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In the Matter of the Compensation of  
**SHAWN HINES, Claimant**  
WCB Case No. 07-07873  
ORDER ON REVIEW  
Scott M McNutt Jr., Claimant Attorneys  
SAIF Legal, Defense Attorneys

Reviewing Panel: Members Biehl, Langer, and Herman. Member Langer dissents.

Claimant requests review of Administrative Law Judge (ALJ) Otto's order that upheld the SAIF Corporation's denial of his injury claim for a groin condition and peritoneal abscess. On review, the issue is compensability. We reverse.

FINDINGS OF FACT

We adopt the ALJ's "Findings of Fact," but not the "Findings of Ultimate Fact." We supplement and summarize the relevant facts as follows.

On October 24, 2007, around 2:30 p.m., claimant was operating a machine at work that injected foam into preformed plastic doors. (Tr. 7). When running the machine, claimant was bent approximately 45 degrees at the waist, legs spread, with his arms out in front of him. (Tr. 9, 10, 22, 23). On several occasions, due to a malfunction, the machine handles kicked back towards claimant, forcing his right arm backwards and lifting him off the ground. (Tr. 9, 10). The force of the kickback was strong enough that claimant initially thought he snapped his wrist. (Tr. 10). After the third occasion, claimant reported his injury to his boss. (*Id.*) Thereafter, claimant was nauseated and felt like he strained every muscle in his body, especially his back, neck and right arm. (Tr. 11; Ex. 1). He sat in a friend's car and may have lost consciousness. (*Id.*)

The next day, claimant noticed pain and swelling in his groin to the right and behind his scrotum and experienced pain when urinating. (Tr. 12, 27; Ex. 14-43-44). He did not work that day. (Tr. 12).

On October 26, 2007, claimant went to the emergency room because his groin was so painful and swollen that he could hardly walk. (Tr. 12; Ex. 1). Dr. Ehlers's examination findings included ecchymosis and "an obvious hematoma" in claimant's right groin, "pain reproducible to palpation in the

attachment of his right medial groin muscles,” right scrotal tenderness, significant scrotal tenderness, and an intact penile implant prosthesis. (Ex. 1). Dr. Ehlers found no laceration in the groin area. (*Id.*) He diagnosed a right groin pull. (*Id.*)

On October 27, 2007, around 7:00 p.m., claimant’s perineum ruptured at the location of his swelling/bruising and spewed approximately one cup of dark green/grey pus. (Tr. 14, 16, 17, 30). He was unable to get a ride to the hospital until October 29, where he was examined by Dr. Toovy and Dr. Skeeters, a urologist. (Tr. 15, 16; Exs. 2 through 5, 13-5).

Drs. Toovy and Skeeters found swelling, tenderness, inflammatory changes, and an opening to the right and behind claimant’s scrotum. (Exs. 3, 4-2, 5-2). They diagnosed a right peritoneal abscess. (Exs. 4-4, 5-2). Claimant was hospitalized for five or six days. (Tr. 18; Ex. 13-5-6).

On November 8, 2007, SAIF denied compensability of claimant’s groin condition and peritoneal abscess. (Ex. 8). Claimant requested a hearing.<sup>1</sup>

On February 19, 2008, Dr. Girod, an infectious disease specialist, examined claimant at SAIF’s request and diagnosed a subcutaneous abscess, which had completely resolved. (Ex. 9-4, -8). He found no swelling, redness, pain, or drainage. (Ex. 9-7-9). Dr. Girod opined that claimant’s abscess was idiopathic. (Ex. 9-5-11). He reasoned that the emergency room record and claimant described the pus as green in color without blood, which indicated that it was either unrelated to a blood clot, or that it was an old infection. (Ex. 9-5, -10). He stated that the bruising and swelling seen by Dr. Ehlers was actually a fully manifested infection and abscess. (*Id.*) Because claimant did not have a break in his skin and suffered only a “minor injury” to his groin, Dr. Girod concluded that neither the work injury nor the hematoma/bruising/strain was the major contributing cause of claimant’s peritoneal abscess. (Exs. 9-6, -11, 12).

Drs. Ehlers and Skeeters disagreed with Dr. Girod’s opinion. (Exs. 10, 11, 13, 14). Based on claimant’s work injury, objective findings on October 26, 2007, and the temporal relationship between the injury and abscess, Drs. Ehlers and Skeeters opined that the work injury was the major contributing cause of the hematoma/bruising/strain, which, in turn, was the major contributing cause of the peritoneal abscess. (*Id.*)

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<sup>1</sup> Although SAIF’s denial referenced only the peritoneal abscess, the parties agreed at hearing that SAIF denied claimant’s initial injury claim for a groin condition, as well as the peritoneal abscess as a consequential condition. (Tr. 2-4).

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## CONCLUSIONS OF LAW AND OPINION

In upholding SAIF's denial, the ALJ found that claimant's work injury was neither a material contributing cause of the groin condition, nor the major contributing cause of the peritoneal abscess. The ALJ reasoned that Drs. Ehlers and Skeeters's opinions were based on erroneous assumptions about claimant's injury and the nature of his objective findings, as well as on a temporal relationship. Instead, the ALJ found Dr. Girod's opinion to be the most persuasive.

On review, claimant argues that he established the existence and compensability of a groin condition resulting from his work injury, and that the groin condition was the major contributing cause of a consequential peritoneal abscess. Claimant relies on the opinions of Drs. Ehlers and Skeeters. SAIF cites Dr. Girod's opinion in support of its denial. For the following reasons, we find claimant's groin condition and peritoneal abscess compensable.

To prove the compensability of an injury, claimant must show that his work injury was a material contributing cause of his disability or need for treatment of his groin condition. ORS 656.005(7)(a); ORS 656.266(1); *Albany Gen. Hosp. v. Gasperino*, 113 Or App 411, 415 (1992). Claimant must prove both legal and medical causation by a preponderance of the evidence. *Harris v. Farmer's Co-op Creamery*, 53 Or App 618 (1981); *Carolyn F. Weigel*, 53 Van Natta 1200 (2001), *aff'd without opinion*, 184 Or App 761 (2002). Legal causation is established by showing that claimant engaged in potentially causative work activities; whether those work activities caused claimant's condition is a question of medical causation. *Darla Litten*, 55 Van Natta 925, 926 (2003).

Whether claimant established legal causation hinges principally on his credibility and reliability. In determining the credibility of a witness's testimony, we normally defer to an ALJ's demeanor-based credibility findings. *See Erck v. Brown Oldsmobile*, 311 Or 519, 526 (1991). Here, the ALJ did not make an express demeanor-based credibility finding. Moreover, because the issue of credibility concerns the substance of claimant's testimony, we are equally qualified to make our own credibility determination. *Coastal Farm Supply v. Hultberg*, 85 Or App 282 (1987); *Michael A. Ames*, 60 Van Natta 1324, 1326 (2008).

Claimant testified that, on three occasions, the machine handles kicked back and forced his right arm and body backwards, lifting him off the ground. (Tr. 9, 10). According to claimant, the force of the kickback caused his elbow to strike his right groin, making him nauseated to the point where he had to sit down, and possibly lose consciousness. (Tr. 10, 11, 20, 23, 24). He felt like he had strained every muscle in his body, and felt pain in his groin the day after the work injury. (Tr. 11, 12, 25-28).

The description of the mechanism of injury contained in Drs. Ehlers, Toovy, and Skeeters's reports, as well as the statement to the claim investigator, did not mention that claimant's elbow struck his groin. (Exs. 1, 4-1, 5-1, 7A). Nevertheless, the description of the force of the kickback, being lifted off the ground, straining his whole body, feeling nauseated, possibly losing consciousness, and the onset of groin pain were consistent. The first mention of claimant's elbow striking his groin is contained in Dr. Girod's February 19, 2008 report. (Ex. 9-7).

We acknowledge that Dr. Girod considered it biomechanically difficult for claimant's elbow to strike his groin. (Ex. 15-17). However, there is no evidence that claimant denied striking his groin, or that the mechanism of his injury was impossible.

Furthermore, even if claimant's elbow did not directly strike his groin, no physician stated that direct impact to the groin was necessary for claimant to have suffered a groin strain/bruise/hematoma. Dr. Ehlers admitted that the exact biomechanics of claimant's injury was unclear, but considered the kickback from the machine, which "pushed him back," to be a "direct trauma mechanism." (Ex. 14-7-9, -27). Dr. Ehlers testified that his examination findings were consistent with either an impact injury or a straining/pulling injury. (Exs. 1, 14-25, -27, -33, -39, -40). Dr. Skeeters also did not know the exact mechanism of claimant's injury, but understood it to be straining activities. (Exs. 5, 13-9, -29, -31, -32, -35). He opined that such straining caused claimant's groin condition. (Ex. 13-9, -13, -29, -32, -35).

Despite some discrepancies, we consider claimant's account of the injurious event to be credible. *See Sean Mecham*, 61 Van Natta 259, 261 (2009); *see also Crystal R. Emig*, 60 Van Natta 198, 199 (2008). Accordingly, we find that he engaged in potentially causative work activities. Therefore, claimant has established legal causation. *Litten*, 55 Van Natta at 926.

Next, we turn to whether claimant has established medical causation related to his groin condition. Relying on Dr. Girod's opinion, the ALJ concluded that Dr. Ehlers's examination findings evidenced an existing infection, rather than a strain, bruise, or hematoma caused by claimant's work injury. Claimant argues that Dr. Ehlers's opinion, as supported by Dr. Skeeters, persuasively establishes that he suffered a strain/bruise/hematoma as a result of his work injury. For the following reasons, we agree with claimant's contention.

Claimant must show that his work injury was a material contributing cause of his disability or need for treatment of his groin condition. ORS 656.005(7)(a); ORS 656.266(1). A "material contributing cause" is a substantial cause, but not necessarily the sole cause or even the most significant cause. *See Van Blokland v. Oregon Health Sci. Univ.*, 87 Or App 694, 698 (1987); *Summit v. Weyerhaeuser Co.*, 25 Or App 851, 856 (1976) ("material contributing cause" means something more than a minimal cause; it need not be the sole or primary cause, but only the precipitating factor); *John P. Monroe*, 60 Van Natta 317, 320 (2008) (same).

Because of the possible alternative causes for claimant's groin condition, resolution of this matter is a complex medical question that must be resolved by expert medical opinion. *See Uris v. Comp. Dep't*, 247 Or 420, 424-36 (1967); *Barnett v. SAIF*, 122 Or App 279 (1993). 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). We properly may or may not give greater weight to the opinion of the treating physician, depending on the record in each case. *See Dillon v. Whirlpool Corp.*, 172 Or App 484, 489 (2001); *Darwin B. Lederer*, 53 Van Natta 974 n 2 (2001) (absent persuasive reasons to the contrary, the Board generally gives greater weight to the opinion of the claimant's attending physician).

Dr. Ehlers diagnosed a right groin pull. He reported objective findings of ecchymosis, an obvious hematoma, reproducible pain located at the attachment of claimant's right medial groin muscle, and scrotal tenderness. (Ex. 1).

According to Dr. Ehlers, ecchymosis meant bruising, which was dark, rather than red, and consistent with an injury to blood vessels. (Ex. 14-16). He described a hematoma as blood deep in body tissue, making the affected area darkened, more swollen, and more tender. (Ex. 14-18-20). Dr. Ehlers further described an abscess as a fluid-filled sac that is moveable, and softer than

surrounding tissue. (Ex. 14-21). Acknowledging that severe infections could cause bruising, Dr. Ehlers explained that infections involve more redness, more swelling, more tenderness, and more thickened painful skin, rather than bruising. (Ex. 14-35).

Dr. Ehlers opined that the examination findings were consistent with an injury. He observed dark “black and blue” bruising in claimant’s groin area. (Exs. 1, 10, 14-16-18). He also found deep focal tenderness where the groin muscle attached to the thigh. (Exs. 1, 10, 14-11, -17-19). Based on his clinical examination findings, Dr. Ehlers diagnosed an obvious hematoma. He explained that he observed a harder, swollen, bruised area deep in the groin tissue. (Ex. 14-19-21).

Dr. Ehlers did not consider his examination findings to be indicative of an infection. He explained that claimant did not have a soft, moveable fluid-filled sac, fever, or redness. (Exs. 10-4, 14-16, -19-21, -29). Instead, Dr. Ehlers stated that claimant had dark bruising, deep palpable tenderness at the muscle insertion site, and swelling, consistent with an impact or straining injury. (Ex. 14-28-30, -39-40). Dr. Ehlers explained that he diagnosed a muscle pull based on claimant’s swelling, bruising, and palpable pain in the groin muscle insertion site. (Exs. 10, 14-23). Based on his understanding of claimant’s straining/jerking work injury, the objective findings, and the temporal relationship between the injury and onset of groin pain, Dr. Ehlers concluded that claimant’s work injury was the major contributing of his muscle tear. (Exs. 10, 14-33, -40).

SAIF argues that, because the precise mechanism of claimant’s injury is unclear, Dr. Ehlers’s opinion, which was based on claimant suffering a traumatic injury, is unpersuasive. SAIF further contends that Dr. Ehlers’s diagnoses and causation opinion were based solely on a temporal relationship. We disagree.

As stated previously, no physician based their causation opinion on a direct impact injury. Moreover, Drs. Ehlers, Skeeters, and Girod understood the mechanism of injury to be the forceful kickback of the foam machine, which caused claimant to be lifted off the ground. Therefore, we do not find the precise mechanism of claimant’s injury to be dispositive.

Dr. Ehlers examined claimant on October 26, 2007, two days after his work injury. (Ex. 1). Dr. Ehlers documented detailed observations of his examination findings. (*Id.*) Based on those objective findings, as well as his understanding that claimant suffered a straining type of injury, Dr. Ehlers opined

that the groin condition was consistent with an impact or straining injury. *See* ORS 656.005(19)<sup>2</sup>; *see also SAIF v. Lewis*, 335 Or 92, 98 (2002) (“objective findings” include indications of injury or disease “capable of being verified”); *Pedro Lopez-Rodriguez*, 57 Van Natta 1733 (2005) (same). Thus, Dr. Ehlers’s opinion was not based solely on a temporal relationship.

Moreover, Dr. Ehlers acknowledged that, if a patient complained of groin pain without a history of trauma, he would have been more suspicious of an infection. (Ex. 14-24). However, Dr. Ehlers further stated that, if claimant gave no history of trauma, he would still question whether there was an injury based on claimant’s bruises. (Ex. 14-34-35). Dr. Ehlers also explained why he did not consider claimant’s objective findings to be an infection. We find Dr. Ehlers’s opinion to be well explained and based on a sufficiently accurate history. *Jackson County v. Wehren*, 186 Or App 555, 559 (2003) (a history is complete if it includes sufficient information on which to base the physician’s opinion and does not exclude information that would make the opinion less credible); *Somers*, 77 Or App at 263.

On the other hand, Dr. Girod did not believe that claimant had bruises or a hematoma on October 26. Instead, he believed that claimant had an infection. Dr. Girod described symptoms of infections as redness, swelling, and often fever and chills. (Ex. 15-6). He also stated that a normal temperature did not rule out an infection. (Ex. 15-19). Dr. Girod testified that infections could be “a little bit dark” and discolored, such that they could be misinterpreted as a bruise especially if a physician is given a history of trauma. (Exs. 12, 15-14). He opined that Dr. Ehlers’s objective findings were actually signs of an infection or abscess, rather than bruising, a hematoma, or other findings of tissue bleeding. (Exs. 9-5, -10, 12, 15-20). Dr. Girod believed that Dr. Ehlers’s diagnosis was based on the temporal relationship between claimant’s work injury and the examination findings. (Exs. 12, 15-22-23). Dr. Girod concluded that the work injury was neither a material, nor major, contributing cause of claimant’s disability/need for treatment. (Exs. 9-5-11, 15-24).

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<sup>2</sup> Under that statute, “objective findings” are defined as “verifiable indications of injury or disease that may include, but are not limited to, range of motion, atrophy, muscle strength, and palpable muscle spasms,” not including “physical findings or subjective responses to physical examinations that are not reproducible, measurable or observable.”

SAIF argues that Dr. Girod, an infectious disease specialist, persuasively establishes that claimant did not have bruising or a hematoma due to his work injury. Therefore, SAIF contends that claimant did not meet his burden of proving material contributing cause. For the following reasons, we disagree.

Dr. Ehlers examined claimant on October 26, 2007, two days after his work injury. (Ex. 1). Dr. Ehlers acknowledged that infectious disease physicians' assessments were "very good," but stated that he would not be comfortable with their diagnoses if they never saw the patient. (Ex. 14-36). At Dr. Girod's February 19, 2008 examination, claimant's groin conditions had resolved and Dr. Girod found no evidence of redness, tenderness, or swelling. (Exs. 9-8-11, 15-36-37). Because Dr. Ehlers examined claimant closer in time to the injury and before his symptoms resolved, we find that Dr. Ehlers was in a more advantageous position to evaluate claimant's condition. *See Trevor C. Johnson*, 61 Van Natta 1443, 1446 (2009) (the opinion of a physician who examined the claimant before the symptoms resolved was found more persuasive); *Teri L. Tygart*, 58 Van Natta 1565, 1567, (2006) (opinion of physician who examined the claimant closer to alleged injury found persuasive).

Moreover, Dr. Skeeters testified that it was not difficult to differentiate between bruising and the discoloration from an infection. (Ex. 13-10). Dr. Ehlers explained why he did not consider claimant's objective findings to be indicative of an infection rather than an injury. Because we find Dr. Ehlers's opinion to be well reasoned, and because Dr. Girod did not examine claimant before his symptoms resolved, we do not find Dr. Girod's opinion that claimant did not suffer bruising, a hematoma, or strain to be persuasive. *See Timothy L. O'Dore*, 59 Van Natta 1404, 1406 (2007) (opinion of physician who did not believe that the disputed condition existed was unpersuasive when the medical evidence established the existence of that condition); *Carol L. Simmons*, 61 Van Natta 528, 533 (2009) (same).

Finally, Dr. Girod opined that claimant's need for treatment was due completely to an idiopathic and preexisting infection. (Ex. 9-6, -11). Yet, he also acknowledged that "[t]he minor injury to the [groin] at work" increased the symptoms of a preexisting infection. (*Id.*) Under such circumstances, and based on the aforementioned reasons, we find that claimant's work injury was a material contributing cause of the disability/need for treatment of his groin condition. ORS 656.005(7)(a); ORS 656.266(1); *see Lenora J. Rea*, 60 Van Natta 1058, 1063 (2008) (physician's opinion that work activities on the date of injury caused

the claimant's low back degenerative changes to be symptomatic sufficiently established that those activities were at least a material contributing cause of the claimant's disability/need for treatment of a low back condition).

We turn to the compensability of claimant's peritoneal abscess. In upholding SAIF's denial, the ALJ found Dr. Girod's opinion to be the most persuasive. The ALJ reasoned that the opinions of Drs. Ehlers and Skeeters were based primarily on a temporal relationship. On review, claimant argues that his hematoma was the major contributing cause of his peritoneal abscess. Alternatively, he contends that his work injury caused microabrasions, which became infected and developed into an abscess.

Claimant's theory of compensability is that the peritoneal abscess was a result of his groin condition (which we have determined to be compensable), rather than a direct result of his work injury. As such, claimant asserts that the peritoneal abscess should be analyzed as a consequential condition under ORS 656.005(7)(a)(A). For the following reasons, we find claimant's peritoneal abscess compensable as a consequence of his compensable groin condition.

A consequential condition is "a separate condition that arises from the compensable injury, for example, when a worker suffers a compensable foot injury that results in an altered gait that, in turn, results in back strain." *Fred Meyer, Inc. v. Crompton*, 150 Or App 531, 536 (1997); *Rodney L. Femrite*, 61 Van Natta 457, 458 (2009) (same). A condition that is a consequence of a compensable condition, rather than a direct result of an injurious industrial accident, is only compensable if the compensable condition is the major contributing cause of the consequential condition. ORS 656.005(7)(a)(A); *Gasperino*, 113 Or App at 415. The determination of major contributing cause involves the evaluation of the relative contribution of the different causes of claimant's condition and a decision as to which is the primary cause. *Dietz v. Ramuda*, 130 Or App 397, 401 (1994), *rev dismissed*, 321 Or 416 (1995).

Although Dr. Ehlers could not specifically identify how bacteria were introduced to claimant's hematoma, he concluded that the compensable groin condition was the major contributing cause of the peritoneal abscess. (Ex. 14-30). Dr. Ehlers stated that hematomas can become infected, but there usually needs to be a break in the skin. (Ex. 14-28). However, he believed that claimant may have suffered microabrasions, based on swelling and irritation in his groin area, which allowed bacteria to infect his groin. (Exs. 10, 14-13, -25-28).

Dr. Ehlers did not know whether or not there was blood in the pus discharged from claimant's perineum. (Ex. 14-32). Nevertheless, he did not consider the absence or presence of blood determinative to whether the abscess was related to the hematoma. (Ex. 14-32-33). Instead, based on his objective findings, the mechanism of a straining or impact injury, no prior history of infections, and the temporal relationship between the work injury and claimant's infection, Dr. Ehlers opined that the work injury caused a strain and hematoma, which were the major contributing cause of the peritoneal abscess. (Exs. 10, 14-13, -25-29, -39-41).

Dr. Skeeters, urologist, examined and treated claimant after his peritoneal abscess ruptured. (Ex. 5). Dr. Skeeters testified that a large part of his practice involved infections and infectious disease. (Ex. 13-8). Although he did not find evidence of microabrasions at examination, Dr. Skeeters testified that a hematoma could be instantaneously infected from an injury if there was a break in the skin. (Exs. 11-3, 13-33). Dr. Skeeters also did not consider it unusual for an abscess to develop within two days. (Ex. 13-12, -20, -34).

Dr. Skeeters opined that claimant's work injury caused a hematoma, which became infected. (Exs. 11, 13-9, -30-33). In doing so, he testified that he neither saw, nor asked claimant to describe, the pus that had discharged from the perineum. (Ex. 13-14, -20, -22, -28). Dr. Skeeters acknowledged that green/gray pus, without blood, would tend to support a more infective process. (Ex. 13-15). Nevertheless, based on his understanding that there was no blood in the pus, the temporal relationship between the injury and infection, the objective findings of a hematoma without infection on October 26, and no history of prior infections, Dr. Skeeters concluded that the hematoma was the major contributing cause of the peritoneal abscess. (Exs. 11, 13-9, -18-19, -30-33).

In contrast, Dr. Girod opined that claimant's groin condition was neither a material, nor the major, contributing cause of claimant's peritoneal abscess. (Exs. 9-6, -11, 12). He reasoned that the pus discharged from claimant's perineum was green without blood, which was consistent with an old infection, rather than related to a blood clot. (Ex. 9-5, -10). Dr. Girod believed that Dr. Ehlers's examination findings were a fully manifested infection. (Exs. 9-5, -10, 12, 15-14, -20).

Dr. Girod acknowledged that it was possible to have blunt trauma resulting in a large hematoma that gets infected. (Ex. 15-10, -13). He explained that a blood is a tremendous culture media for bacteria "if they can gain access to

a blood clot,” and, if there is no cut or abrasion, access would be gained through pores or hair follicles. (Ex. 15-11). According to Dr. Girod, if there is no open wound, it would take longer for bacteria to access the hematoma. (Ex. 15-13). Thus, even assuming claimant suffered a hematoma from his work injury, Dr. Girod found that the timing and color of the abscess drainage indicated that the abscess was caused by a preexisting infection. (Exs. 9-5-11, 15-9-13, -18, -20, -25-26, -31-33, -35). Therefore, absent an open wound, Dr. Girod concluded that claimant’s peritoneal abscess was idiopathic, caused by an infected hair follicle. (Exs. 9-5-11, 12, 15-11, -25, -28-30).

Claimant contends that the opinions of Drs. Ehlers and Skeeters are more persuasive because they were based on their treatment and observations and rebutted Dr. Girod’s contrary opinion. SAIF responds that Drs. Ehlers and Skeeters based their opinion solely on a temporal relationship. SAIF further argues that Dr. Girod persuasively explained why claimant’s work injury could not be the major contributing cause of his claimed condition. We agree with claimant’s contentions.

Drs. Ehlers and Skeeters considered the temporal relationship between claimant’s injury and the hematoma to be sufficient. Dr. Skeeters testified that such an infection could occur within 48 hours. Based on the mechanism of claimant’s injury, the objective findings of conditions from that injury, and no prior history of infections, Drs. Ehlers and Skeeters concluded that claimant’s groin conditions were the major contributing cause of the peritoneal abscess. Under these circumstances, we do not consider their opinions to be based solely on a temporal relationship. *See Allied Waste Industries, Inc., v. Crawford*, 203 Or App 512, 518 (2005), *rev den*, 341 Or 80 (2006) (although opinions based solely on a temporal relationship are generally unpersuasive, the temporal relationship may be the most important factor in determining the major contributing cause of a claimant’s condition); *Paul C. Ratermann*, 60 Van Natta 1694, 1696 (2008).

It is undisputed that no physician actually observed the pus discharged from claimant’s perineum. Dr. Girod found the key determining factor in his conclusion to be the color of the pus. He stated that the pus was green with no blood. Dr. Girod’s understanding of the pus was based on the emergency room records and claimant’s description. (Exs. 9-5, 15-15-16, -36). However, claimant testified that Dr. Girod never asked about the pus, and that no physician asked him about blood in the pus. (Tr. 18-19). Dr. Skeeters confirmed that he did not ask claimant about the pus and that there was no documented description

of the pus in the emergency room records. (Exs. 4, 5, 13-20, -22, -28). Unlike Dr. Girod, Drs. Ehlers and Skeeters did not consider the color of the pus discharged from claimant's perineum to be dispositive. Moreover, based on his understanding that there was no blood in the pus, Dr. Skeeters still opined that the groin condition was the major contributing cause of the peritoneal abscess.

Furthermore, Dr. Girod did not believe that claimant suffered a hematoma from his work injury. Instead, he considered Dr. Ehlers's examination findings to be a fully manifested infection. As previously stated, we have found Dr. Ehlers's opinion regarding a groin condition caused by the work injury to be persuasive. Thus, Dr. Girod's opinion that claimant did not suffer a hematoma renders his causation opinion related to the peritoneal abscess less persuasive. *O'Dore*, 59 Van Natta at 1406; *Simmons*, 61 Van Natta at 533.

We acknowledge that Drs. Ehlers and Skeeters's opinions are somewhat unclear as to how the hematoma became infected. Nevertheless, they opined that claimant's work injury was the major contributing cause of his groin condition, which, in turn, was the major contributing cause of the peritoneal abscess. Their conclusion was based on the temporal relationship between claimant's injury and the resultant conditions, as well as the mechanism of his injury, objective findings, and a history of no prior infections. They also rebutted Dr. Girod's contrary medical opinion.

Dr. Girod stated that, in the absence of a break in the skin, bacteria could reach a hematoma through a pore or hair follicle. (Ex. 15-11). Nevertheless, he assumed that claimant's abscess was caused by a hair follicle. (Exs. 9-10, 15-10-13, -28-30). In doing so, Dr. Girod acknowledged that there was no evidence of an infected hair follicle on claimant's groin. (Ex. 15-30). However, Dr. Girod acknowledged that blood is a "tremendous culture media for bacteria." (Ex. 15-11). In light of Dr. Girod's statement that bacteria would gain access to a hematoma through a pore or hair follicle, as well as Drs. Ehlers and Skeeters's opinions that claimant's groin condition was the major contributing cause of the abscess, we conclude that claimant has established compensability of his peritoneal abscess. ORS 656.005(7)(a)(A); ORS 656.266(1). Accordingly, the ALJ's order is reversed.

Claimant's attorney is entitled to an assessed fee for services at hearing and on review. ORS 656.386(1). 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 at hearing and on review is \$10,000, payable

by SAIF. In reaching this conclusion, we have particularly considered the time devoted to the case (as represented by the record, claimant's appellate briefs, his counsel's requested fee, and SAIF's objections), the complexity of the issue, the value of the interest involved, and the risk that claimant's counsel may go uncompensated.

Finally, claimant is awarded reasonable expenses and costs for records, expert opinions, and witness fees, if any, incurred in finally prevailing over the denial, to be paid by SAIF. *See* ORS 656.386(2); OAR 438-015-0019; *Nina Schmidt*, 60 Van Natta 169 (2008); *Barbara Lee*, 60 Van Natta 1, *recons*, 60 Van Natta 139 (2008). The procedure for recovering this award, if any, is prescribed in OAR 438-015-0019(3).

### ORDER

The ALJ's order dated December 5, 2008 is reversed. SAIF's denial of claimant's groin condition and peritoneal abscess is set aside and the claim is remanded to SAIF for processing in accordance with law. For services at hearing and on review, claimant's attorney is awarded an assessed fee of \$10,000, payable by SAIF. Claimant is awarded reasonable expenses and costs for records, expert opinions, and witness fees, if any, incurred in finally prevailing over the denial, to be paid by SAIF.

Entered at Salem, Oregon on July 2, 2009

Member Langer dissenting.

The majority finds that claimant established a compensable injury claim for his groin condition and peritoneal abscess. Because I disagree with the majority's decision, I respectfully dissent. For the following reasons, I would conclude that claimant did not establish legal causation.

Claimant testified that he remembered striking his groin with his elbow at least twice because it made him nauseated, as though he was kicked. (Tr. 20-21). He stated that his groin was bruised in the same area where his elbow struck. (Tr. 28; Ex. 9-9). Claimant also testified that his elbow hit his right leg and then slid and struck his groin. (Tr. 23-24). However, neither the October 26 nor 29, 2007 medical records documented any reports of claimant's elbow striking his groin or leg. (Exs. 1, 4, 5). In his statement to the claim investigator, claimant did not mention his elbow striking his groin. (Ex. 7A). Instead, he only mentioned that the kickback from the machine caused him to strain. (Ex. 7A-2).

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Furthermore, claimant did not report any initial groin symptoms after his alleged work injury. Instead, he complained of neck/back pain, arm pain, headache, and nausea. (Exs. 1, 4, 7A-3).

Claimant also testified that the impact of his elbow striking his groin made him so nauseated that he had to go sit down. (Tr. 20). However, Dr. Toovy's October 29, 2007 report indicated that claimant "felt neck strain nausea" and had to go outside. (Ex. 4). Claimant told the claim investigator that, after the last time the machine kicked back, he got heat flash and had to go outside to keep from passing out. (Ex. 7A-2).

The first documentation of claimant's elbow striking his groin is in Dr. Girod's February 2008 report. (Ex. 9-5, -7, -9). Dr. Girod testified that the anatomical picture drawn by Dr. Ehler (showing the location of claimant's bruising behind and to the right of his scrotum, and three to four inches from his anus) was the same location as where claimant reported striking his groin. (Exs. 14-14, -43-44, 15-16-17). Dr. Girod stated that it was very difficult to hit his elbow to his groin in the same location where claimant had bruising/swelling. (Ex. 15-17).

In light of the inconsistencies in claimant's account of the alleged workplace injury, as well as Dr. Girod's opinion that it was biomechanically difficult for claimant to strike his elbow to his groin, which was not rebutted by other experts, I am not persuaded that claimant sustained a work injury as he alleged. Thus, I do not find that claimant established legal causation. Furthermore, I find Dr. Girod's other medical conclusions persuasive. Because the majority concludes otherwise, I respectfully dissent.