

In the Matter of the Compensation of  
**LISA R. DAVIS-WARREN, Claimant**

WCB Case No. 10-03965

**ORDER ON REVIEW**

Bottini Bottini & Oswald, Claimant Attorneys  
Michael G Bostwick LLC, Defense Attorneys

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

Claimant requests review of Administrative Law Judge (ALJ) Pardington's order that upheld the self-insured employer's denial of her injury claim for the effects from an "air pressurization" event. On review, the issue is compensability. We reverse.

FINDINGS OF FACT

We adopt the ALJ's "Findings of Fact."<sup>1</sup> We summarize the pertinent facts.

On June 7, 2010, claimant, a flight attendant, had difficulty taking a deep breath approximately five to ten minutes after flight takeoff. (Tr. 29). In that same time period, her coworker also "felt lightheaded," and believed that he was "going to pass out." (Tr. 9).

Claimant's symptoms worsened and she was subsequently contacted by the pilot and informed that there were difficulties with the pressurization of the aircraft. (Tr. 29-30). Claimant and her coworker used an oxygen bottle in an attempt to alleviate their symptoms. (Tr. 9-10, 30). At least one passenger "looked kind of sickly" and used an "airsick bag" on the flight. (Tr. 10, 31).

Claimant and her coworker completed incident reports. (Exs. 43, 44). The pilot also completed an incident report stating that the aircraft failed to pressurize on "climb out." (Ex. 45-2). According to that report, the cabin pressure warning light "lit up" as the plane climbed to approximately 12,000 feet. (*Id.*) The plane reached an altitude of 18,000 feet, and a "cabin altitude" of 14,000 feet for approximately five minutes. (*Id.*; *see also* Ex. 42-3). The cabin altitude then

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<sup>1</sup> We do not adopt the ALJ's finding that no passenger was offered oxygen. (*See* Tr. 31). We also clarify the seventh full paragraph on page 4 of the Opinion and Order by incorporating Dr. Meghashyam's deposition testimony. (*See* Exs. 94; 104-22 through 26).

decreased as the plane descended. The cabin pressure warning light “extinguished maybe 15-20 minutes after illumination.” (Ex. 45-2) Control of pressurization was ultimately maintained and the final hour of the flight was “smooth.” (*Id.*)

Claimant’s coworker did not seek medical treatment, but “called in sick” for his next scheduled day of work. (Tr. 15). Claimant sought treatment in the emergency room, reporting symptoms of nausea, disorientation, dizziness, and a migraine headache. (Ex. 46-1; Tr. 34).

Dr. Meghashyam, who is board-certified in hyperbaric medicine, examined claimant and observed “shakiness,” “ataxia,” and “apraxia,” and then treated her with hyperbaric oxygen. (Exs. 53, 104-10 through 16). That treatment plan was arrived at after Dr. Meghashyam consulted with the Divers Alert Network at Duke University and Travis Air Force Base, where Air Force personnel undergo testing under different changes in pressures and altitudes. (Ex. 104-15, -16). According to Dr. Meghashyam, a “test of pressure” by way of hyperbaric treatment was the standard of care for a patient with claimant’s symptoms who had experienced a “change in ambient pressure.” (Ex. 104-20). Dr. Meghashyam stated that claimant’s exposure to the “incomplete cabin pressurization” and her subsequent symptoms warranted hyperbaric treatment. (Ex. 104-18 through 22).

Dr. Burton examined claimant at the employer’s request. (Ex. 84). He opined that claimant’s “reported symptoms” from the flight were “undoubtedly psychogenic in origin and unrelated to” that workplace event. (Ex. 84-19). He did not believe that claimant experienced any need for medical treatment as a result of the cabin pressure issues on the flight. (Tr. 68-69).

The employer denied claimant’s injury claim. Claimant requested a hearing.

### CONCLUSIONS OF LAW AND OPINION

The ALJ upheld the employer’s denial, relying on Dr. Burton’s opinion. The ALJ also distinguished *K-Mart v. Evenson*, 167 Or App 46 (2000), reasoning that unlike in *Evenson*, claimant did not establish that her workplace “exposure” required medical services. We conclude that claimant suffered a compensable injury, reasoning as follows.

An injury is compensable if the work incident required medical services. *Evenson*, 167 Or App at 51. Under ORS 656.005(7)(a), the harm, damage or hurt that is sufficient to amount to an “injury” is one “requiring medical services or

resulting in disability or death.” *Id.* Medical services need not be directed toward the cure of an existing identifiable disease; rather, diagnostic or other medical services will suffice. *Id.* (citing *Finch v. Stayton Canning Co.*, 93 Or App 168, 173 (1988)).

Applying those principles, the *Evenson* court observed that a consulting emergency room physician and the claimant’s treating physician believed that a workplace exposure to HIV required testing and prophylactic treatment. *Id.* at 51-52. Under those circumstances, the court held that the claimant sustained a compensable injury because she “requir [ed] medical services.” *Id.* (citing ORS 656.005(7)(a)).

Likewise, here, Dr. Meghashyam, who is board-certified in hyperbaric medicine, concluded that claimant’s exposure to abnormal cabin pressurization and resulting symptoms required medical services, specifically a “test of pressure with hyperbaric oxygen.” (Ex. 104-6, -18 through 22, -24, -30, -31). We find that sufficient, under *Evenson*, to establish a compensable injury. *See* 167 Or App at 51-52.

In reaching that conclusion, we recognize that Dr. Burton opined that the incomplete cabin pressurization did not require medical services. (Tr. 68-69). That opinion was premised on his belief that “altitude pressure of 14,000 feet [was] not capable of causing injury or harm” in “a healthy person.” (Tr. 74). Dr. Meghashyam, however, persuasively explained that there was no such bright line cutoff for incurring an injury due to a change in ambient pressure, but rather that responses to such pressure changes were “variable.” (Ex. 104-38, -46 through 48). As an expert in hyperbaric medicine who treats five to seven patients per day with hyperbaric treatment, we defer to Dr. Meghashyam’s opinion over that of Dr. Burton. (*See* Ex. 104-6; Tr. 58, 69).

We disagree with the employer’s assertion that Dr. Meghashyam’s opinion as to whether claimant’s workplace exposure required medical services was only based on “possibility,” as opposed to “probability.” *See Gormley v. SAIF*, 52 Or App 1055, 1060 (1981) (medical opinions expressed as mere possibility insufficient to prove claim). Although Dr. Meghashyam initially signed a concurrence letter stating that she could not say that it was “medically probable that the [work] event was injurious,” she explained in her deposition that she signed that letter based on her understanding that “medically probable” was to be defined as “most definitely.” (Ex. 104-22 through 26).

Moreover, it is not dispositive that Dr. Meghashyam also stated that “decompression sickness may [have been] one of the causes of [claimant’s] symptoms.” (See Ex. 104-27). In an initial injury claim, claimant is not required to establish a particular diagnosis, such as “decompression sickness.” See *Boeing Aircraft Co. v. Roy*, 112 Or App 10, 15 (1992) (for initial claims, a claimant need not prove a specific diagnosis if it is proved that symptoms are attributable to work). Dr. Meghashyam stated that, regardless of a precise diagnosis, claimant’s workplace exposure to the change in ambient pressure, resulting symptoms, and responses to clinical tests, necessitated a “standard of care” treatment with hyperbaric oxygen. (Ex. 104-21, -22). We find that sufficient to establish that it was medically probable that claimant’s workplace exposure required medical services. See *Evenson*, 167 Or App at 51-52.

Finally, we disagree with the employer’s contention that Dr. Meghashyam’s opinion was based on an inaccurate history of the workplace event. See *Nicole E. Potter*, 62 Van Natta 3060, 3061 (2010) (medical opinion based on inaccurate history unpersuasive). Although Dr. Meghashyam initially misunderstood that claimant was exposed to a “decompression” event, she was subsequently provided with an accurate history of the “incomplete cabin pressurization,” and concluded that the event and resulting symptoms necessitated the hyperbaric treatment medical services. (See Ex. 104-18 through 22).

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 \$20,000, payable by the employer. In reaching this conclusion, we have particularly considered the time devoted to the case (as represented by the record, claimant’s appellate briefs, and her counsel’s uncontested attorney fee submission), the complexity of the issue, the value of the interest involved, and the risk that 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 the employer. 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).

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ORDER

The ALJ's order dated April 1, 2011 is reversed. The employer's denial is set aside and the claim is remanded to the employer for processing according to law. For services at hearing and on review, claimant's attorney is awarded an assessed fee of \$20,000, to be paid by the employer. 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 the employer.

Entered at Salem, Oregon on December 2, 2011

Member Langer dissenting.

I disagree with the majority that claimant sustained a compensable injury. I reason as follows.

As set forth in the majority opinion, the record establishes that, contrary to claimant's emergency room report that she had been "on a flight that had a sudden decompression above 12,000 feet," there was no "decompression" event, but only an incomplete cabin pressurization during the early stages of the June 7, 2010 flight. (*See* Exs. 45, 46-1). Specifically, the airplane flew at a cabin altitude of approximately 14,000 feet for about five minutes. (*Id.*) There were approximately 60 people on board the plane, and there is no record that anyone other than claimant sought medical treatment. (*See* Tr. 13, 44).

According to Dr. Burton, that workplace incident did not expose claimant to an injury that required medical services. (Ex. 84-17 through 21; Tr. 68-69, 74). Dr. Burton explained that a cabin altitude of 14,000 feet would not constitute an injurious exposure that would result in medical treatment. (*Id.*) Unlike the majority, I find Dr. Burton's opinion to be the most persuasive.

In reaching a different result, the majority relies on Dr. Meghashyam, who treated claimant with hyperbaric treatment for "altitude decompression sickness." Dr. Meghashyam, however, acknowledged that there was "very little evidence of" such a condition occurring "among healthy people at altitudes below 18,000 feet." (Ex. 104-40; *see also* Ex. 83-3). Moreover, she was only willing to commit that altitude decompression sickness *may have* been one of the causes of claimant's symptoms. (Ex. 104-27, -41). I would not find this opinion sufficient to establish that the workplace incident required the aforementioned hyperbaric treatment.

Additionally, Dr. Meghashyam's conclusion regarding the administration of hyperbaric treatment was contingent on the reliability of claimant's symptoms. (See Ex. 104-20 through 22). Dr. Burton, however, concluded that claimant's symptoms were "psychogenic in origin and unrelated to any workplace activities." (Ex. 84-16). Dr. Meghashyam acknowledged that she did not even consider a psychological origin of claimant's symptoms. (Ex. 104-32). In light of that acknowledgment, I would not rely on Dr. Meghashyam's opinion.

The majority also places great emphasis on Dr. Meghashyam's expertise in hyperbaric medicine. Dr. Meghashyam, however, professed no expertise on altitude sickness or aviation medicine. (Ex. 104-28 through 30, -43). She even went so far as to say that she "would not be able to understand" the flight altitude data of the plane or its relevance concerning claimant's condition. (Ex. 104-30). In other words, Dr. Meghashyam's expertise was in the administration of hyperbaric treatment, not in assessing the cause of any such treatment. (See Ex. 104-6 through 8, 28 through 30). Moreover, before treating claimant, Dr. Meghashyam had never treated a case of altitude decompression sickness. (Ex. 104-28). Consequently, I would not find that Dr. Meghashyam possessed greater expertise than Dr. Burton concerning whether or not claimant's exposure to an incompletely pressurized airplane required medical services.

Finally, I disagree with the majority's conclusion that this case is analogous to *K-Mart v. Evenson*, 167 Or App 46 (2000). In *Evenson*, it was undisputed that the claimant was "exposed to serious, even life-threatening, pathogens," and both the treating emergency room doctor and treating physician concurred "that testing and treatment were required" in that situation. 167 Or App at 51-52. Here, there is a legitimate dispute as to whether claimant was exposed to anything injurious. Indeed, as set forth above, the more persuasive evidence indicates that there was no injurious exposure. Moreover, even Dr. Meghashyam did not assert that hyperbaric treatment was *required*, only that she administered such treatment as the "standard of care" based on claimant's reported symptoms and pressurization event. In any event, for the reasons previously noted, I would rely on Dr. Burton's assessment that the workplace incident did not require any medical services, much less the extensive hyperbaric treatment provided by Dr. Meghashyam. Therefore, I do not find that *Evenson* supports the majority's position.

In sum, I would find that claimant did not sustain an injury that required medical services. See ORS 656.005(7)(a). Consequently, I would uphold the employer's denial. Because the majority determines otherwise, I respectfully dissent.