
In the Matter of the Compensation of
HERMINDA S. MENDOZA, Claimant
WCB Case No. 15-04877
ORDER ON REVIEW
Dodge And Associates, Claimant Attorneys
SAIF Legal Salem, Defense Attorneys

Reviewing Panel: Members Johnson and Lanning.

Claimant requests review of that portion of Administrative Law Judge (ALJ) Poland's order that upheld the SAIF Corporation's denial of her new/omitted medical condition claim for an adjustment disorder. On review, the issue is compensability.

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

Claimant was compensably injured in July 2014, and requested acceptance of an adjustment disorder in July 2015. After SAIF *de facto* denied the claim, claimant requested a hearing.

At the hearing, claimant's attorney clarified that claimant was pursuing the adjustment disorder claim as an occupational disease claim for a mental disorder, subject to ORS 656.802. (Tr. 4). Finding the opinion of Dr. Johnson, a consulting psychologist, insufficient to carry claimant's burden of proof in light of evidence casting doubt on claimant's reliability, the ALJ upheld the *de facto* denial.

On review, claimant contests the ALJ's appraisal of the medical evidence. Based on the following reasoning, we affirm.

Claimant bears the burden of proving that employment conditions, including work-related injuries, were the major contributing cause of her mental disorder.¹ ORS 656.266(1); ORS 656.802(2)(a); *Kepford v. Weyerhaeuser Co.*, 77 Or

¹ A mental disorder caused by a specific compensable injury is analyzed as a consequential condition. See *Martin Navarro*, 67 Van Natta 1264, 1267 (2015); *Jackie T. Ganer*, 50 Van Natta 2189 (1998), *recons*, 51 Van Natta 116 (1999). Nevertheless, our evaluation of the claim occurs in the context of the case as the parties have developed it, including their stipulations. See *Randall D. Marks*, 56 Van Natta 2937 (2004) (compensability evaluated under the "material contributing cause" standard on review because the parties agreed at hearing that it was the correct standard, thus implicitly stipulating that there was no "combined condition"). Here, at hearing, claimant expressly agreed that her claim was being pursued as a mental disorder under ORS 656.802. (Tr. 4). Accordingly, we evaluate the claim as such.

App 363, 365-66 (1986). She must establish that there is a diagnosis of a mental or emotional disorder generally recognized in the medical or psychological community, and the employment conditions producing the mental disorder must exist in a real and objective sense. ORS 656.802(3)(a), (c). The employment conditions producing the mental disorder must be conditions other than conditions generally inherent in every working situation or reasonable disciplinary, corrective, or job performance evaluation actions by the employer, or cessation of employment or employment decisions attendant upon ordinary business or financial cycles. ORS 656.803(3)(b). Both those factors excluded by ORS 656.802(3)(b) and non-work factors must be weighed against nonexcluded employment conditions. The claim is compensable only if nonexcluded employment conditions outweigh all other causes combined. *Liberty Northwest Ins. Corp. v. Shothafer*, 169 Or App 556, 555-56 (2000).

The causation issue presents a complex medical question, which must be answered by expert medical opinion. *Uris v. Comp. Dep't*, 247 Or 420 (1967); *Barnett v. SAIF*, 122 Or App 279 (1993). 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).

Here, the diagnosis of work-related adjustment disorder was initially supported by Dr. Doppelt, a psychologist who examined claimant at SAIF's request, as well as by Dr. Johnson. (Exs. 50-21, 67B-3). However, after reviewing surveillance video of claimant, Dr. Doppelt changed his opinion.

Dr. Doppelt noted that claimant's presentation during his examination, which included complaints of many symptoms that impaired the use of her right hand and arm, was inconsistent with the surveillance video, which showed her using her right hand and arm naturally, without visible signs of distress or pain. (Ex. 69-1-2). Consequently, he concluded that claimant was not a reliable historian. (Ex. 69-1).

Dr. Doppelt explained that his diagnosis had been based on the history provided by claimant, as well as her presentation. (Ex. 69-2). Because he no longer considered claimant's reporting to be reliable, he retracted his diagnosis

In any event, for the reasons discussed below, claimant has not established that either the compensable injury itself, or employment conditions including the compensable injury, were the major contributing cause of an adjustment disorder condition. Accordingly, her claim would not be compensable even if it were evaluated as one for a consequential condition. *See* ORS 656.005(7)(a)(A); *Justin D. Morris*, 65 Van Natta 812 (2013).

of a work-related adjustment disorder. (*Id.*) He explained that further evaluation would be required to determine whether claimant even had an adjustment disorder. (*Id.*)

Similarly, Dr. Besing, another consulting psychologist who diagnosed adjustment disorder (but who did not specifically attribute it to the work injury or other employment conditions), opined that the video surveillance was inconsistent with claimant's presentation and the history that she provided. (Exs. 54, 72). He concluded that claimant had misrepresented herself, and he opined that there was no longer sufficient evidence to warrant an adjustment disorder diagnosis. (Ex. 72-2).

Dr. Johnson did not retract his diagnosis because he did not consider a review of video surveillance to be grounds to make or change a diagnosis. (Tr. 37). However, he did not dispute the conclusion that whether claimant had a work-related adjustment disorder depended on her history and presentation, nor did he dispute the conclusion that the surveillance video impeached the reliability of her history and presentation.²

Dr. Johnson explained why he did not consider the video surveillance to be a sufficient basis to change his opinion, but his explanation indicates that he would not change his opinion in light of such evidence regardless of its content. He did not persuasively explain why, in light of the video surveillance, it was more likely than not that claimant had an adjustment disorder, or that the adjustment disorder was attributable to her injury or other employment conditions. *See Gormley v. SAIF*, 52 Or App 1055, 1059 (1981) (the claimant must prove the claim by a preponderance of the evidence).

Under such circumstances, we conclude that Dr. Johnson's opinion that claimant had a work-related adjustment disorder was based on claimant's impeached credibility. Consequently, we do not consider Dr. Johnson's opinion persuasive. *See Miller v. Granite Constr. Co.*, 28 Or App 473, 478 (1977) (the claimant did not sustain his burden of proof where the medical evidence rested on his impeached credibility). Accordingly, we affirm.

² Dr. Schmitt, claimant's attending physician, and Drs. Bell and Hanna, who examined claimant at SAIF's request, also noted that the video surveillance showed claimant using her right hand in a manner that was inconsistent with her presentation during examinations, and concluded that claimant had misrepresented her condition. (Exs. 68A, 70, 71).

ORDER

The ALJ's order dated April 14, 2016 is affirmed.

Entered at Salem, Oregon on October 24, 2016