

In the Matter of the Compensation of  
**MARCUS N. SHEARER, Claimant**

WCB Case No. 09-02799

**ORDER ON REVIEW**

J R Perkins III, Claimant Attorneys  
Reinisch Mackenzie PC, Defense Attorneys

Reviewing Panel: Members Langer and Biehl.

The self-insured employer requests review of Administrative Law Judge (ALJ) Otto's order that set aside its denial of claimant's injury claim for a left abdominal wall/groin strain. On review, the issue is compensability. We reverse.

FINDINGS OF FACT

Claimant was 25 years old at the time of hearing. Employed as an aircraft technician, he worked 4 ten-hour shifts, from 8:00 p.m. until 6:30 a.m., Wednesdays through Saturdays. His "weekends" were Sunday through Tuesday.

Claimant experienced left testicle pain while off work on March 17 or 18, 2009, when he was carrying his son's diaper bag. That pain resolved after several hours. (Tr. 18-19; Ex. 3-1).

About a week later, on March 25, 2009 at work, claimant moved a piece of aluminum weighing 30 to 50 pounds. When moving and turning the metal, he felt a stretching sensation in his left groin area, like a pulled muscle. (Tr. 7). The initial discomfort went away, except for a tightness and pain "off and on." (Tr. 9). Claimant did not think it was "that big of [a] deal," and he continued working as usual. (*Id.*).

On April 1, 2009, claimant moved a Lazy Boy chair while cleaning at home and his left side and groin area "hurt pretty bad." (Tr. 9). He sought emergency room treatment late that evening, before going to work.<sup>1</sup> (*Id.*). Dr. Moore diagnosed a groin strain or possible hernia and restricted him from heavy lifting. (Ex. 6).

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<sup>1</sup> Claimant also complained of a "foreign body sensation" in his right eye (unrelated to the groin injury). (*See* Ex. 4-1).

Dr. Bolstad, D.O., began treating claimant on April 28, 2009. She reported that claimant continued to have left lower abdominal pain, pain down the inside of his left thigh, and, sometimes, pain in his left testicle. (Ex. 20-1). Dr. Bolstad diagnosed an acute left abdominal wall strain, due to the March 25, 2009 work injury, and a possible left inguinal hernia. (*Id.* at 2; Ex. 23-2). In June and July, claimant's abdominal wall strain was generally improving, except when he stood on concrete at work. (Exs. 25, 27-1).

Dr. Blumberg, general surgeon, examined claimant at the employer's request, on July 14, 2009. He opined that the record and claimant's history were consistent with an abdominal wall strain. (Ex. 29-3).

### CONCLUSIONS OF LAW AND OPINION

The ALJ found claimant's abdominal/groin condition compensable. Based on claimant's testimony and the medical opinions, the ALJ concluded that claimant's March 29, 2009 work activity was a material contributing cause of his need for treatment/disability for his claimed condition. Based on the following reasoning, we disagree.

Claimant bears the burden of establishing that the claimed work incident was at least a material cause of disability or need for treatment of his abdominal wall/groin condition. ORS 656.005(7)(a); ORS 656.266(1); *Olson v. State Indus. Accident Comm'n*, 222 Or 407, 414-15 (1960). 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).

Because claimant had three instances of symptoms in the same general area (including two off-work incidents), and he did not immediately report the work incident, we find that causation is a complex medical question. Under these circumstances, medical causation must be established by a preponderance of persuasive expert medical evidence. *See Barnett v. SAIF*, 122 Or App 279, 283 (1993).

We rely on medical opinions that are well reasoned and based on accurate and complete histories. *Somers v. SAIF*, 77 Or App 259, 263 (1986). We also generally rely on a treating physician's causation opinion, absent persuasive

reasons to do otherwise, depending on the record in each case. *Dillon v. Whirlpool Corp.*, 172 Or App 484, 489 (2001) (the Board properly may or may not give greater weight to the opinion of the treating physician, depending on the record in each case); *Weiland v. SAIF*, 63 Or App 810, 814 (1983).

The employer argues that the medical evidence is insufficient to carry claimant's burden of proof, because the two episodes of testicular or groin pain that occurred off work were not "adequately conveyed to or factored by" the physicians. We agree, reasoning as follows.

Dr. Bolstad provides the only medical evidence relating claimant's abdominal/groin condition to the March 25, 2009 work incident.<sup>2</sup> She opined that claimant "suffered a work injury resulting in a left abdominal wall strain and left groin strain." (Ex. 20-2). However, the record does not indicate that Dr. Bolstad was aware that claimant was able to work several days after the work incident and he first sought treatment only after he experienced severe symptoms while moving a chair at home on April 1. Therefore, we cannot say that Dr. Bolstad's causation opinion was based on an accurate and complete history and we do not find it persuasive. See *Lisa M. Lunt*, 62 Van Natta 980, 284 (2010) (medical opinion found unpersuasive because it was based on an inaccurate history regarding the claimant's symptoms). Accordingly, absent persuasive medical evidence supporting the injury claim, we uphold the employer's denial.<sup>3</sup> See ORS 656.005(7)(a).

### ORDER

The ALJ's order dated August 25, 2009 is reversed. The self-insured employer's denial is reinstated and upheld. The ALJ's \$4,000 attorney fee and cost awards are reversed.

Entered at Salem, Oregon on April 21, 2010

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<sup>2</sup> The ALJ also relied on Dr. Stoller's April 17, 2009 chart note, which included an "HPI" relating that "[p]atient is a 25 year old male with history of job related lifting incident \* \* \*." (Ex. 17-1). We do not find that this restatement of claimant's history amounts to a physician's opinion addressing causation. Moreover, because claimant apparently denied any previous problems to Dr. Stoller, we cannot say that the doctor had an accurate and complete history.

<sup>3</sup> We acknowledge that Dr. Blumberg found the record and claimant's history "consistent" with an abdominal wall strain. (Ex. 29-3). However, there is no indication that Dr. Blumberg considered the complete emergency room records, or claimant's history of an acute onset of symptoms right before he first sought treatment. (*Compare id.* and Exs. 3, 6).