's services on review is \$4,500, payable by the insurer. In reaching this conclusion, we have particularly considered the time devoted to the case (as represented by claimant's respondent's brief), the complexity of the issue, the value of the interest involved, and the risk that counsel may go uncompensated.

Finally, claimant is awarded reasonable expenses and costs for records, expert opinions, and witness fees, if any, incurred in finally prevailing over the denial, to be paid by the insurer. *See* ORS 656.386(2); OAR 438-015-0019; *Gary E. Gettman*, 60 Van Natta 2862 (2008).

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(Exs. 3-2, 21-2, 27-1, 44-2). Dr. Harris did not explain these results. Therefore, we cannot infer that they demonstrate when claimant tore her right rotator cuff. *See Benz v. SAIF*, 170 Or App 22, 25 (2000) (although the Board may draw reasonable inferences from the medical evidence, it is not free to reach its own medical conclusions); *SAIF v. Calder*, 157 Or App 224 (1998) (the Board is not an agency with specialized medical expertise and must base its findings on medical evidence in the record); *see also Marissa G. Farr*, 65 Van Natta 2529, 2532 (2013) (Board did not discount a physician's opinion for not addressing the claimant's family history where the opposing medical opinion implicated congenital or hereditary factors without adequate explanation).

ORDER

The ALJ's order dated September 25, 2015 is affirmed. For services on review, claimant's counsel is awarded an assessed attorney fee of \$4,500, payable by the insurer. Claimant is awarded reasonable expenses and costs for records, expert opinions, and witness fees, if any, incurred in finally prevailing over the denial, to be paid by the insurer.

Entered at Salem, Oregon on March 25, 2016