

In the Matter of the Compensation
DANIEL D. HIGGINS, Claimant

WCB Case No. 02-06236

ORDER ON REVIEW

Parker Bush & Lane, Claimant Attorneys
Johnson Nyburg & Andersen, Defense Attorneys

Reviewing Panel: Members Lowell, Phillips Polich, and Bock. Member Phillips Polich dissents.

Claimant requests review of Administrative Law Judge (ALJ) Fulsher's order that upheld the insurer's denials of his aggravation claim for a left shoulder condition. On review, the issues are aggravation and compensability.

We adopt and affirm the ALJ's order with the following supplementation. On page 4, we add the following at the end of the first full paragraph:

“Dr. Matteri found that claimant had experienced symptomatic worsening of his chronic shoulder condition, but not a pathological worsening. (Ex. 25-3). In light of Dr. Matteri's opinion that the June 19, 2002 incident was the major contributing cause of claimant's symptoms, we construe his opinion to mean that the June 2002 incident was the major contributing cause of the symptomatic worsening of his chronic shoulder condition.”

For the following reasons, we agree with the ALJ that the medical evidence is insufficient to establish compensability of claimant's aggravation claim for a left shoulder condition. Under ORS 656.273(1), claimant is entitled to additional compensation for a worsened condition resulting from the original injury. Such a condition is established by medical evidence of an “actual worsening” of the compensable condition supported by objective findings. If, however, the major contributing cause of the worsened condition is an injury not occurring within the course and scope of employment, the worsening is not compensable.

Claimant relies on the opinion of Dr. Puziss, his attending physician, who found that claimant's left shoulder condition had worsened over time and continued to deteriorate as a result of the original work injury. (Exs. 24, 27). Dr. Puziss concluded that claimant's current symptoms and need for surgery were related in major part to the original September 1998 work injury. (Ex. 27).

Even if we assume, without deciding, that claimant had an “actual worsening” of his compensable left shoulder condition, we are not persuaded by Dr. Puziss’ opinion that claimant had a “worsened condition resulting from the original injury[.]” *See* ORS 656.273(1). We agree with the ALJ that Dr. Puziss’ opinion is not persuasive because he did not have an accurate understanding of claimant’s June 19, 2002 off-work incident with his grandson.

Claimant testified that on June 19, 2002, he bent over and lifted his 34 to 37 pound grandson with his left arm. (Tr. 8-9, 23). He experienced a sharp pain and a burning sensation down into his arm. (Tr. 9). Claimant’s shoulder symptoms after that incident were a lot sharper and more intense. (Tr. 9-10).

In contrast, Dr. Puziss understood that claimant simply “bent over” to pick up his grandson and felt a pop in the shoulder. Dr. Puziss’ June 25, 2002 report said that “on 6/19/02, [claimant] simply bent down to pick up his grandson and felt a pop in the shoulder and then some burning pain which radiated down to his left fingers.” (Ex. 14-1). On August 13, 2002, Dr. Puziss stated that claimant “has gone on to worsen again over time” and needed further treatment. (Ex. 24-1).

In an October 16, 2002 letter, Dr. Puziss explained:

“Furthermore, this patient did not sustain a new off-the-job injury per se on June 19, 2002. What happened is that the patient simply bent over to pick his [grand]son up and felt a pop in the shoulder. Doubtless this pop is explained by the loose articular cartilage of the humeral head, which was not seen in the prior surgery. The patient tore his articular cartilage by simply leaning over. The patient already had a degenerative arthritis of the humeral head seen at prior surgery and this essentially was a spontaneous worsening of the preexisting degenerative and traumatic arthritis that he has of his humeral head.” (Ex. 27-1).

Dr. Puziss said that claimant had a “spontaneous worsening” of the preexisting condition of traumatic and degenerative arthritis. (*Id.*) He believed that claimant’s “shoulder continues to deteriorate over time as a result of his original work injury despite appropriate surgeries.” (Ex. 27-2). Dr. Puziss explained further:

“[Claimant’s] shoulder spontaneously worsened as he tore his articular cartilage of humeral head without even an injury at all. Simply leaning over to pick up a small child should not be construed as an ‘injury,’ for if this were an injury, then any motion of any kind could be construed as an injury. Even rolling over in bed would, according to Dr. Matteri’s reasoning, be considered an injury, but again, this patient did not have an ‘injury.’” (*Id.*)

Dr. Puziss concluded that claimant’s “bending over to pick up a child” was only the “straw that broke the camel’s back[.]” (*Id.*)

Although Dr. Puziss understood that claimant “bent over” to pick up his grandson, there is no evidence that he was aware that claimant actually lifted up his 34 to 37 pound grandson with his left arm and experienced sharp pain and a burning sensation down into his arm. (Tr. 8-9). Under these circumstances, we agree with the ALJ that Dr. Puziss did not have an accurate understanding of claimant’s June 19, 2002 incident with his grandson and, therefore, his history was incomplete. *Compare Jackson County v. Wehren*, 186 Or App 555, 561 (2003) (a physician’s history is complete if it includes sufficient information on which to base the opinion and does not exclude information that would make the opinion less credible). In contrast, Dr. Matteri believed that the June 2002 incident was the major contributing cause of claimant’s current left shoulder condition. (Ex. 25). There are no other opinions that support compensability. Therefore, we agree with the ALJ that the medical evidence is insufficient to establish compensability of claimant’s aggravation claim for a left shoulder condition.

ORDER

The ALJ’s order dated December 16, 2002 is affirmed.

Entered at Salem, Oregon on July 22, 2003

Board Member Phillips Polich dissenting.

The majority concludes that claimant failed to sustain his burden of proving his aggravation claim. Because I disagree with the majority’s analysis of the medical evidence, I respectfully dissent.

Dr. Puziss' opinion establishes that claimant had an actual worsening of his left shoulder condition supported by objective findings. Claimant had substantial decreases in left shoulder ranges of motion. (Exs. 11, 14, 19). Furthermore, Dr. Puziss said that claimant tore the loose articular cartilage of the humeral head, which he described as a worsening of the preexisting degenerative and traumatic arthritis. (Ex. 27). Dr. Puziss explained that claimant's left shoulder problems were beyond any waxing and waning expected at the time of the June 2001 closure. (Exs. 24, 26, 27).

On the other hand, Dr. Matteri did not explain why he believed claimant's condition after June 2002 was merely a waxing and waning of the compensable condition. (Exs. 19-7, 25-2). In fact, Dr. Matteri's opinion that the June 2002 incident did not result in any "permanent alteration" supports Dr. Puziss' conclusion that the major cause of claimant's need for treatment was the compensable conditions, not the June 19, 2002 incident. (Ex. 19-8). Furthermore, Dr. Matteri had an inaccurate history that claimant was asymptomatic before the June 2002 incident. (Ex. 25-2). Finally, Dr. Matteri's opinion is not persuasive because it lacks adequate explanation.

Although claimant concedes that the June 19, 2002 incident with his grandson was a causative factor in his need for treatment, Dr. Puziss' opinion establishes that claimant's compensable left shoulder condition worsened, and that the compensable condition was the major contributor to his need for treatment of the worsened condition. The majority errs by rejecting Dr. Puziss' opinion.