
In the Matter of the Compensation of
ALVARO MACHUCA-RAMIREZ, Claimant
WCB Case No. 00-01097
ORDER ON REVIEW
Michael B Dye, Claimant Attorneys
Sather Byerly & Holloway, Defense Attorneys

Reviewing Panel: Members Phillips Polich and Lowell.

Claimant requests review of Administrative Law Judge (ALJ) Black's order that: (1) upheld the insurer's partial denial of lumbar disc conditions; and (2) upheld the insurer's partial denial of low back pain and lumbar spondylosis conditions. On review, the issue is compensability.

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

On December 2, 1998, claimant injured his back during a lifting incident at work. (Ex. 18). The insurer initially denied responsibility, but later accepted the claim as a "lumbar strain." (Exs. 20; 41; 55A).

A June 1999 CT scan, interpreted by Dr. Purnell, demonstrated lumbar disc bulges at L4-5 and L5-S1. (Ex. 52). In November 1999, claimant requested acceptance of the disc bulges as "omitted conditions" under the terms of ORS 656.262(6)(d). (Ex. 71A).

In February 2000, the insurer declined to accept the L4-5 and L5-S1 disc conditions. (Ex. 74). Claimant requested a hearing.

Later, claimant requested acceptance of "chronic low back pain, degenerative disc disease, and lumbar spondylosis" as occupational diseases. (Ex. 85). In August 2000, the insurer declined to accept those conditions. (*Id.*) Claimant requested a hearing.

The ALJ determined that the medical evidence regarding the disputed disc conditions did not support a conclusion that those conditions were compensable. The ALJ further determined that there was no medical opinion in the record evaluating the relative contributions of the various factors (work and non-work) causing claimant's chronic low back pain, degenerative disc disease, and lumbar spondylosis conditions. Consequently, the ALJ upheld both of the insurer's denials.

On Board review, claimant argues that the disputed conditions are compensable as “combined” conditions. Claimant does not assert that the disputed conditions are independently compensable. Consequently, we address only the “combined” condition issue. We begin with the disputed L4-5 and L5-S1 disc bulge conditions.

In order to establish the compensability of the disputed disc conditions as “combined” conditions, claimant must prove that his compensable work injury is the major contributing cause of his disability or need for treatment for his “combined” L4-5 and L5-S1 disc bulge conditions. ORS 656.005(7)(a)(B); *SAIF v. Nehl*, 148 Or App 101, *on recon* 149 Or App 309 (1997). A determination of the major contributing cause involves the evaluation of the relative contribution of different causes of claimant's low back condition and deciding which is the primary cause. *See Dietz v. Ramuda*, 130 Or App 397 (1994), *rev dismissed* 320 Or 416 (1995). The fact that a work event precipitated the symptoms or need for treatment of a condition does not necessarily mean that the work incident was the major contributing cause of the condition. *Dietz*, 30 Or App at 401; *see also Robinson v. SAIF*, 147 Or App 157, 162 (1997); *Elaine M. Baxter*, 51 Van Natta 1898 (1999).

Because of possible alternative causes for the disputed disc 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).

The record contains the reports of three medical examiners specifically discussing the origin of claimant's L4-5 and L5-S1 disc bulges. The first was from Dr. Brooks (insurer-arranged medical examiner). (Ex. 64). Dr. Brooks was unable to state that the disc bulges were related to or affected by claimant's work injury. (Ex. 64-2). The second was from Drs. Williams and Schilperoort (insurer-arranged examiners), who opined that claimant's disc conditions were not due to occupational trauma, but were the results of the natural aging process. (Ex. 73-5). The third was from Dr. Tsang (attending physician), who concurred with the evaluations by both Dr. Brooks and Drs. Williams and Schilperoort. (Exs. 65; 75).

Based on this record, we agree with the ALJ that claimant has failed to establish the compensability of L4-5 and L5-S1 disc conditions as “combined” conditions.

We acknowledge claimant's assertion that Dr. Donovan opined that claimant's preexisting degenerative lumbar condition combined with the December 1998 work injury to cause a "combined" condition. (Ex. 43-2). We also acknowledge that Dr. Donovan opined that the 1998 work injury was the major cause of claimant's "combined" condition and need for treatment. (*Id.*) However, when specifically asked about claimant's L4-5 and L5-S1 disc conditions, Dr. Donovan indicated she had no opinion regarding the compensability of those conditions. (Ex. 80). Consequently, we reject claimant's argument that Dr. Donovan's opinion supports the compensability of the disputed disc conditions as "combined" conditions. We turn to claimant's occupational disease claim.

Claimant seeks to establish the compensability of "chronic low back pain, degenerative disc disease, and lumbar spondylosis" as occupational diseases. Specifically, claimant asserts that those conditions are the result of cumulative work exposure. Therefore, he must prove that his cumulative work activities are the major contributing cause of those diseases, not just the major contributing cause of the disability or treatment associated with them. ORS 656.802(2)(a).

The only doctor who appears to have considered the cumulative effect of claimant's work in producing claimant's back conditions is Dr. Baker. However, after examining claimant and reviewing all the records, including the June 1999 CT scan, Dr. Baker opined that the major cause of claimant's "low back pain syndrome" was a transitional lumbosacral segment (congenital anomaly). (Ex. 90). Consequently, the record does not support a conclusion that claimant's "chronic low back pain, degenerative disc disease, and lumbar spondylosis" are compensable as occupational diseases.

ORDER

The ALJ's order dated May 4, 2001, as reconsidered and corrected on August 22, 2001, is affirmed.

Entered at Salem, Oregon on May 16, 2002