
In the Matter of the Compensation of
KATHERINE A. BOWSER, Claimant
WCB Case No. 01-02152
ORDER ON REVIEW
Cary Et Al, Claimant Attorneys
Julie Masters, SAIF Legal, Defense Attorneys

Reviewing Panel: Members Lowell, Biehl, and Bock. Member Biehl declined to sign the order.

The SAIF Corporation requests review of those portions of Administrative Law Judge (ALJ) Hazelett's order that: (1) set aside its denials of claimant's current right knee condition; and (2) set aside its partial denial of claimant's medical service claim for the same condition. Claimant cross-requests review of that portion of the ALJ's order that declined to award an assessed attorney fee for SAIF's allegedly unreasonable claims processing.¹ On review, the issues are compensability and attorney fees. We reverse in part and affirm in part.

FINDINGS OF FACT

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

CONCLUSIONS OF LAW AND OPINION

Claimant injured her right knee in a non-work-related motor vehicle accident in May 1992. (Exs. 5; 6). In February 1993, after an unsuccessful course of conservative treatment, Dr. Watrous performed surgery to relieve claimant's patellar tendinitis condition. (Ex. 12). By October 1993, claimant's right knee was asymptomatic and claimant had resumed such activities as water skiing and dancing. (Ex. 13-3).

In October 1994, claimant fell at work striking and twisting her right knee. (Ex. 15). The claim was accepted as a "quadriceps strain right knee." (Ex. 22). A July 1995 Determination Order, which awarded 5 percent (7.5 degrees) scheduled permanent disability, closed the claim. (Ex. 36). A November 1995

¹ Claimant moved to dismiss SAIF's request for review, contending that she did not receive timely notice of SAIF's request. However, claimant has subsequently withdrawn the motion.

Order on Reconsideration reduced the permanent disability award to zero.² (Ex. 39).

In December 1994, claimant began working for SAIF's insured. (Ex. 50). While working in January 1995, claimant struck her right knee walking into an open drawer. (Ex. 23). The claim was accepted as a disabling "right knee contusion" and closed in April 1995 without an award of permanent disability.³ (Exs. 30; 32). A September 1995 Order on Reconsideration affirmed the April 1995 Notice of Closure. (Ex. 37).

On February 21, 1996, claimant underwent diagnostic right knee arthroscopy for ongoing right knee pain. (Exs. 47; 48).

In March 1996, claimant was chasing a robber from the employer's premises when she fell and again injured her right knee. (Ex. 50). SAIF accepted a non-disabling "right knee strain, resolved." (Ex. 53). Claimant continued to experience right knee pain and sought medical treatment from Dr. Reeves and Dr. Macha. (Exs. 54 through 66; 67 through 80). The March 1996 claim closed on December 3, 1998 with an award of 6 percent (9 degrees) scheduled permanent disability.⁴ (Ex. 102). An April 1999 Order on Reconsideration reduce the scheduled permanent disability award to 1 percent (1.5 degrees). (Ex. 110).

Claimant continued to experience pain and seek medical treatment. (Exs. 103 through 108; 111 through 117). In October 1999, Dr. Hill became the attending physician. (Ex. 118). Dr. Hill recommended physical therapy, pain management counseling, and prescribed a new knee brace. (Ex. 121). Dr. Hill also requested reimbursement for palliative care. (Ex. 122).

In September 2000, Dr. Colletti evaluated claimant at SAIF's request. (Ex. 127). Dr. Colletti diagnosed: (1) medial retinacular strain with patella subluxation related to the 1996 work injury; (2) bilateral and preexisting chondromalacia patella extensor mechanism dysplasia unrelated to the 1996 injury; (3) bilateral preexisting infrapatellar tendinitis/bursitis unrelated to 1996 work

² In February 1996, the Board approved a Claim Disposition Agreement for the 1994 claim. (Ex. 46).

³ At the time of the 1995 injury, Liberty Northwest Insurance Corporation (not SAIF) was on the risk. (Exs. 30; 32).

⁴ The record does not establish that SAIF ever amended its initial Notice of Acceptance.

injury; and (4) preexisting right knee contusion with recurrent knee pain treated surgically before the 1996 work injury and unrelated to it. (Ex. 127-6). Dr. Colletti opined that claimant's preexisting conditions had combined with the work-caused 1996 strain. (Ex. 127-9). However, Dr. Colletti believed that the 1996 strain had long since healed. (Ex. 127-8). Consequently, Dr. Colletti opined that the preexisting conditions were the major cause claimant's current need for treatment. (Ex. 127-9). Dr. Reeves concurred with Dr. Colletti's opinion.⁵ (Ex. 132).

SAIF disapproved the palliative care request on the ground that it was for a condition that had not been accepted. (Ex. 128). SAIF did not identify what condition it asserted resulted in claimant's need for treatment. (*Id.*)

Dr. Hill agreed that claimant had suffered a retinacular strain with patella subluxation as a result of the March 1996 work event. (Ex. 140-1). Dr. Hill opined that claimant probably continued to experience pain from that condition. (*Id.*) Dr. Hill further opined that the March 1996 work event continued to be the major cause of claimant's current pain and need for palliative care. (*Id.*) Dr. Hill believed that the palliative care was necessary to keep claimant "functional in the work force." (Ex. 140-2). SAIF again disapproved the palliative care request contending that the treatment was for a condition that had not been accepted.⁶ (Ex. 141). Dr. Hill requested review by the Medical Review Unit (MRU). (Ex. 142).

In its response to MRU, SAIF asserted that: (1) Dr. Hill's treatment was directed at a previously denied condition; *i.e.*, reflex sympathetic dystrophy (RSD);⁷ and (2) Dr. Hill's treatment was directed at a "chronic condition" predating the March 1996 injury. (Ex. 145). Finding that compensability of the medical services was at issue, MRU declined to review Dr Hill's request. (Ex. 146).

⁵ Dr. Macha declined comment on Dr. Colletti's opinion. (Ex. 130).

⁶ SAIF did not identify what condition it asserted resulted in claimant's need for treatment, but did advise claimant that it disputed the compensability of the requested medical services. (Ex. 141).

⁷ In August 1997, SAIF denied a claim for reflex sympathetic dystrophy. (Ex. 81). In January 1998, the Board approved a Disputed Claim Settlement resolving that claim. (Ex. 84).

Dr. McKillop reviewed the medical records at SAIF's request. (Exs. 134; 147). Like Dr. Colletti, Dr. McKillop believed that the 1996 work injury had caused a strain of the medial retinacular portion of the joint capsule and that the strain had "healed completely." (Ex. 134-4) Dr. McKillop opined that claimant had a bilateral preexisting patello-femoral tracking disorder. (Ex. 147-3). Dr. McKillop explained that a patello-femoral tracking disorder can be helped on a limited basis by surgery, but that such treatment rarely brings about a complete cure; consequently, individuals with that disorder continue to have symptoms and progression of knee problems over the years. (*Id.*) Taking into account claimant's history of chronic patello-femoral pain for many years, and that claimant was still recovering from an arthroscopy at the time of 1996 work event, Dr. McKillop opined that the work-related strain condition had healed in about six weeks. (Ex. 147-3). Therefore, Dr. McKillop reasoned that claimant's current condition related entirely to preexisting factors. (Ex. 147-4).

In October 2000, claimant requested that SAIF amend its acceptance to include "retinacular strain" right knee. (Ex. 131). In November 2000, SAIF declined to formally accept that condition, contending that the condition was already encompassed within the scope of its prior acceptance. (Ex. 136).

Claimant requested a hearing contesting the denial of medical services and a *de facto* denial of her current condition. Claimant also sought penalties and attorney fees for unreasonable claim processing. At hearing, SAIF formally denied claimant's current condition asserting that: (1) the 1996 injury combined with a preexisting condition; and (2) the preexisting condition was the major cause of claimant's current condition. (Tr. 4).

The ALJ relied on the opinion of Dr. Hill and concluded that claimant had established the compensability of her current right knee condition and that Dr. Hill's treatment was directed toward that condition. Consequently, the ALJ set aside SAIF's formal and *de facto* denials. The ALJ further found that SAIF's failure to reimburse Dr. Hill for the disputed medical services constituted an unreasonable delay of payment of compensation and assessed a penalty pursuant to ORS 656.262(11)(a).

On review, SAIF challenges the ALJ's compensability decision. In response, claimant does not dispute that the major contributing cause standard is applicable to this claim. In order to satisfy the "major contributing cause" standard, claimant must establish that her work injury contributed more to the claimed condition than all other factors combined. *See, e.g., McGarrah v. SAIF,*

296 Or 145, 146 (1983). A determination of the major contributing cause involves the evaluation of the relative contribution of different causes of claimant's disease and deciding which is the primary cause. *See Dietz v. Ramuda*, 130 Or App 397 (1994), *rev dismissed* 320 Or 416 (1995).

Because of possible alternative causes for her current condition, resolution of this matter is a complex medical question that must be resolved by expert medical opinion. *See Uris v. Compensation Department*, 247 Or 420 (1967). When there is a dispute between medical experts, more weight is given to those medical opinions which are well reasoned and based on complete information. *See Somers v. SAIF*, 77 Or App 259, 263, (1986).

Here, Dr. Hill's opinion is the only causation opinion in the record supporting the compensability of claimant's current right knee condition. In rendering his ultimate causation, Dr. Hill offered very little discussion explaining how he reasoned that the 1996 strain continued to be the major cause of claimant's disability and need for treatment. In light of the opinions offered by Drs. Colletti and McKillop, especially including the concurrence by claimant's long-time attending physician, Dr. Reeves, we find Dr. Hill's opinion not sufficiently explained to be persuasive. *See Blakely v. SAIF*, 89 Or App 653, 656, *rev den* 305 Or 972 (1988) (physician's opinion lacked persuasive force because it was unexplained).

Consequently, we conclude that claimant's current right knee condition is not compensable.⁸ Accordingly, we reverse the ALJ's compensability decision.

ORDER

The ALJ's order dated August 28, 2001 is reversed in part and affirmed in part. SAIF's denials are upheld and reinstated. The ALJ's attorney fee award is reversed. The remainder of the ALJ's order is affirmed.

Entered at Salem, Oregon on August 8, 2002

⁸ Claimant seeks an attorney fee award under ORS 656.382(1) based on SAIF's failure to issue a current condition denial until the date of hearing. Because we have upheld the denial of claimant's current right knee condition, it follows that there has been no unreasonable resistance to the payment of compensation. *See Randall v. Liberty Northwest Ins. Corp.*, 107 Or App 599 (1991) (in order for unreasonable resistance to compensation to be found, the claim must be compensable); *Phyllis C. Maas*, 53 Van Natta 1444 (2001). Consequently, an attorney fee award under ORS 656.382(1) is not warranted.