
In the Matter of the Compensation of
DONNA M. BUTTERFIELD, Claimant
WCB Case No. 08-05420
ORDER ON RECONSIDERATION
Dale C Johnson, Claimant Attorneys
Brian L Pocock, Defense Attorneys

Reviewing Panel: Members Biehl and Lowell.

Claimant requests reconsideration of our June 30, 2010 Order on Review that reversed an Administrative Law Judge's (ALJ's) order setting aside the self-insured employer's denials of her new/omitted medical conditions claim for low back conditions. Claimant contends that we erroneously concluded that the medical opinion of an examining physician, Dr. Rosenbaum, was un rebutted. For the following reasons, we adhere to our previous decision.

As noted in our previous order, claimant sustained a compensable right knee injury in May 2008. In reversing the ALJ's order that found that claimant also sustained a low back injury in May 2008, we cited Dr. Rosenbaum's opinion, which concluded that claimant had previously experienced low back radiculopathy in May 2007 in connection with an off-work right knee injury, diagnosed by Dr. Lamoreaux as a severe knee sprain. We reasoned that neither Dr. Lamoreaux nor another physician, Dr. Hacker, had rebutted Dr. Rosenbaum's analysis.

Claimant argues that our reasoning was incorrect because Dr. Lamoreaux's diagnosis in May 2007, which was limited to a knee sprain, served as a rebuttal to Dr. Rosenbaum's interpretation of her May 2007 chart notes. Claimant also faults us for relying on Dr. Rosenbaum's opinion because he allegedly enhanced claimant's 2007 symptoms by describing a "burning" pain that does not appear in Dr. Lamoreaux's May 2007 chart notes.

We acknowledge that Dr. Lamoreaux did not diagnose a low back injury or radiculopathy in May 2007. (Ex. 1). Nevertheless, Dr. Rosenbaum first interpreted Dr. Lamoreaux's May 2007 chart notes as indicating the presence of radicular pain in his October 21, 2008 report. (Ex. 20-6). Neither Dr. Lamoreaux nor Dr. Hacker disputed or addressed Dr. Rosenbaum's analysis in their reports in February and March 2009. (Exs. 23, 24). In March 2009, Dr. Rosenbaum further explained his opinion in a deposition. (Ex. 25). No medical reports were submitted from Dr. Lamoreaux or Dr. Hacker in response to that testimony.

Under these circumstances, we continue to conclude that Dr. Rosenbaum's analysis was unrebutted. In reaching this conclusion, we acknowledge that Dr. Rosenbaum used a term "burning" to describe a symptom on the medial aspect of claimant's right knee. The word "burning" does not appear in Dr. Lamoreaux's May 2007 chart notes. (Ex. 1).

However, Dr. Rosenbaum noted that Dr. Lamoreaux's chart notes indicated that claimant had a nerve-like pain up and down the leg. (Ex. 20-4). This is consistent with Dr. Lamoreaux's chart notes which describe a "nerve-type pain" that radiated all the way up and down the leg. (Ex. 1-1). Dr. Rosenbaum reasoned that such pain was not typical of just a knee injury. On that basis, he opined that claimant had previously experienced radiculopathy. (Ex. 25-23).

Considering Dr. Rosenbaum's explanation and the absence of medical evidence refuting that analysis, we continue to be persuaded by his opinion that claimant previously experienced low back radiculopathy in May 2007. Therefore, we once more conclude that Dr. Rosenbaum's opinion is the most persuasive.

Accordingly, we withdraw our June 30, 2010 order. On reconsideration, as supplemented herein, we adhere to and republish our June 30, 2010 order. The parties' rights of appeal shall begin to run from the date of this order.

IT IS SO ORDERED.

Entered at Salem, Oregon on July 28, 2010