
In the Matter of the Compensation of
TERRY L. SALLAGOITY, Claimant
WCB Case Nos. 14-01310, 14-00712
ORDER ON REVIEW
Julene M Quinn LLC, Claimant Attorneys
H Thomas Andersen, Defense Attorneys

Reviewing Panel: Members Weddell and Johnson.

Claimant requests review of Administrative Law Judge (ALJ) Otto's order that upheld the self-insured employer's denial of claimant's new/omitted medical condition claim for a left shoulder supraspinatus tendon tear. On review, the issue is compensability.

We adopt and affirm the ALJ's order with the following supplementation.¹

On August 3, 2013, claimant, a housekeeper, was at work, vacuuming a room, when two closet doors fell on her. (Tr. 10). On August 5, 2013, she consulted Dr. Skotte about bruises on her left arm and left leg and a "burning sensation through [her] arm." (Ex. 2). Dr. Skotte observed a left forearm abrasion and diagnosed a left forearm contusion or soft tissue injury. (*Id.*)

Claimant saw Dr. Skotte several more times in August 2013, for an infection in the left forearm wound, numbness in the fingers, and left arm and back pain. (Exs. 2, 3, 4, 5). Dr. Skotte did not document any complaints or findings involving claimant's left shoulder. (*Id.*)

On August 22, 2013, Mr. Walberg, a physical therapist, performed an initial evaluation. He described the injury to claimant's left forearm and recorded complaints of left forearm pain, left finger numbness, and left 4th finger "getting stuck." (Ex. A1-1). He also documented reduced left shoulder strength and range of motion and developed a physical therapy plan to address those deficits, but he did not describe an injury to claimant's left shoulder or document left shoulder complaints. (Ex. A1-2, -3).

¹ We do not adopt the third sentence in the first full paragraph on page 11 of the ALJ's order. Contemporaneous medical records may be, but are not necessarily, more persuasive than a claimant's testimony. *Roberto Lopez-Carrillo*, 67 Van Natta 372, 374 (2015) (contemporaneous medical records can be more reliable than later testimony).

On September 9, 2013, claimant told Dr. Skotte that her left low back and left knee were bothering her, which she attributed to trying to do “too much, too soon.” (Ex. 6). Dr. Skotte diagnosed a lumbosacral strain and prescribed additional physical therapy. (*Id.*)

On September 16, 2013, claimant told Dr. Skotte that her left arm was better, but that folding towels at work was bothering her low back. (Ex. 8). On the same day, Mr. Walberg reported that claimant was “still” complaining of left shoulder pain, but her left forearm pain was better. (A8-1).

On September 19, 2013, claimant told Dr. Skotte that her back and left forearm were better, but she had left knee pain and discomfort above the elbow from folding laundry at work. (Ex. 8). Dr. Skotte examined claimant’s left shoulder and opined that she had “full” motion. (*Id.*) On the same day, claimant told Mr. Walberg that her left shoulder/upper extremity was “still * * * ‘on fire’ and burning[.]” (Ex. A9-1). Mr. Walberg’s assessment was that claimant’s symptoms were “real to her, even though they [were] out of proportion to her injury.” (Ex. A9-4).

On September 25, 2013, Mr. Walberg noted that claimant’s left upper extremity active range of motion and strength had fluctuated from week to week. (Ex. A11-5).

On September 26, 2013, claimant told Dr. Skotte that her left arm had not improved and was worse when she folded laundry at work. (Ex. 9). Dr. Skotte reported that she was “complaining of pain down the entire left arm and not just the area where the original contusion is.” (*Id.*) He documented reduced abduction, but observed that when he “gave her something to distract her, she was totally able to bring her abduction to almost 160 degrees[.]” (*Id.*) He recommended “an IME as * * * she is continually coming up with new complaints in other areas.” (*Id.*)

On October 1, 2013, claimant consulted Dr. Walther, an orthopedist. Claimant told Dr. Walther that she had immediate pain in her arm after the injury. (Ex. 10-1). Dr. Walther examined claimant’s left upper extremity and opined that she had “full” range of motion in the left shoulder, elbow and wrist. (Ex. 10-2). Dr. Walther further reported that she did not observe any musculoskeletal abnormalities, serious neurological issues, or problems with claimant’s left shoulder. (*Id.*) She referred claimant to a physiatrist for a possible complex regional pain syndrome. (*Id.*)

On October 4, 2013, the employer accepted a left arm contusion and abrasion. (Ex. 11A).

On October 15, 2013, Dr. Toal, an orthopedic surgeon, and Dr. Green, a neurologist, performed an examination at the employer's request. The physicians documented left shoulder range-of-motion deficits, tenderness and pain, and diagnosed a left shoulder impingement syndrome. (Ex. 14-11, -12). They opined that the August 3, 2013 event was not a material contributing cause of claimant's left shoulder condition. (Ex. 14-15).

Drs. Walther and Skotte concurred with the findings and opinions of Drs. Toal and Green. (Exs. 16, 17).

A February 14, 2014 left shoulder MRI showed a full thickness tear in the rotator cuff.² (Ex. 22).

On March 3, 2014, claimant initiated a new/omitted medical condition claim for a subscapularis tear. (Ex. 26).

On March 13, 2014, the employer issued a denial, asserting that there was insufficient evidence that the claimed tear was caused by the August 3, 2013 work injury or the accepted left arm contusion and abrasion.³ (Ex. 27). Claimant requested a hearing.

On April 8, 2014, Dr. Walther reviewed the February 14, 2014 MRI and opined that the findings were chronic and degenerative and not caused by the August 3, 2013 work event. (Ex. 29-2). She maintained that she had thoroughly examined claimant's left shoulder on October 1, 2013 and found "nothing acutely wrong." (*Id.*)

² The original MRI report described a supraspinatus tear in the "findings" and a subscapularis tear in the "impression." (Ex. 22-2). The MRI report was corrected on May 14, 2014, to conform the "impression" with the "findings" of a supraspinatus tear. (Exs. 33A, 34-1).

³ The employer subsequently issued another denial, acknowledging that claimant had initiated a new/omitted medical condition claim for a supraspinatus tear and asserting that there was insufficient evidence that the claimed tear was caused in material part by the work injury or by the accepted left arm contusion and abrasion. (Ex. 39A). Claimant requested a hearing.

On April 16, 2014, Dr. Jacobson, an orthopedic surgeon, reported that he had evaluated claimant on March 24, 2014.⁴ (Ex. 30-1). Based on his understanding that the door had fallen on claimant, causing her to fall and land on the ground with the door on top of her, and that her left shoulder symptoms began at that time, he concluded that she had injured her left shoulder during the event. (Ex. 30-2).

On May 1, 2014, Dr. Sullivan, an internist who had seen claimant for her left shoulder in April 2014, agreed with Dr. Jacobson's conclusion regarding causation. (Exs. 28A, 30A, 31-3). Dr. Sullivan also understood that claimant was struck by a heavy door, which caused her to fall and land awkwardly on the ground with the door on top of her, and that her left shoulder symptoms began at that time. (Ex. 31-2)

On May 7, 2014, Dr. Toal opined that if the supraspinatus had been torn, there would have been immediate pain. (Ex. 32-2). Since there was no mention of shoulder pain immediately after the event, he concluded that the supraspinatus was not torn as a result of the August 3, 2013 event. (*Id.*)

During a June 18, 2014 deposition, Dr. Jacobson acknowledged that an acute rotator cuff tear typically causes pain immediately or within a few days; *i.e.*, the person "knows they've done something." (Ex. 35-21). Based on Dr. Skotte's chart notes and Dr. Walther's October 1, 2013 examination, Dr. Jacobson opined claimant had not torn her rotator cuff as a result of the work event. (Ex. 35-33, -45). Considering the small size of the tear, he stated that it could have occurred within six months of the February 14, 2014 MRI, but he noted that Dr. Walther's October 1, 2013 examination did not indicate that there was anything clinically wrong with claimant's left shoulder at that time. (Ex. 35-35, -46). He concluded that "what [he] saw appeared to have occurred some time between when Dr. Walther saw her in October and when [he] saw her in April or March." (Ex. 35-43).

On July 23, 2014, Dr. Yodlowski, an orthopedic surgeon, performed an examination at the employer's request. Dr. Yodlowski opined that a traumatic rotator cuff tear would cause acute pain. (Ex. 38B-27). Dr. Yodlowski concluded that claimant's presentation (*i.e.*, no shoulder complaints associated with the injury event, normal left shoulder examination on October 1, 2013) indicated that she did not sustain a traumatic tear on August 3, 2013. (*Id.*)

⁴ Dr. Jacobson's March 24, 2014 chart note is not in the record.

On July 22, 2014, claimant consulted Dr. Wigle, an orthopedic surgeon. Based on the physical therapy records showing that claimant had pain with left shoulder flexion, external rotation, and internal rotation in late August 2013, Dr. Wigle opined that claimant probably tore her rotator cuff on August 3, 2013. (Ex. 39-1).

Claimant testified that, on August 5, 2013, her shoulder was hurting and she showed Dr. Skotte that her whole arm hurt. (Tr. 14).

In a “post-hearing” deposition, Dr. Wigle surmised that claimant would have thrown up her left arm to protect herself from the doors and that the impact caused a stretch or strain injury, which is a “classic mechanism of injury * * * in all tendon ruptures[.]” (Ex. 44-22, -23). He further reasoned that the tear was small, which explained her symptom presentation and range of motion. (Ex. 44-24, -25). He acknowledged that he did not know “how much she tore it” and that it was “hard to depend on her history throughout this thing,” but concluded that she injured her shoulder during the event because “this is the only thing that [he could] see historically that would have brought her to needing medical care.” (Ex. 44-26, -27).

Dr. Sullivan was also cross-examined in a “post-hearing” deposition. He acknowledged that an orthopedic surgeon would be more likely to discover a tear than an initial treating physician as the “inflammatory process * * * has settled in and, also, * * * if there is a distracting injury, hopefully [it] will have been treated by then.” (Ex. 45-12). Notwithstanding Dr. Walther’s October 1, 2013 normal left shoulder examination, he relied on the history claimant provided and his examination seven months after the work event. (Ex. 45-23, -24). He acknowledged that he did not thoroughly review claimant’s medical records. (Ex. 45-27, -28).

The ALJ determined that the medical evidence did not persuasively establish that the work injury was a material contributing cause of claimant’s left shoulder rotator cuff tear. The ALJ found that the opinion of Dr. Wigle was based on an incorrect understanding of the mechanism of injury and that the opinion of Dr. Sullivan was based on incomplete and inaccurate information. Considering Dr. Walther’s October 1, 2013 examination report and the absence of left shoulder pain complaints following the injury, the ALJ concluded that there was no temporal relationship between the injury and the onset of claimant’s symptoms. Lastly, the ALJ was not persuaded that claimant’s left forearm abrasion “masked” left shoulder symptoms. Accordingly, the ALJ upheld the employer’s denial.

On review, claimant contends that her work accident was a material contributing cause of her disability/need for treatment of the claimed supraspinatus tear. She asserts that the MRI and Dr. Jacobson's opinion establish that the tear occurred at the time of the injury, that Dr. Skotte's initial chart note shows that her complaints included the left shoulder, and that the opinions of Drs. Sullivan and Wigle are more persuasive than those of Drs. Yodlowski and Toal.

To prevail on a new/omitted medical condition claim, the claimant must prove that the work injury was a material contributing cause of the disability or need for treatment of the claimed condition.⁵ See ORS 656.005(7)(a); ORS 656.266(1); *Betty J. King*, 58 Van Natta 977 (2006). Considering the conflicting evidence regarding the cause of the claimed condition, the compensability issue presents a complex medical question that must be resolved by expert medical evidence. *Barnett v. SAIF*, 122 Or App 279, 282-83 (1993). We give more weight to those medical opinions that are well reasoned and based on complete information. See *Somers v. SAIF*, 77 Or App 259, 263 (1986).

For the following reasons, we find the medical evidence insufficient to establish a compensable condition.

Dr. Jacobson opined that the tear could have occurred within the six months preceding the February 14, 2014 MRI. (Ex. 35-46). However, after reviewing Dr. Walther's October 1, 2013 normal left shoulder examination, he thought it was unlikely that claimant had torn her rotator cuff as a result of the August 3, 2013 incident. (Ex. 35-35).

When claimant was seen by Dr. Skotte on August 5, 2013, she reported a "burning sensation through [her] arm." (Ex. 2). However, she did not specifically report discomfort above the elbow until September 19, 2013. (Ex. 8). She attributed that discomfort to folding laundry. (*Id.*) Subsequently, on September 26, 2013, Dr. Skotte reported that claimant was "now complaining of pain down the entire left arm and not just the area where the original contusion is." (Ex. 9). Dr. Skotte's chart notes do not show that claimant had a left shoulder complaint on August 5, 2013.

⁵ The parties do not dispute, and the record establishes, the existence of the claimed left supraspinatus tear. See *Maureen Y. Graves*, 57 Van Natta 2380, 2381 (2005). The insurer did not assert a "combined condition" defense. See ORS 656.005(7)(a)(B); ORS 656.266(2)(a).

Dr. Sullivan, an internal medicine specialist who treats mostly diabetes and heart conditions, based his causation opinion on what claimant told him and on his examination, some seven months after the work injury. In doing so, he disregarded Dr. Walther's October 1, 2013 normal left shoulder examination, explaining that was "between * * * the patient and Dr. Walther[.]" and his "concern is what the patient tells me and then what I find on exam[.]" (Ex. 45-24). Because claimant told him that she talked to Dr. Skotte about her left shoulder injury, Dr. Sullivan also discounted the absence of left shoulder complaints in Dr. Skotte's chart notes. (Ex. 45-27). Dr. Sullivan further acknowledged that he had not thoroughly reviewed all of claimant's medical records.⁶ (Ex. 45-27, -28). For these reasons, we conclude that Dr. Sullivan's opinion is not well reasoned or based on complete information. *Somers*, 77 Or App at 263.

Similarly, we do not find Dr. Wigle's opinion persuasive. He did not examine claimant until July 22, 2014, almost a year after the work injury. Dr. Wigle acknowledged that the absence of acute shoulder complaint "raises a question about the degree of tearing [claimant] had acutely[.]" (Ex. 44-21, -26). He explained that patients with significant acute tears will complain of acute pain "right at the time * * * they usually don't have no complaint of pain[.]" (Ex. 44-21). He surmised that claimant focused on her forearm injury. (Ex. 44-22). He assumed that claimant would have thrown up her arm to protect herself and sustained a stretch or strain injury when the door hit her arm. (Ex. 44-22, -23). He concluded that "this is the only thing that I can see historically that brought her to needing medical care." (Ex. 44-26, -27).

Yet, Dr. Wigle did not address Dr. Walther's orthopedic examination on October 1, 2013 or her conclusion that there was nothing acutely wrong with claimant's left shoulder. (Ex. 29-2). At that point, the chart notes of Drs. Skotte and Walter showed that claimant was no longer focused on the left forearm injury. (Exs. 10-1, 11A). The abrasion had healed and the edema and swelling were "markedly reduced." (Ex. 9). Moreover, Dr. Wigle did not address Dr. Jacobson's opinion that claimant's left shoulder condition developed after Dr. Walther saw her on October 1, 2013. (Ex. 35-43). Because Dr. Wigle did not fully consider and respond to these contrary opinions, we do not find his opinion persuasive. *See Janet Benedict*, 59 Van Natta 2406, 2409 (2007), *aff'd without opinion*, 227 Or App 289 (2009) (medical opinion less persuasive when it did not address contrary opinions).

⁶ Similarly, Dr. Sullivan agreed with an opinion from Dr. Jacobson that was based on an incorrect history. (Ex. 45-19, -21).

Thus, regardless of the asserted deficiencies in the opinions of Drs. Toal and Yodlowski, claimant has not persuasively established the compensability of her claimed condition. *See Lorraine W. Dahl*, 52 Van Natta 1576 (2000) (because physicians' opinions supporting compensability were unpersuasive, the claim was found not compensable, regardless of the persuasiveness of the countervailing physicians' opinions). Accordingly, we affirm.

ORDER

The ALJ's order dated June 26, 2015, as corrected July 9, 2015, is affirmed.

Entered at Salem, Oregon on May 10, 2016