

In the Matter of the Compensation of  
**VARIE LUCIANO, Claimant**  
WCB Case No. 14-05514  
ORDER ON REVIEW  
Peter O Hansen, Claimant Attorneys  
Richard J Cantwell, Defense Attorneys

Reviewing Panel: Members Weddell, Curey, and Somers.

The self-insured employer requests review of Administrative Law Judge (ALJ) Smitke's order that set aside its denial of claimant's occupational disease claim for bilateral upper extremity conditions. On review, the issue is compensability.

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

In 2007, claimant began working for the employer as a senior office specialist. (Tr. 1-1). Her job required her to perform advanced secretarial duties, including computer data input. (*Id.*)

In July 2014, a co-worker went on leave and claimant's work load approximately doubled. (Ex. 19B). In August 2014, she began to notice discomfort, numbness, and pain in her bilateral hands and wrists, which she attributed to her work using a mouse and keyboard. (Ex. 7-4, -11).

Ultimately, in April 2015, she was evaluated by Dr. Puziss, who diagnosed chronic mild bilateral carpal tunnel syndrome (CTS), mild left ulnar nerve irritation, bilateral medial humeral epicondylitis, bilateral flexor pronator myotendinitis, and bilateral dorsal and volar forearm tightness related to her increased work activities. (Ex. 19B-3). Dr. Puziss disagreed with the opinions of Drs. Nolan, Vetter, Bell, Groman, and Wicher, all of whom concluded that claimant did not have a diagnosable work-related condition. (Exs. 10, 17, 21, 23).

The ALJ set aside the employer's denial, reasoning that claimant's testimony regarding her work activities and upper extremity symptoms was credible, and that Dr. Puziss offered the most persuasive opinion. In particular, the ALJ noted that Dr. Puziss's opinion gave detailed consideration to the waxing and waning of claimant's symptoms in response to her increased work load and subsequent time off and ergonomic workplace modifications. Additionally, the ALJ determined that Dr. Puziss made objective findings in support of the diagnosed conditions,

and that those findings gradually diminished as her symptoms and work capacity improved over time. Finally, the ALJ reasoned that Dr. Puziss addressed contrary opinions and that his statement that carpal tunnel syndrome can exist in the presence of negative nerve conduction studies was unchallenged. The ALJ was not persuaded by the contrary opinions, which stated that claimant had no diagnosable upper extremity conditions, and that her pain was caused by psychosocial stressors or somatoform disorder.

On review, the employer contends that the opinions of Drs. Nolan, Vetter, Bell, Groman, and Wicher are more persuasive than that of Dr. Puziss. The employer also contends that the opinion of Dr. Puziss is not sufficient to prove compensability. We disagree, based on the following reasoning.

Claimant bears the burden to prove that her work activities were the major contributing cause of her condition. ORS 656.266(1); ORS 656.802(2)(a). For an initial claim, claimant need not prove a specific diagnosis to prove the compensability of an occupational disease claim. *Tripp v. Ridge Runner Timber Servs.*, 89 Or App 355, 358 (1988); *Fernando Guzman*, 66 Van Natta 1166, 1167 (2014). However, she must also prove the existence of her occupational disease by medical evidence supported by objective findings. ORS 656.802(2)(d); *see Carl A. Lorenz*, 59 Van Natta 1754, 1758 (2007) (compensability not proven where the existence of the claimed occupational disease was not established).

There is disagreement among the medical experts regarding the nature and cause of claimant's bilateral upper extremity conditions. Under such circumstances, 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 complete information. *Somers v. SAIF*, 77 Or App 259, 263 (1986).

Dr. Puziss examined claimant and diagnosed multiple upper extremity conditions caused by her work activities. (Ex. 19B-3). In doing so, Dr. Puziss explained that the improvement in claimant's symptoms with the use of dictation software, followed by increased symptoms when she increased her work from part-time to full-time, strongly indicated the work-relatedness of her upper extremity conditions. (Ex. 20B-2).

The employer contends that Dr. Puziss relied on an inaccurate history because he commented that claimant did not have “widespread bilateral upper extremity pains.” (Ex. 26-3). In challenging Dr. Puziss’s opinion, the employer refers to claimant’s report of back, neck and shoulder symptoms in October 2014, rather than her symptoms at the time of Dr. Puziss’s July 2015 comment. (Ex. 7-5, -6). However, the record shows that Dr. Puziss’s July 2015 chart notes recorded that claimant “does not have” widespread pain, after she had been treating with him for some 3 months and reported feeling 85 percent better. (Exs. 19B, 26). Accordingly, Dr. Puziss’s statement is supported by the record, and we do not consider his history of claimant’s complaints to be inaccurate. *See SAIF v. Strubel*, 161 Or App 516, 521-22 (1999) (medical opinions are evaluated in context and based on the record as a whole to determine sufficiency). Moreover, after conducting our review of the record, we conclude that Dr. Puziss’s medical opinion is based on a thorough and accurate understanding of the onset of claimant’s symptoms and their improvement with treatment, rest, and ergonomic modifications. *See Jackson County v. 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 addition, Dr. Puziss performed four examinations over a period of four months and noted improvement in claimant’s symptoms during that time. (Exs. 19B, 20B, 20C, 25). Based on this record, we conclude that Dr. Puziss’s multiple examinations and documentation of claimant’s improvement in her symptoms further adds to the persuasiveness of his opinion. *See Diana G. Hults*, 61 Van Natta 1886, 1888 (2009) (more weight accorded to diagnostic opinions of physicians who had greater opportunity to observe the claimant’s condition over time).

The employer contends that Dr. Nolan’s opinion rebutted Dr. Puziss’s opinion that negative nerve conduction studies did not rule out CTS given a clinical examination indicative of the condition. We disagree with that contention.

Dr. Puziss explained that nerve conduction studies may result in a negative indication for CTS in approximately 15 percent of patients who otherwise have a positive clinical examination. (Ex. 19B-3). Accordingly, Dr. Puziss relied on his own clinical examination to diagnose mild CTS based on his positive examination findings. (*Id.*)

Dr. Nolan did not directly disagree with or rebut Dr. Puziss's statement that nerve conduction studies may not yield diagnostic evidence in as many as 15 percent of patients who may otherwise be diagnosed with CTS based on clinical examination. Further, Dr. Nolan did not address Dr. Puziss's observation that such tests are more common when CTS is treated during early stages of the condition. (*Id.*) Instead, he simply said that physical examination "pales in comparison" to nerve conduction studies, which he described as the "gold standard" for diagnosis of CTS. (Ex. 20A-2).

Thus, while Dr. Nolan did address Dr. Puziss's point regarding the sensitivity of nerve conduction studies, his lack of response to the abovementioned points rendered his response less thorough, and therefore, unpersuasive. *See Moe v. Ceiling Sys., Inc.*, 44 Or App 429, 433 (1980) (rejecting unexplained or conclusory opinion). Accordingly, we agree with the ALJ's conclusion that Dr. Puziss's reasoning regarding the significance of the nerve conduction testing makes his opinion more persuasive regarding claimant's diagnoses and their causes.

The employer also contends that Drs. Bell and Vetter offered persuasive opinions because they identified psychological stressors that they considered the cause of claimant's upper extremity symptoms. (Ex. 17-17). We acknowledge that Drs. Bell and Vetter identified stressful life circumstances at the outset of their report. (Ex. 17-4). However, like Dr. Nolan, Drs. Bell and Vetter did not address Dr. Puziss's opinion regarding the significance of the negative nerve conduction studies, nor did they discuss the significance of claimant's increased work load before the onset of her symptoms. Ultimately, given Dr. Puziss's detailed opinion correlating the onset of claimant's symptoms with her increased work load, and the improvement of those symptoms following treatment and ergonomic modifications, we are not persuaded by Drs. Bell and Vetter's opinion, which attributed claimant's symptoms to a psychological condition. (Ex. 17-17).

Next, the employer asserts that Dr. Groman's conclusion that claimant's condition did not improve during two months that she was taken off work was supported by the record. (Ex. 21-31). However, Dr. Groman's own report stated that claimant "had some improvement" (albeit with "incomplete relief") after taking two months off work. (Ex. 21-3). Moreover, the medical record, as well as claimant's credible testimony, establishes that she did have some improvement after taking time off work. (Ex. 14; Tr. 19). Accordingly, due to the aforementioned inconsistencies, the probative weight of Dr. Groman's opinion is

discounted. *See Howard L. Allen*, 60 Van Natta 1423, 1424-25 (2008) (internally inconsistent medical opinion, without explanation for the inconsistencies, was unpersuasive).

The employer additionally argues that Dr. Puziss did not have the necessary expertise to counter Dr. Wicher's diagnosis of a somatic symptom disorder. Based on the following reasoning, we find Dr. Wicher's opinion unpersuasive.

Dr. Wicher opined generally that "psychological factors unrelated to [claimant's] work exposure are playing the most significant role in her current clinical presentation." (Ex. 23-6). While diagnosing a somatic symptom disorder and commenting that such a disorder "contributes to the development of increased symptoms," Dr. Wicher did not express an opinion regarding Dr. Puziss's orthopedic diagnoses. (Ex. 23-9). Thus, Dr. Wicher's opinion would only be considered to support the employer's denial in conjunction with the reports of Drs. Nolan, Bell, Vetter, and Groman (who disputed Dr. Puziss's orthopedic diagnoses for claimant's condition). Because we consider those latter opinions to be unpersuasive for the reasons expressed above, as well as the reasons set forth in the ALJ's order, we do not consider Dr. Wicher's opinion to persuasively rebut Dr. Puziss's opinion attributing the major contributing cause of the claimed bilateral upper extremity conditions to claimant's work activities.

In summary, based on the aforementioned reasoning and that expressed in the ALJ's order, we find that claimant has established the compensability of her occupational disease claim for bilateral upper extremity conditions. Accordingly, we affirm.

Claimant's counsel 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 attorney fee award is \$5,500, to be paid by the employer. In reaching this conclusion, and we have particularly considered the time devoted to the case (as represented by claimant's respondent's brief and her counsel's request),<sup>1</sup> the complexity of the issue, the value of the interest involved, and the risk that counsel may go uncompensated.

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<sup>1</sup> "Time devoted to the case" is but one factor in the determination of a reasonable attorney fee. *Brad L. Emerson*, 67 Van Natta 1550, 1552 (2015). Furthermore, application of the "rule-based" factors is not a strict mathematical calculation. *Robert L. Lininger*, 67 Van Natta 1712, 1718 (2015).

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 employer. *See* ORS 656.386(2); OAR 438-015-0019; *Gary Gettman*, 60 Van Natta 2862 (2008). The procedure for recovering this award, if any, is described in OAR 438-015-0019 (3).

### ORDER

The ALJ's order dated August 28, 2015 is affirmed. For services on review, claimant's attorney is awarded an assessed fee of \$5,500, payable by the employer. Claimant is awarded reasonable expenses for records, expert opinions, and witness fees, if any, incurred in finally prevailing over the denial, to be paid by the employer.

Entered at Salem, Oregon on May 27, 2016