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In the Matter of the Compensation of  
**ELLIS F. MERRILL, Claimant**  
WCB Case No. 01-04347  
ORDER ON REVIEW  
Martin J Mckeown, Claimant Attorneys  
Jerry Keene, Reinisch Et Al, Defense Attorneys

Reviewing Panel: Members Phillips Polich and Langer.

Claimant requests review of Administrative Law Judge (ALJ) Black's order that upheld the self-insured employer's denial of his current low back condition. On review, the issue is compensability.

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

In March 1998, claimant filed a claim for a low back condition resulting from a lifting incident at work. (Exs. 3; 4). The claim was initially accepted as a disabling "lumbar strain." (Ex. 18).

A July 1998 MRI (interpreted by Dr. Michels) demonstrated "facet hypertrophic change at L3-4, L4-5, and L5-S1. (Ex. 22). Dr. Michels considered the change at L4-5 to be the "most severe." (*Id.*) Dr. Michels also noted disc desiccation at L2-3 and L5-S1. (*Id.*)

In November 1998, based on the MRI and their own examination, Drs. Denekas and Neuman (employer-arranged examiners) opined that: (1) claimant had some degenerative changes in the lumbar spine that preexisted the March 1998 work event; and (2) claimant's condition was most consistent with a "lumbar strain with radicular features." (Exs. 26-7; 26-8). Drs. Denekas and Neuman further opined that the major contributing cause of claimant's symptoms (need for treatment) was the March 1998 work event. (Ex. 26-8).

Claimant requested acceptance of (among other things): (1) S1 radiculopathy; and (2) history of L5-S1 disc herniation. (Ex. 62). The employer denied those conditions. (*Id.*) Claimant requested a hearing.

A prior ALJ determined that claimant had failed to establish the compensability of his S1 radiculopathy and L5-S1 herniated disc. (Ex. 82-7). Consequently, the prior ALJ upheld the employer's denial of those conditions. (*Id.*) The prior ALJ's order has become final.

In May 2001, the employer modified its acceptance to include: “lumbar strain that combined with preexisting, non-compensable lumbar degenerative disc disease.” (Ex. 79). Thereafter, the employer issued a “current condition denial” stating: “the preexisting, non-compensable lumbar degenerative disc is the major contributing cause of [claimant’s] current disability and/or need for medical treatment of the combined condition.” (Ex. 79A). Claimant requested a hearing.

In November 2000, claimant was evaluated by Drs. Tesar and Radecki (employer-arranged examiners). (Ex. 67). Drs. Tesar and Radecki opined that claimant’s preexisting degenerative disc disease combined with the work-related lumbar strain injury to prolong his disability and need for treatment. (Ex. 67-10). Although Drs. Tesar and Radecki acknowledged that the work event had, for a period of time, been the major cause of claimant’s disability and need for treatment, at the time of their examination they believed that the major cause of claimant’s “current condition” was the preexisting degenerative disc disease. (*Id.*)

The ALJ determined that Dr. Gideonse (attending physician) offered the only opinion supporting the compensability of claimant’s current low back condition. Finding Dr. Gideonse’s opinion inadequately explained (considering contrary opinions in the record), the ALJ concluded that claimant had failed to establish the compensability of his current low back condition. Consequently, the ALJ upheld the employer’s denial.

In order to establish the compensability of his current low back condition, claimant must prove that the work event of March 1998 contributed more to the disability or need for treatment of the current low back condition than all other factors combined. ORS 656.005(7)(a)(B); *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 disability or need for treatment of the claimed condition and deciding which is the primary cause. *Dietz v. Ramuda*, 130 Or App 397 (1994), *rev dismissed* 320 Or 416 (1995).

Because of possible alternative causes for claimant's current low back 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 that are well reasoned and based on complete information. *See Somers v. SAIF*, 77 Or App 259, 263, (1986).

Here, as noted by the ALJ, the only opinion arguably supporting the compensability of claimant's current low back condition is from Dr. Gideonse. Dr. Gideonse concurred with the opinion of Drs. Tesar and Radecki with two exceptions: (1) Dr. Gideonse believed claimant had an S1 radiculopathy; and (2) claimant had a permanent 30 pound lifting restriction as a result of the work injury. (Exs. 69; 70; 84). Assuming that Dr. Gideonse's clarified concurrence can be interpreted (per claimant's assertions) as an opinion that the major cause of claimant's current low back condition is the March 1998 work injury, because the opinion is not otherwise explained, it is not 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 agree with the ALJ that, based on this record, claimant has failed to establish the compensability of his current low back condition.

#### ORDER

The ALJ's order dated March 29, 2001, as corrected November 19, 2001, is affirmed.

Entered at Salem, Oregon on June 13, 2002