In the Matter of the Compensation of
YANIRA HUICOCHEA, Claimant
WCB Case Nos. 15-01550, 14-06281
ORDER ON REVIEW
Dunn & Roy PC, Claimant Attorneys
MacColl Busch Sato PC, Defense Attorneys

Reviewing Panel: Members Curey and Lanning.

The self-insured employer requests review of Administrative Law Judge (ALJ) Wren's order that: (1) set aside its denial of claimant's new/omitted medical condition claim for right sacroiliac (SI) joint sprain/dysfunction and bone marrow edema; and (2) found that claimant's medical services claim was related to her compensable injury. On review, the issue is compensability.[1] We affirm.

FINDINGS OF FACT

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

CONCLUSIONS OF LAW AND OPINION

To prevail on her new/omitted medical condition claim, claimant must prove that the conditions exist and that the work injury was a material contributing cause of her disability or need for treatment of the conditions. *See* ORS 656.005(7)(a); ORS 656.266(1); *Maureen Y. Graves*, 57 Van Natta 2380, 2381 (2005) (proof of the existence of the condition is a fact necessary to establish compensability of a new/omitted medical condition).

Because of the disagreement between medical experts regarding the cause of claimant's conditions, this claim presents a complex medical question that must be resolved by expert medical opinion. *Barnett v. SAIF*, 122 Or App 279, 282 (1993); *Mathew C. Aufmuth*, 62 Van Natta 1823, 1825 (2010). Unless there are persuasive

[1] The employer moves to strike claimant's respondent's brief as untimely submitted. Claimant's respondent's brief was due on May 16, 2016. However, the postmarked envelope containing the respondent's brief received by the Board is postmarked May 17, 2016. Additionally, the employer submits tracking information documenting a May 17, 2016 mailing date for the certified mail number corresponding to the envelope received by the Board. Claimant has not responded to the employer's motion.

Under these circumstances, the record establishes that claimant's respondent's brief was untimely filed. Consequently, the motion to strike is granted. *See* OAR 438-011-0020(2); *Miranda Samples*, 65 Van Natta 846, 849 n 1 (2013) (respondent's brief was not considered on review because it was untimely filed).

reasons to do otherwise, we tend to give more weight to the opinion of a claimant's treating physician. *Weiland v. SAIF*, 64 Or App 810, 814 (1983). However, whether we give greater weight to the attending physician's opinion will depend on the record in each case. *Dillon v. Whirlpool Corp.*, 172 Or App 484, 489 (2001).

Claimant relies on the opinion of Dr. Verzosa, his attending physician, and Dr. Wei, a radiologist, to establish the existence of the claimed SI joint conditions. Based on the following reasoning, we find their opinions persuasive.

At the beginning of claimant's treatment, Dr. Verzosa noted spasms and tenderness of the SI joint and recommended chiropractic treatment and massage therapy. (Ex. 8-4). Dr. Verzosa also noted a positive Fabere's test indicating SI joint pain. (Ex. 168-25).

Later, Dr. Wei interpreted an MRI as showing "minimal subchondral bone marrow edema," at the right sacroiliac joint. (Ex. 42). He commented that the findings were "suspicious of an acute arthropathy." (*Id.*) Dr. Verzosa discussed the findings with Dr. Wei, and noted that "acute arthropathy" described non-arthritic inflammation of the SI joint due to irritation of the joint. (Ex. 45).

Dr. Toal, an orthopaedic surgeon who examined claimant at the employer's request, also viewed the MRI, but concluded that there was "no significant pathology" and "no significant bone marrow edema" present based on the MRI. (Ex. 95-11). Reviewing Dr. Verzosa's notes regarding Dr. Wei's description of serial images showing SI joint pathology, Dr. Toal commented that the increased signal present on the images was of "unknown clinical significance" and was "more likely an anatomical variant rather than bone marrow edema," and that such abnormalities were not uncommon on MRI imaging. (Exs. 167;171-4).

Dr. Warnock, a radiologist who performed a record review at the employer's request, concluded that the MRI was normal. (Ex. 145-1). He explained that there was a signal intensity in the ilium visible on axial images 14 and 15, showing one axial slice. (Ex. 145-2). However, he considered these "slight signal changes" to be created by normal anatomical variants. (*Id.*) Similarly, Dr. Kaesche, an orthopedic surgeon who examined claimant at the employer's request, reviewed the MRI and noted variation in the ilium signal adjacent to the right SI joint. (Ex. 176-1). He concluded that the signal variation "did not appear to be pathologic" and represented a normal variation.[2] (*Id.*)

[2] Dr. Duncan, a chiropractor who examined claimant and co-authored a report with Dr. Kaesche, did not personally review the MRI. (Ex. 176-1).

Dr. Wei disagreed with Dr. Warnock's interpretation of the MRI, and noted that Dr. Warnock only identified increased signal on one axial slice of the image. (Ex. 175-4). However, Dr. Wei also identified abnormalities on a series of coronal images, in addition to the axial image discussed by Dr. Warnock. (*Id.*)

Dr. Wei explained that Dr. Warnock's identification of a signal abnormality on only one image made it more likely that Dr. Warnock would consider it to be an insignificant finding than if an abnormality had been identified on multiple images. (*Id.*) Dr. Wei's explanation regarding the coronal findings is unrebutted by Dr. Warnock, as well as the other examiners who reviewed the MRI. In the absence of a direct rebuttal to Dr. Wei's more detailed explanation concerning the aforementioned MRI findings, we consider Dr. Wei's opinion more 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)

Dr. Wei also responded to Dr. Toal's opinion that the MRI findings were most likely an anatomical variant. (Ex. 175-3). Based on cross-referencing the multiple images showing increased signal changes, and correlating those findings with Dr. Verzosa's physical examination findings, Dr. Wei concluded that it was more likely that the MRI findings were caused by an acute injury. (*Id.*) Dr. Toal's opinion regarding the MRI findings is conclusory. Thus, we rely on Dr. Wei's interpretation of the MRI. *See Moe v. Ceiling Sys., Inc.*, 44 Or App 429, 433 (1980) (rejecting unexplained or conclusory opinion); *Christopher Gabriel*, 67 Van Natta 2110, 2113 (2015).

The employer urges us to defer to Dr. Warnock's opinion because of his extensive credentials as a radiologist. Yet, as previously explained, Dr. Warnock did not directly address/rebut Dr. Wei's explanation concerning claimant's MRI findings. Moreover, this record does not establish a basis for granting more probative weight to Dr. Warnock's opinion based on expertise or specialty. *See, e.g., Carri Steffey*, 66 Van Natta 1095, 1100 n 4 (2014); *Basilia Noriega*, 65 Van Natta 763, 765 n 2 (2013) (record did not support a conclusion that the "specialty/ expertise" of particular physicians was determinative).

The employer also argues that claimant's symptoms have been inconsistently reported. Yet, Dr. Verzosa consistently reported a muscle spasm that correlated with the diagnosed SI join injury. (Exs. 168-24, 174-2, -3). Dr. Verzosa's findings offer corroboration of Dr. Wei's MRI interpretation, and

further establishes the existence of the claimed SI joint conditions. Accordingly, based on the aforementioned reasoning, we conclude that the medical opinions of Drs. Wei and Verzosa persuasively establish the existence of the claimed conditions.

Claimant relies on the opinions of Dr. Verzosa and Dr. Wei to establish that the work-related injury incident was a material contributing cause of disability and need for treatment for the claimed conditions. The employer contends that Dr. Verzosa and Dr. Wei did not rely on an accurate medical history regarding the onset of claimant's SI joint symptoms, and that the opinions of Drs. Toal, Kaesche and Duncan are more persuasive regarding the material cause issue. Based on the following, we disagree with the employer's assertions.

Dr. Verzosa initially noted claimant's mechanism of injury, describing claimant's low back pain after picking up three trash bags, weighing approximately 50 pounds each and carrying them to a dumpster. (Ex. 8-1). Dr. Verzosa opined that the work injury incident was the major contributing cause of the claimed sacroiliac sprain/dysfunction and bone marrow edema. (Ex. 174-2). She considered the mechanism of injury to have placed significant mechanical stress on the SI joint, resulting in claimant's injury. (Ex. 174-3).

Dr. Wei acknowledged that he was not a clinician. Nonetheless, clarifying that his opinion was primarily based the acute appearance of the SI joint pathology, Dr. Wei concluded that claimant's mechanism of injury was consistent with an SI joint injury. (Ex. 175-2, -3).

In contrast, Dr. Toal did not consider the mechanism of injury to be sufficiently forceful, explaining that the SI joint includes the strongest ligaments in the body. (Ex. 95-11). He described a head-on motor vehicle accident or a fall from a great height as being sufficient mechanisms of injury to damage the SI joint. (*Id.*) Dr. Toal explained that claimant's mechanism of injury was not sufficiently forceful to cause bone marrow edema, because the marrow resides inside the bone. (Ex. 171-5).

Drs. Kaesche and Duncan opined that an SI joint injury caused by claimant's work activities was "medically improbable" because of the inherent stability of the SI joint. (Ex. 173-18). They explained that an SI joint injury would require more force applied to the pelvic area than what was described by claimant. (*Id.*)

However, the opinions of Drs. Toal, Kaesche and Duncan are premised on a determination that claimant did not sustain an SI joint injury. Because the existence of the claimed condition has been previously established, we discount the

persuasiveness of their causation opinions. *See Fernando Felipe-Cumplido*, 67 Van Natta 1746, 1754 (2015)*; Vicki L. Galvin*, 58 Van Natta 886, 887-88 (2006) (where medical evidence established the existence of the claimed condition, the causation opinions of physicians disputing existence of the claimed condition were found not persuasive). Moreover, Drs. Verzosa and Wei persuasively explained that the mechanism of injury was capable of causing the diagnosed condition. (Exs. 174, 175). In addition, for the reasons previously expressed, the opinions of Drs. Toal, Kaesche, and Duncan do not provide a persuasive reason to reject the opinion of claimant's attending physician, Dr. Verzosa. *See Dillon*, 172 Or App at 489; *Darwin B. Lederer*, 53 Van Natta 974, 974 n 2 (2001).

Finally, the employer contends that the opinions of Drs. Versoza and Wei did not comment on a description of claimant's onset of symptoms before the work injury that was noted by Drs. Kaesche and Duncan in the June 2015 report, some 11 months after claimant's July 2014 work injury. Specifically, Drs. Kaesche and Duncan noted a history of an onset of right buttock aching and burning three days before the work injury, without any specific event causing the symptoms. (Ex. 173-1). Yet, that medical history is not consistent with any of claimant's other histories summarized in the record, which describe an onset of low back and right buttock pain occurring while lifting a trash bag. (Exs. 1-4, 6-5, 8, 95-2). Additionally, claimant testified consistently with the history provided in the initial treatment records, Dr. Verzosa's records, and Dr. Toal's November 2014 employer-requested medical examination report. (Exs. 8, 95; Tr. 11-12). Finally the employer neither challenged claimant's description of her complaints nor asked her to respond to the references to "pre-injury" complaints in Drs. Kaesche and Duncan's reports.

Under these particular circumstances, we are not persuaded that Drs. Verzosa and Wei relied on an inaccurate history. *Jackson County v. Wehren*, 186 Or App 555, 559 (2003) (a history is complete if it includes sufficient information on which to base the physician's opinion and does not exclude information that would make the opinion less credible). In any event, Drs. Kaesche and Duncan did not attribute claimant's SI joint symptoms to a "pre-work injury" or unrelated condition. *See Wehren*, 186 Or App at 560 (medical experts are not required to weigh hypothetical causes if not suggested by another expert as contributing to the claimant's condition). Instead, they did not consider claimant to have a diagnosable condition relating to the SI joint. Because that proposition has been previously rejected, their comments are not particularly probative. *Galvin*, 58 Van Natta at 887-88.

Finally, with the exception of footnote 4, we adopt and affirm that portion of the ALJ's reasoning that claimant's disputed physical therapy was related to her compensable work injury incident.[3]

ORDER

The ALJ's order dated January 20, 2016 is affirmed.

Entered at Salem, Oregon on October 7, 2016

[3] As previously noted, claimant's untimely filed respondent's brief was not considered on review. Therefore, no attorney fee award under ORS 656.382(2) is warranted. *See Frederic Virtue*, 67 Van Natta 1884, 1885 (2015)*; Shirley M. Brown*, 40 Van Natta 879 (1988).