
In the Matter of the Compensation of
REBECCA GIBB, Claimant
WCB Case No. 14-05947
ORDER ON REVIEW
Julene M Quinn LLC, Claimant Attorneys
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Reviewing Panel: Members Johnson and Lanning.

Claimant requests review of Administrative Law Judge (ALJ) Mills's order that upheld the self-insured employer's denial of her new/omitted medical condition claim for left shoulder post-traumatic arthritis. On review, the issue is compensability.

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

On March 9, 2014, while working for the employer, claimant was injured while "lifting a box overhead." (Tr. 5). The employer accepted a lumbar strain and left shoulder tendonitis. (Ex. 26).

On November 20, 2014, claimant requested acceptance of a left shoulder strain and left shoulder post-traumatic arthritis. (Ex. 60). On December 1, 2014, the employer accepted the left shoulder strain. (Ex. 61). On December 3, 2014, the employer denied the left shoulder post-traumatic arthritis. (Ex. 63-1). Claimant requested a hearing.

In upholding the employer's denial, the ALJ reasoned that neither Dr. Jacobson's nor Dr. Nelson's opinion persuasively established that the claimed post-traumatic arthritis condition existed. Instead, relying on the opinions of Drs. Kitchel, Harris, and Leadbetter, as well as a normal MR arthrogram and lack of objective findings, the ALJ concluded that the medical evidence did not establish the claimed condition's existence.

On review, claimant contends that she established the existence of her claimed left shoulder post-traumatic arthritis.² In doing so, she asserts that Dr. Jacobson's opinion is persuasive and supported by the opinion of her

¹ The parties agree that Exhibit 65A was admitted into the record. (Tr. 2).

² Claimant also argues that neither ORS 656.267 nor ORS 656.005(7)(a) require that she prove the existence of an alleged new/omitted medical condition, provided that there are objective medical findings of the claimed condition. However, at hearing, claimant conceded that she had the burden of

treating physician, Dr. Nelson. For the following reasons, we find that neither Dr. Jacobson's nor Dr. Nelson's opinions persuasively support the existence of the claimed condition.

To prevail on a new/omitted medical condition claim, claimant must prove that the claimed condition exists and that the work injury was a material contributing cause of the disability/need for treatment of the condition. *See* ORS 656.005(7)(a); ORS 656.266(1); *Graves*, 57 Van Natta at 2381. It is claimant's burden to show that the claimed left shoulder post-traumatic arthritis exists as a new/omitted medical condition, not that it is the best diagnosis to describe her condition. *See Elizabeth Wood*, 66 Van Natta 402, 404-05 (2014); *April L. Shabazz*, 60 Van Natta 2475, 2476-77 (2008).

Considering the disagreement between experts regarding the existence of the claimed condition and causation, the compensability issue presents complex medical questions that must be resolved by expert medical opinion. *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 and accurate information. *Somers v. SAIF*, 77 Or App 259, 263 (1986).

Here, for the following reasons, in addition to those expressed in the ALJ's order, the medical evidence does not persuasively establish that the claimed left shoulder post-traumatic arthritis condition exists.

On March 12, 2014, Dr. Nelson, claimant's treating physician, initially diagnosed bilateral shoulder joint pain and lower back pain. (Ex. 8-3). Based on a "reassuring" clinical examination and imaging, Dr. Nelson did not believe that claimant had structural injury. (*Id.*) He anticipated rapid improvement over the next few days. (*Id.*)

On March 19, 2014, Dr. Nelson noted that claimant's symptoms seemed somewhat out of proportion to the injury and her clinical findings. (Ex. 12-1). Dr. Nelson noted "no significant objective findings" and that claimant has "primarily pain symptoms." (Ex. 12-2).

proving that her claimed new/omitted medical condition exists. (Tr. 3). In any event, her contention is contrary to Board case precedent. *See, e.g., Arlis R. Wheeler*, 68 Van Natta 560, 562 (2016) (finding that the claimant had met her burden of establishing the existence of the claimed new/omitted medical condition, citing *Maureen Y. Graves*, 57 Van Natta 2380, 2381 (2005)).

Thereafter, because of claimant's continued left shoulder pain, Dr. Nelson ordered an MR arthrogram. (Ex. 19-1). Overall, Dr. Nelson considered the MR arthrogram to be "relatively normal." (Ex. 27-1).

On May 27, 2014, following his examination of claimant, Dr. Jacobson diagnosed "left shoulder pain consistent with traumatic a.c. joint arthritis and trapezial strain." (Ex. 41-2). Claimant was given an injection in her left shoulder. (Ex. 41-3). According to Dr. Jacobson, it was significant that claimant's left shoulder symptoms resolved for approximately two days following the injection. (Ex. 68-2). He explained that, "[a]lthough her shoulder symptoms eventually returned, * * * the positive result of the injection confirmed the diagnosis of traumatic AC joint arthritis in the left shoulder[.]" (Ex. 68-2). Dr. Jacobson opined that "[b]ecause the Kenalog injection eliminated [claimant's] symptoms, albeit temporarily, it is medically probable that her symptoms were due to inflammation of the acromioclavicular joint." (*Id.*)

Thereafter, Dr. Nelson agreed that the diagnosis of left shoulder post-traumatic arthritis was not supported by the medical record or pertinent diagnostics. (Ex. 69A-1). However, he also commented that he deferred to Dr. Jacobson's opinion. (Ex. 69A-2). According to Dr. Nelson, claimant's response to the AC joint injection suggested that the AC joint was a source of pain, but was not necessarily indicative of post-traumatic arthritis. (Ex. 74-19). He noted that the injection included an anesthetic that works quickly and a steroid that takes longer to work. (Ex. 74-17-18). He believed that claimant's response to the AC joint injection was most likely related to the anesthetic, which would establish pain being generated in that area, but not the reason for the pain. (Ex. 74-18). Thus, Dr. Nelson did not diagnose left shoulder post-traumatic arthritis, but deferred to Dr. Jacobson's opinion. (Ex. 74-37).

Drs. Kitchel, Harris, and Leadbetter, who independently examined claimant at the employer's request, agreed that claimant's normal MR arthrogram and x-ray findings did not support the existence of left shoulder post-traumatic arthritis. (Exs. 56-1-2, 57-9, 70-8, 73-3). Moreover, Dr. Kitchel explained that traumatic arthritis conditions develop slowly after an acute injury and, therefore, it is "medically improbable" that claimant developed left shoulder post-traumatic arthritis within six months of her work injury. (Ex. 56-1). Dr. Kitchel further explained that diagnostics of claimant's left shoulder did not show any inflammation within the AC joint and, without acute inflammation, "traumatic AC joint arthritis cannot be shown to exist." (Ex. 56-2).

Dr. Harris agreed with Dr. Kitchel that post-traumatic arthritis takes years to develop, rather than months, after an injurious event. (Ex. 67-2). He further opined that claimant's "mechanism of injury is not one that would have placed sufficient force across the AC joint to cause arthritis[.]" (Ex. 57-11). Dr. Kitchel and Dr. Nelson concurred with Dr. Harris's opinion. (Exs. 58-1, 59).

Claimant relies on Dr. Jacobson's diagnosis of left shoulder post-traumatic arthritis. Although Dr. Jacobson agreed that claimant did not have *chronic* arthritis in her left shoulder, he opined that she had AC joint inflammation, without MRI or x-ray evidence, as confirmed by her response to the AC joint injection. (Ex. 68-2).

We acknowledge that Dr. Jacobson's practice is focused on shoulder care. (Ex. 68-1). Nonetheless, we find persuasive reasons to discount Dr. Jacobson's opinion. *See Shirley J. Roney*, 59 Van Natta 2271, 2275 (2007) (discounting insufficiently explained opinion, despite physician's allegedly greater specialized expertise). Specifically, Dr. Jacobson did not address or rebut the well-reasoned opinions of Drs. Kitchel, Harris, and Leadbetter. *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). For instance, Dr. Jacobson neither described the mechanism of injury which would have resulted in post-traumatic arthritis nor explained the development of post-traumatic arthritis only two months after claimant's work injury. Finally, Dr. Jacobson did not address Dr. Nelson's explanation that claimant's response to the AC joint injection was more indicative of pain in the AC joint and did not necessarily support a diagnosis of post-traumatic arthritis.

We acknowledge that Dr. Nelson's opinion supports a connection between claimant's work injury and her left shoulder complaints. (Ex. 12). However, Dr. Nelson defers to Dr. Jacobson's opinion (Ex. 69-1-2), and does not independently diagnose post-traumatic arthritis, which is the claimed new/omitted medical condition. (Ex. 74-8). Because we have discounted Dr. Jacobson's opinion, it likewise follows that we consider Dr. Nelson's opinion to be unpersuasive because of his deference to Dr. Jacobson's opinion. (Ex. 74-8, -33, -35-37).

In sum, because Dr. Jacobson's opinion is unpersuasive, and no other opinion persuasively supports the diagnosis of left shoulder post-traumatic arthritis, the record does not establish that the claimed condition exists. *See Lorraine W. Dahl*, 52 Van Natta 1576 (2000) (if medical opinions supporting compensability are insufficient to meet the claimant's burden of proof, the claim

is not compensable, regardless of the persuasiveness of countervailing opinions). Consequently, the record does not support the compensability of the disputed left shoulder post-traumatic arthritis. *See Graves*, 57 Van Natta at 2380. Accordingly, we affirm.

ORDER

The ALJ's order dated August 19, 2015 is affirmed.

Entered at Salem, Oregon on May 5, 2016