
In the Matter of the Compensation

KARL R. BATES, Claimant

WCB Case No. 02-01328

ORDER ON REVIEW

Welch Bruun & Green, Claimant Attorneys

Johnson Nyburg & Andersen, Defense Attorneys

Reviewing Panel: Members Langer and Biehl.

The insurer requests review of Administrative Law Judge (ALJ) Peterson's order that set aside its denial of claimant's injury claim for a low back strain condition. On review, the issue is compensability.

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

On review, the insurer contends that the ALJ made errors of "fact finding" which led him to erroneously conclude that claimant injured his back while lifting at work on October 26, 2001. Specifically, the insurer contends that the ALJ's order failed to mention that claimant lifted the 30 pound bundle of metal with the help of a co-worker. We acknowledge that claimant and a co-worker were lifting bundles of metal weighing about 30 pounds; however, notwithstanding that clarification, we are persuaded that a material contributing cause of claimant's need for treatment of his low back strain was the work "lifting" incident.

The insurer also contends that claimant's testimony was inconsistent with his histories presented to examining physicians. Specifically, the insurer argues that claimant failed to mention to the medical providers that he felt a "pop" while dragging a barrel of cardboard to the recycle bin and after sneezing, he felt a "shock of electricity," and then felt the onset of pain. (App. Brief p. 3).

We disagree with the insurer's characterization of claimant's testimony. Claimant testified that he felt a "pop" in his low back and the onset of pain immediately following the lifting incident. (Tr. 7-8). He then testified that he went to find his supervisor. On the way, claimant took a barrel of cardboard and dragged it to the recycle bin. While dragging the barrel, he sneezed, causing him to feel a "shock of electricity" down his leg to his foot. Realizing that he could not continue working, he went to his supervisor and told her that he had injured himself while lifting with his co-worker. (Tr. 8-9). After reporting it to his supervisor, medical transport was called to the work site and claimant was taken to a doctor. (Tr. 9-10).

Dr. Ackerman's initial chart note reveals that claimant was lifting some metal in a bent-over fashion when he experienced a sharp pain in his low back. (Ex. 1-1). The doctor's hand written notes indicated that claimant was lifting metal and overextended. Claimant complained of low back pain with stiffness and radiating pain down the right leg. (Ex. 1A). Dr. Ackerman's examination revealed objective findings including mild diffuse tenderness in the lower lumbar region, some slight muscular spasm, and an apparent forward list to the posture. (Ex. 1-2). Dr. Ackerman diagnosed "low back pain, most likely secondary to lumbar strain." (Ex. 1-2).

Even assuming that Dr. Ackerman did not receive an entirely complete history regarding the work injury, we do not believe that this defect is of such importance that his opinion should be discounted as corroborating claimant's testimony that his injury occurred while lifting at work. *See Jackson County v. Wehren*, 186 Or App 555 (2003) (a 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); *Jim Perger*, 55 Van Natta 672, 673 (2003). Therefore, we agree with the ALJ's determination that the medical evidence corroborated claimant's testimony that he sustained a low back injury while lifting at work. Accordingly, we affirm the ALJ's order.

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 \$1,800, payable 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 and her counsel's uncontested statement of services), the complexity of the issue, and the value of the interest involved.

ORDER

The ALJ's order dated December 20, 2002 is affirmed. For services on review, claimant's attorney is awarded an assessed fee of \$1,800, to be paid by the insurer.

Entered at Salem, Oregon on May 27, 2003