
In the Matter of the Compensation of
LORRINE A. PAPENFUS, Claimant
WCB Case No. 15-02668
ORDER ON REVIEW
Dunn & Roy PC, Claimant Attorneys
SAIF Legal, Defense Attorneys

Reviewing Panel: Members Johnson and Weddell.

Claimant requests review of Administrative Law Judge (ALJ) Naugle's order that upheld the SAIF Corporation's denial of her occupational disease claim for neck conditions. On review, the issue is compensability. We affirm.

FINDINGS OF FACT

We adopt the ALJ's "Findings of Fact," with the following summary and supplementation.

Claimant has worked for approximately 40 years and has a history of cervical spine conditions. A 1987 x-ray showed mild kyphosis in the lower cervical spine, minimal C5-6 disc narrowing and minimal C6-7 disc spurring. (Ex. 1). In 1992, she was involved in a nonwork-related motor vehicle accident (MVA), which resulted in cervical and lumbar disc herniations, as well as spinal degenerations. (Exs. 8-1, 10-2).

Claimant testified that she has seen a chiropractor since of 1992 "kind of consistently[.]" (Tr. 18). Thereafter, she sustained various nonwork-related injuries and MVAs (in 1996, 2000, 2007, 2008, and 2009) involving, among other things, injuries to her neck and back. (Tr. 15-18; Exs. 2, 4, 6, 8). Imaging studies showed chronic degenerative disc changes and C5-6 and C6-7 herniations. (Exs. 2, 4, 6, 10).

In November 2009, claimant began treating with Dr. Owen for injuries related to her January 2009 MVA, complaining of neck, mid- and low-back, sacroiliac, and bilateral shoulder pain, as well as bilateral arm and hand numbness. (Ex. 10). She continued to treat with Dr. Owen thereafter. (*See* Ex. 11).

Around 2012 or early 2013, claimant's job was as a site visit coordinator, which involved creating spreadsheets and scanning documents into a computer. (Tr. 6, 12, 23-24). She worked in an office with a sit/stand work desk. (Tr. 23-25).

In September 2013, Dr. Owen reported that claimant had a long history of MVA treatments and regimens for her extensive and permanent cervical spine injuries, with imaging studies showing significant cervical joint degeneration, disc narrowing and bulging, nerve root impingement, loss of cervical curve, and chronic soft tissue damage. (Ex. 12). He stated that her job was the major contributing cause in her lack of recovery and authorized her to be off work through mid-October. (*Id.*)

Thereafter, claimant mostly worked from home, utilizing an ergonomic sit/stand work station she created. Claimant was able to work at her own pace, ice, and rest as needed. (Tr. 23-25). She reported improvement in her chronic neck and upper back pain. (Tr. 24; Ex. 14A). She continued to seek chiropractic treatment from Dr. Owen.

In mid-January 2015, claimant's job duties changed to processing claims, which required her to work full time (four 10-hour days) in an office and repetitively twist/turn her head to input information from hardcopy papers into a computer. (Tr. 6-7). Claimant testified that, in early February 2015, she started experiencing "more excruciating" neck pain due to the change in her job duties. (Tr. 7-8). By mid-February, she began experiencing left hand problems and discoloration and, by early March, had sharp constant pain in her left hand. (*Id.*)

On February 17, 2015, claimant sought treatment from Dr. Owen for cervical, thoracic, and lumbar pain due to stress from work. (Ex. 15-1). In early March 2015, she worked only two days per week, based on Dr. Owen's recommendation. (Tr. 10; Ex. 18). Dr. Owen particularly noted that claimant's new job required more repetitive turning and twisting motions. (Ex. 19-1). He further reported that claimant had severe cervical, thoracic, and lumbar pain with a long history of multiple MVAs from which she never healed, and that her work and work stress aggravated her permanent and chronic conditions. (Exs. 18, 19-1).

Claimant testified that, on March 25, 2015, she rolled out of bed and felt shooting pain from her neck down to her left shoulder, arm, and hand, which she had never experienced before. (Tr. 8-9, 13, 33). That day, Dr. Owen treated her for left arm pain, noting that she had a new injury from her new job and never had left arm pain before. (Ex. 20-1). Additionally, he took claimant off of work for an "undetermined" duration due to severe pain in the neck, mid-back, left arm, shoulder, and hand from a possible disc. (Ex. 19-2).

Thereafter, claimant filed an occupational disease claim related to her new job duties involving repetitive neck and arm motions. (Ex. 33).

An April 2015 MRI showed moderate degenerative spondylosis changes at C5-6 and C6-7 with no overt stenosis or cord impaction, as well as C7-T1 left neural foraminal encroachment, increased since 2009. (Ex. 41). A May 14, 2015 electrodiagnostic evaluation was suggestive of left C8 radiculopathy. (Ex. 50).

Based on the opinion of Dr. Rosenbaum, who examined claimant on May 26, 2015, SAIF denied claimant's occupational disease claim for neck conditions. (Exs. 51, 53). Claimant requested a hearing.

CONCLUSIONS OF LAW AND OPINION

Assuming the existence of the claimed occupational disease, the ALJ found that the record did not establish that claimant's employment conditions were the major contributing cause of the disease. The ALJ reasoned that, while Dr. Owen opined that claimant's work was the cause of her symptoms, there was insufficient evidence that the symptoms are the disease. Interpreting Dr. Owen's testimony to mean that claimant's preexisting cervical spine conditions (rather than her work activities) were the major contributing cause of her symptoms/disease, the ALJ upheld SAIF's denial.

On review, claimant argues that the opinion of Dr. Owen persuasively established that: (1) her 2015 work activities caused her neck and left arm symptoms; (2) her symptoms represented a pathological worsening of her preexisting cervical condition; and (3) her work activities were the major contributing cause of her combined condition and pathological worsening of the disease. Although we agree with claimant's first two arguments, we do not find that Dr. Owen's opinion persuasively establishes that her employment conditions were the major contributing cause of her combined condition and the pathological worsening of the disease. We reason as follows.

Claimant must establish the existence of her occupational disease or worsening of a preexisting disease by medical evidence supported by objective findings. ORS 656.802(2)(d). Because claimant concedes that her claim is based upon a worsening of her preexisting cervical conditions, she must prove that her employment conditions were both the major contributing cause of the combined condition and pathological worsening of the disease, not merely the

cause of the symptoms of the disease.¹ ORS 656.266(1); ORS 656.802(2)(b); *Weller v. Union Carbide*, 288 Or 27, 35 (1979) (symptomatic worsening is not sufficient under ORS 656.802(2)(b); there must be proof of a pathological worsening of the disease). If medical evidence supports a conclusion that symptoms were brought on by claimant's work activity and the symptoms were, in fact, the occupational disease for which she seeks treatment, substantial evidence could support a finding that employment conditions were the major contributing cause of the disease. *SAIF v. Chipman*, 166 Or App 443, 449 (2000); *Mary A. Ralston*, 60 Van Natta 2372, 2373 (2008).

The determination of major contributing cause involves the evaluation of the relative contribution of the different causes of claimant's condition and a decision as to which is the primary cause. *Dietz v. Ramuda*, 130 Or App 397, 401 (1994), *rev dismissed*, 321 Or 416 (1995). Although work activities that precipitate a claimant's injury or disease may be the major contributing cause, that is not necessarily always true. *Id.* at 401. For combined conditions, the relative contribution of each cause, including the precipitating cause, must be evaluated under the particular circumstances. *Id.* at 402. Additionally, preexisting conditions shall be deemed causes in determining major contributing cause of the occupational disease. ORS 656.802(2)(e).

Here, in a September 2015 summary letter, Dr. Owen acknowledged that claimant had prior problems in all aspects of her spine, but opined that her 2015 work exposure contributed to her current condition. (Ex. 58-1-2). He noted that claimant had different findings on examination after her change in job duties, such as worsened muscle spasms causing impinged blood flow to her hand making it turn purple, which represented a pathological worsening of her cervical spine conditions. (Ex. 58-2). Dr. Owen also stated that claimant had electrodiagnostic evidence of left C8 radiculopathy, indicating a pinched nerve from the repetitive overuse of her neck and arms from her job change. (*Id.*) According to Dr. Owen, claimant's work exposure involving repetitive motion of her neck caused pathologically worsened objective findings, including the new findings/conditions of impinged blood flow to the left hand and left C8 radiculopathy. Dr. Owen concluded that claimant's work activities (*i.e.*, 2015 job changes) were the major contributing cause of the pathological worsening of her preexisting conditions and new left hand/arm findings. (Ex. 58-3-4).

¹ For all occupational disease claims, a "preexisting condition" means "any injury, disease, congenital abnormality, personality disorder or similar condition that contributes to disability or need for treatment and that precedes the onset of the claimed occupational disease, or precedes a claim for worsening in such claims pursuant to ORS 656.273 or 656.278." ORS 656.005(24)(b).

In October 2015, Dr. Owen testified that he began treating claimant in 2009 for chronic pain due to her preexisting cervical spine conditions (*i.e.*, joint degeneration, disc narrowing and bulging, nerve root impingement, and loss of cervical curve) as a result of her multiple car accidents, and that this pain was aggravated by her work. (Ex. 59-7-8). He had recommended that she be able to work from home so that she would be able to sit/stand, move around, stretch, ice, and take breaks as needed. (Ex. 59-12). Dr. Owen stated that claimant's 2015 job change (which required her to sit in one position for a long period of time and repeatedly rotate to and from the computer) increased her symptoms and was the major contributing cause of her need for treatment. (Ex. 59-13-14).

According to Dr. Owen, claimant had a whole new set of signs and symptoms (specifically left arm radiculopathy and left hand complaints) caused by her new job involving moving her head back and forth. (Ex. 59-14). He testified that, although claimant had preexisting nerve root impingement and disc bulges/narrowing, she did not have radiculopathy or pressure on the nerve before her 2015 job change because of her ability to work from home. (Ex. 59-15-20). He explained that the repetitive motion of claimant's cervical spine from her job change (as well as an inability to take breaks, ice, sit/stand, and move around as needed) resulted in inflammation in the disc space, which caused increased pressure on the nerves and muscle spasms in her neck resulting in her new signs and symptoms. (*Id.*) Dr. Owen opined that claimant had a pathological worsening of her cervical conditions, as evidenced by the new symptoms of left arm radiculopathy, vascular impingement resulting in her left hand becoming purple, and the nerve conduction study. (Ex. 59-22-25).

We find that Dr. Owen had an accurate history regarding claimant's preexisting conditions and work activities, and the changes therein. Based on his opinion, we further find that claimant has established the existence of a pathological worsening of her preexisting disease (and not merely of its symptoms), supported by objective findings (*i.e.*, impinged blood flow to the left hand and left C8 radiculopathy), caused by her 2015 work activities. ORS 656.802(2)(d); *Chipman*, 166 Or App at 449.

Notwithstanding these aforementioned findings, we do not consider Dr. Owen's opinion sufficient to establish that claimant's work activities were the major contributing cause of both the combined condition and pathological worsening of the disease under ORS 656.802(2)(b). We reason as follows.

Dr. Owen testified that claimant's change in job duties affected her preexisting conditions "100 percent." (Ex. 59-20). He explained that she could not handle those new work activities (turning her head back and forth) all day due to her preexisting chronic neck conditions, the contribution from her prior MVAs, and her inability to work from home to manage her symptoms. (Ex. 59-20-21). Noting that claimant had never complained of left arm radiculopathy, that her symptoms began after her job duties changed, and that her symptoms went away when she stopped working, Dr. Owen stated that her job was "a major contributing cause." (Ex. 59-25). According to Dr. Owen, claimant's signs and symptoms of left arm radiculopathy were nonexistent with her prior nonwork-related injuries and conditions, but the 2015 nerve conduction study showed that "it was severe." (*Id.*) Dr. Owen acknowledged that claimant did not have a baseline nerve conduction study, but guessed "that it was probably 100 percent normal[.]" (*Id.*) Based on those circumstances, Dr. Owen concluded that claimant's job and "created enough nerve pressure to create [the symptoms in the left arm, shoulder, and neck] 100 percent." (*Id.*)

Dr. Owen's explanation indicates that claimant's work activities (*i.e.*, her 2015 change in job duties) precipitated her disease that caused her to seek treatment. However, the immediate or precipitating cause of a disease is not necessarily always the major contributing cause of the disease, pathological worsening of a preexisting disease, or the combined condition. *Dietz*, 130 Or App at 401-02. Moreover, as previously noted, preexisting conditions shall be deemed causes in determining major contributing cause of the occupational disease. ORS 656.802(2)(e).

We acknowledge Dr. Owen's discussion of claimant's preexisting conditions, involving nerve impingement, disc bulges, and narrower disc spaces for the nerve roots, as well as his opinions regarding how her 2015 change in job duties was the major contributing cause of her pathologically worsened disease (which included impinged blood flow to the left hand and left C8 radiculopathy). (Exs. 58-3-4, 59-15-20, -25). Nevertheless, he also testified that the likelihood of those work activities causing her new symptoms (which evidenced a pathological worsening of her preexisting conditions) would be "probably minimal" if she did not have the preexisting conditions. (Ex. 59-21-22).

Absent further explanation, we are not persuaded that Dr. Owen adequately evaluated the relative contribution of claimant's preexisting conditions, including the precipitating cause (*i.e.*, her change in job duties), in determining the primary cause of the combined condition under ORS 656.005(7)(a)(B). ORS

656.802(2)(e); *Dietz*, 130 Or App at 401-02. That is, in light of his testimony, we do not find that Dr. Owen sufficiently explained his conclusion that claimant's 2015 work exposure, when weighed against the relative contribution of her preexisting conditions, was the major contributing cause of *both* the combined condition and the pathological worsening of the disease. See ORS 656.802(2)(b); *Dietz*, 130 Or App at 401-02; *Sally J. Van Meter*, 57 Van Natta 2641 (2005) (claim not compensable under ORS 656.802(2)(b) where medical evidence did not address the major contributing cause of the combined condition).

Under these particular circumstances, we find that claimant has not established the compensability of her claimed occupational disease. ORS 656.266(1); ORS 656.802(2)(b). Consequently, we affirm.

ORDER

The ALJ's order dated January 27, 2016 is affirmed.

Entered at Salem, Oregon on September 13, 2016