
In the Matter of the Compensation of
ROBERT L. FRINK, Claimant
WCB Case No. 00-06568
ORDER ON REVIEW
Mitchell & Guinn, Claimant Attorneys
Cavanagh & Zipse, Defense Attorneys

Reviewing Panel: Members Biehl, Bock, Langer, Lowell, and Phillips Polich.¹

The insurer requests review of Administrative Law Judge (ALJ) Myzak's order that set aside its partial denial of claimant's injury claim for cervical, upper thoracic and shoulder strain conditions. On review, the issue is compensability.

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

On March 23, 2000, claimant fell backwards in his chair striking the floor. (Tr. 14; 57). The following day, claimant was seen by Dr. Feldstein, who diagnosed "back contusion." (Ex. 124-3).

On April 3, 2000, claimant was seen by Dr. Mitchell (his family physician), who diagnosed "acute upper thoracic, cervical, and shoulder strain." (Ex. 126-2).

On April 23, 2000, the insurer accepted "contusion, right rib cage." (Ex. 128).

Claimant treated with Dr. Mitchell until June 9, 2000 (a total of four visits). (Ex. 144-6). Dr. Mitchell described claimant's condition on June 9, 2000, as "much improved." (Ex. 144-7).

On August 14, 2000, following claimant's request to amend its acceptance to include upper thoracic, cervical and shoulder strain, the insurer denied those conditions. (Ex. 138). Claimant requested a hearing.

¹ On June 7, 2002, pursuant to a notice of public meeting, the Board decided to sit together as a panel of five to review a designated group of cases. This case was one of that limited group. Although reviewed by all of the members, this case does not involve an issue of first impression that has a profound impact on the workers' compensation system.

The ALJ, relying on the opinion of Dr. Mitchell, determined that: (1) claimant had a preexisting chronic neck pain condition, resulting from prior injuries; (2) the preexisting condition combined with the compensable work injury of March 23, 2000 resulting in claimant's need for treatment; and (3) the major contributing cause of claimant's need for treatment was the compensable work injury of March 23, 2000. Consequently, the ALJ set aside the insurer's denial of claimant's strain conditions.

Neither party disputes that ORS 656.005(7)(a)(B) is applicable to this claim. Therefore, in order to establish that his strain conditions are compensable, claimant must show that his work injury was the major contributing cause of the disability or need for treatment of the combined conditions. ORS 656.005(7)(a)(B); *SAIF v. Nehl*, 148 Or App 279, 283 (1993). Because of claimant's preexisting conditions and the possible alternative causes for his strain conditions, 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).

To satisfy the "major contributing cause" standard, claimant must establish that his compensable injury contributed more to claimant's need for medical treatment or disability for 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 need for treatment of the combined condition and deciding which is the primary cause. *Dietz v. Ramuda*, 130 Or App 397 (1994), *rev dismissed* 320 Or 416 (1995).

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). In evaluating medical opinions we generally defer to the treating physician absent persuasive reasons to the contrary. *See Weiland v. SAIF*, 64 Or App 810 (1983).

Here, Dr. Mitchell saw claimant in December 1999 for an unrelated umbilical hernia condition. (Ex. 144-5). Based on his examination of claimant at that time, Dr. Mitchell believed that the chronic neck problems were under adequate control and that claimant's neck condition was at a stationary baseline state. (Ex. 144-25). When he next saw claimant on April 3, 2000 (ten days after the work injury), Dr. Mitchell noted muscle spasm and reduced range of motion. (*Id.*). Based on the mechanism of injury and his evaluation of claimant on April 3, 2000, Dr. Mitchell believed that the work event of March 23, 2000 had combined

with the preexisting chronic neck problems to produce claimant's need for treatment. (Ex. 144-26). Taking into account all his clinical evaluations of claimant and his understanding of the mechanism of injury, Dr. Mitchell opined that the major contributing cause of claimant's need for treatment for his neck and upper back was the March 23, 2000 work injury. (Ex. 144-27). Dr. Mitchell further opined that claimant had returned to his pre-injury baseline state by June 9, 2000. (Ex. 144-6; 144-25; 144-30).

Because Dr. Mitchell has had the opportunity to evaluate claimant both before and after the March 23, 2000 work injury, we find that he is in an advantageous position to offer an opinion. *See Kienow's Food Stores v. Lyster*, 79 Or App 416 (1986). Moreover, his opinion appears well reasoned.

In contrast to Dr. Mitchell's opinion, is the opinion of Dr. Schilperoort (insurer-arranged examiner). Dr. Schilperoort agreed that the mechanism of injury was sufficient to cause a strain to the thoracic region, and also agreed that, based on Dr. Mitchell's findings, a thoracic strain was a reasonable diagnosis. (Ex. 142-11; 142-12). Nonetheless, based largely on Dr. Feldstein's findings of March 24, 2000, Dr. Schilperoort believed that tenderness in the chest wall cavity was the only injury incurred by claimant as a result of the work incident. (Ex. 134-6). Consequently, Dr. Schilperoort reasoned that Dr. Mitchell's treatment was directed toward claimant's preexisting chronic neck condition. (Ex. 134-7).

During his deposition, Dr. Schilperoort indicated that it was not uncommon for strain symptoms to manifest themselves up to two weeks after an injury. (Ex. 142-16). He also acknowledged that there was some likelihood that claimant experienced a thoracic strain from the work incident. (*Id.*) In light of those circumstances, and because Dr. Schilperoort agreed that, based on Dr. Mitchell's findings, a diagnosis of thoracic strain was reasonable, we find his ultimate opinion (*i.e.*, that Dr. Mitchell's treatment was directed toward claimant's preexisting chronic neck condition) conclusory. Consequently, we do not find Dr. Schilperoort's opinion persuasive. *See Moe v. Ceiling Systems*, 44 Or App 429, 430 (1980) (conclusory and unexplained medical opinion rejected).

In conclusion, finding no persuasive reason to do otherwise, we defer to Dr. Mitchell's well-reasoned opinion. Accordingly, we agree with the ALJ that claimant has established the compensability of his cervical, upper thoracic and shoulder strain conditions.

Claimant's attorney is entitled to an assessed fee for services on review. ORS 656.382(2). After considering the factors set forth in OAR 438-015-0010(4) and applying them to this case, we find that a reasonable fee for claimant's attorney's services on review is \$1,500, to be paid by the insurer. In reaching this conclusion, we have particularly considered the time devoted to the case (as represented by claimant's respondent's brief), the complexity of the issue, and the value of the interest involved.

ORDER

The ALJ's order dated August 30, 2001 is affirmed. For services on review, claimant is awarded a \$1,500 attorney fee, payable by the insurer.

Entered at Salem, Oregon on July 17, 2002