
In the Matter of the Compensation of
TIMOTHY ERCEG, Claimant
WCB Case No. 14-04534
ORDER ON REVIEW
Alvey Law Group, Claimant Attorneys
Sather Byerly & Holloway, Defense Attorneys

Reviewing Panel: Members Weddell and Johnson.

Claimant requests review of Administrative Law Judge (ALJ) Jacobson's order that upheld the self-insured employer's denial of his new/omitted medical condition claim for a C5-6 disc protrusion. On review, the issue is compensability. We affirm.

FINDINGS OF FACT

We adopt the ALJ's "Findings of Fact."

CONCLUSIONS OF LAW AND OPINION

Claimant sustained a previous compensable injury in 2011, resulting in the acceptance of a cervical strain. (Ex. 9). December 2012 x-rays revealed degenerative disc disease at C5-6 and C6-7. (Ex. 12).

On September 5, 2013, claimant hit his head at work, resulting in the present claim. The employer accepted a cervical strain. Subsequent imaging findings included a diffuse broad-based disc protrusion at C5-6 and degenerative changes at C5-6 and C6-7. Claimant filed a new/omitted medical condition claim for a C5-6 disc protrusion. The employer denied the new/omitted medical condition claim, and claimant requested a hearing.

The ALJ concluded that claimant had not established that the work incident was a material contributing cause of any need for treatment or disability of the C5-6 disc protrusion. Accordingly, the ALJ upheld the denial.

On review, claimant contends that the medical evidence supports the compensability of his new/omitted medical condition claim. Based on the following reasoning, we disagree.

Claimant bears the initial burden to establish that his work incident was a material contributing cause of his need for treatment or disability of the C5-6 disc protrusion.¹ ORS 656.005(7)(a); ORS 656.266(1); *Brown v. SAIF*, 262 Or App 640, 646 (2014); *Knaggs v. Allegheny Techs.*, 223 Or App 91, 95-96 (2008). However, if an otherwise compensable injury combined with a preexisting condition, the carrier may establish that the combined condition is not compensable by proving that the otherwise compensable injury (*i.e.*, the work incident) was not the major contributing cause of the disability or need for treatment of the combined condition. ORS 656.005(7)(a)(B); ORS 656.266(2)(a); *Brown*, 262 Or App at 652-53; *Jean M. Janvier*, 66 Van Natta 1827, 1832 (2014); *Jack G. Scoggins*, 56 Van Natta 2534, 2535 (2004).

Considering claimant's previous neck injury and the disagreement among experts regarding the causes of his symptoms, the compensability issue presents a complex medical question that must be resolved by expert medical evidence. *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 complete information. *Somers v. SAIF*, 77 Or App 259, 263 (1986).

We do not adopt the ALJ's conclusion that claimant did not prove that his work incident was a material contributing cause of his need for treatment or disability of his C5-6 disc condition. However, assuming that claimant has established an "otherwise compensable injury," we conclude that the employer has shown a combined condition and has proved that the "otherwise compensable injury" was not the major contributing cause of claimant's need for treatment or disability of the combined condition. We reason as follows.

Drs. Borman and Vetter, orthopedic surgeons who examined claimant at the employer's request, explained that claimant had degenerative disc disease of the cervical spine, an arthritic condition that preexisted his 2013 work injury. (Exs. 25-8, 35-9, 41-2). They opined that the preexisting arthritic condition combined with the work injury to contribute to claimant's symptoms. (Exs. 25-8, 35-12, 41-2). Dr. Keenen, who became claimant's attending physician in January 2014, also concluded that claimant had disc degeneration, and his opinion that the work injury "caused a worsening of the prior cervical condition" is consistent with the existence of a "combined condition." (Exs. 32-3, 47-2).

¹ The existence of the C5-6 disc protrusion is not disputed. See *De Los-Santos v. Si Pac Enterprises, Inc.*, 278 Or App 254, 257 (2016).

In light of this evidence, we are persuaded that claimant's otherwise compensable injury combined with a preexisting condition. Further, as explained below, we conclude that the opinions of Drs. Borman and Vetter persuasively establish that the otherwise compensable injury was not the major contributing cause of claimant's need for treatment or disability of the combined condition.

Dr. Borman explained that claimant's C5-6 protrusion was a component of claimant's preexisting degenerative disc condition, which also existed at the C6-7 level. (Ex. 51-1-2). Although acknowledging that claimant's preexisting degeneration had been exacerbated by the work injury, he opined that the mechanism of injury was inconsistent with injuring or worsening the C5-6 disc protrusion. (Exs. 25-8, 51-4)

Dr. Borman explained that radiculitis, which refers to an irritation of a specific nerve root, cannot be confirmed by diagnostic imaging alone. (Ex. 51-4). He opined that there had not been an objectively documented cervical radiculopathy or nerve root impingement. (Ex. 51-2). In particular, he explained that a C5-6 disc protrusion would be expected to result in repeated reports of decreased sensation in the forearm, down to the thumb and index finger. (*Id.*) He concluded that the symptoms that had been documented were not consistent with a C5-6 disc protrusion. (Ex. 51-2-4).

Dr. Borman's discussion of the preexisting condition and its relationship with the C5-6 disc protrusion is well reasoned, as is his explanation that the otherwise compensable injury did not worsen the protrusion and that the record did not demonstrate symptoms attributable to the protrusion. His opinion persuasively supports the employer's burden of proof.

Claimant contends that Dr. Borman opined that the otherwise compensable injury was, at least initially, the major contributing cause of his need for treatment and disability of the combined C5-6 disc protrusion. We disagree with claimant's interpretation of Dr. Borman's opinion.

Dr. Borman opined that the otherwise compensable injury was initially the major contributing cause of claimant's need for treatment and disability of a combined condition that included claimant's otherwise compensable injury and his overall preexisting condition. (Ex. 51-5). However, the present new/omitted medical condition claim is specifically for claimant's C5-6 protrusion, and Dr. Borman explained that the otherwise compensable injury was not the major contributing cause of claimant's need for treatment or disability of that condition.

Dr. Vetter also opined that the C5-6 protrusion was part of preexisting degeneration, which existed at multiple levels. (Ex. 41-2). He described claimant's injury as consisting of a cervical strain that temporarily combined with the preexisting condition. (*Id.*) After reviewing the medical records, he also concluded that there was no objective evidence showing that the work injury worsened the preexisting condition, including the C5-6 disc protrusion. (*Id.*)

Like Dr. Borman's opinion, Dr. Vetter's opinion supports the employer's position that the otherwise compensable injury was not the major contributing cause of claimant's need for treatment or disability of his combined C5-6 disc condition.

Claimant relies on the contrary opinion of Dr. Keenen, who opined that claimant's upper arm symptoms were consistent with a C5-6 disc protrusion. (Ex. 36-2). He concluded, "[I]t is my opinion the work injury is the major cause of [claimant's] disability and need for medical treatment for his denied 'C5-6 disc protrusion on the left.' I carefully considered all potential causes before expressing an opinion as to which constitutes the major cause." (Ex. 47-2).

Although Dr. Keenen stated that he had "carefully considered all potential causes," he did not persuasively discuss claimant's preexisting degeneration or explain why he considered the preexisting condition to have contributed less to claimant's disability and need for treatment than the otherwise compensable injury. Further, we consider Dr. Borman's reasoning, that claimant's upper arm symptoms were insufficient to support a diagnosis of a C5-6 disc condition, to persuasively refute Dr. Keenen's discussion of those symptoms.

Under these circumstances, we conclude that the opinions of Drs. Borman and Vetter establish that the otherwise compensable injury was not the major contributing cause of claimant's need for treatment or disability of his C5-6 disc protrusion. Therefore, the claimed new/omitted medical condition is not compensable. Accordingly, we affirm.

ORDER

The ALJ's order dated October 14, 2015 is affirmed.

Entered at Salem, Oregon on May 20, 2016