
In the Matter of the Compensation of
JAMES A. COULTER, Claimant
WCB Case No. 10-00803, 09-04425
ORDER ON REVIEW
Unrepresented Claimant
Bruce A Bornholdt, SAIF Legal, Defense Attorneys

Reviewing Panel: Members Langer and Biehl.

Claimant, *pro se*,¹ requests review of Administrative Law Judge (ALJ) Pardington's order that upheld the SAIF Corporation's denials of his injury and occupational disease claims for low back conditions. On review, the issue is compensability.

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

In upholding SAIF's denial of claimant's May 11, 2009 injury claim, the ALJ found that, even assuming that claimant established an "otherwise compensable injury," SAIF met its burden of proving that the "otherwise compensable injury" was not the major contributing cause of his disability/need for treatment for the combined low back condition. ORS 656.005(7)(a)(B); ORS 656.266(2)(a). In upholding SAIF's denial of claimant's occupational disease claim for low back conditions, the ALJ found that claimant did not establish that his work activities were the major contributing cause of his disease. ORS 656.266(1); 656.802(2)(a). On review, claimant argues that he has established the compensability of low back conditions, both as an injury claim, and as an occupational disease. For the following reasons, we disagree with claimant's contentions.

¹ Although claimant was represented at hearing, he is proceeding *pro se* on review. Inasmuch as claimant is unrepresented, he may wish to consult the Ombudsman for Injured Workers. He may do so, free of charge, at 1-800-927-1271, or write to:

DEPT OF CONSUMER & BUSINESS SERVICES
OMBUDSMAN FOR INJURED WORKERS
PO BOX 14480
SALEM OR 97309-0405

“Injury” Theory

Claimant must prove that the May 2009 work incident was at least a material contributing cause of low back disability or need for treatment. ORS 656.005(7)(a); ORS 656.266(1); *Tricia A. Somers*, 55 Van Natta 462, 463 (2003). If claimant establishes an “otherwise compensable injury,” and a “combined condition” is present, SAIF must prove that the otherwise compensable injury was not the major contributing cause of claimant’s disability or need for treatment of the combined low back condition. ORS 656.266(2)(a); *Jack G. Scoggins*, 56 Van Natta 2534, 2535 (2004).

For injury claims, a “preexisting condition” means “any injury, disease, congenital abnormality, personality disorder, or similar condition that contributes to disability or need for treatment.” ORS 656.005(24)(a). Except for claims in which a preexisting condition is “arthritis or an arthritic condition,” the worker must have been diagnosed with such condition or obtained medical services for symptoms of the condition, regardless of diagnosis, before the initial injury. ORS 656.005(24)(a)(A), (B).

Claimant argues that his May 2009 low back injury claim is compensable because any “preexisting conditions” were also related to his work activities with SAIF’s insured.² However, there is no dispute that claimant was diagnosed with, and obtained medical services for symptoms of, L4-5 and L5-S1 disc conditions before his May 11, 2009 work incident. (Exs. 1 through 56). Therefore, the record establishes the existence of statutory “preexisting conditions.” ORS 656.005(24)(a).

Furthermore, even assuming, without deciding, that claimant established an “otherwise compensable injury,” the record establishes that the “otherwise compensable injury” combined with statutory “preexisting conditions” to cause or prolong disability or a need for treatment. (See Exs. 57, 65, 66, 76, 76E, 78A, 83, 84, 85, 86-10-12, 87-5-14, 88-5-13). ORS 656.005(7)(a)(B), (24)(a). Therefore, we determine whether SAIF established that the otherwise compensable injury was not the major contributing cause of claimant’s disability or need for treatment of the combined low back condition. ORS 656.266(2)(a); *Scoggins*, 56 Van Natta at 2535. For the following reasons, we find that SAIF met its burden of proof.

² We further address the compensability of claimant’s low back conditions, which he asserts are related to his overall work exposure with SAIF’s insured, under his occupational disease claim.

Here, Drs. Staver, Dietrich, and Vessely opined that claimant's May 2009 work incident was never the major contributing cause of the combined low back condition, or the disability or need for treatment thereof.³ (Exs. 76E, 84, 85, 86-10-12, 87-5-14, 88-5-13). Their opinions were based on the mechanism of claimant's May 2009 work incident, his preexisting conditions and treatment, off-work activities, age, genetics, objective findings, and progression of symptoms. (*Id.*)

Claimant also relies on the opinions of his treating nurse, Ms. Cody, and treating physician, Dr. Kuether. However, although Ms. Cody noted the differences in claimant's symptoms and functional abilities from his low back conditions before and after his May 2009 work incident, she did not address whether the work incident was a material, or the major, contributing cause of his disability/need for treatment. (Ex. 83). Similarly, although Dr. Kuether recommended lumbar surgery for claimant's low back conditions, he also did not address whether the May 2009 work incident was a material, or the major, contributing cause of claimant's disability/need for treatment. (Exs. 66, 76, 83A).

Under these circumstances, based on the opinions of Drs. Staver, Dietrich, and Vessely, we find that SAIF has established that the "otherwise compensable injury" was not the major contributing cause of claimant's disability/need for treatment of his combined low back condition. ORS 656.005(7)(a)(B); ORS 656.266(2)(a). Consequently, claimant's May 2009 injury claim is not compensable.

"Occupational Disease" Theory

To establish a compensable occupational disease, claimant must prove that employment conditions were the major contributing cause of the low back condition. ORS 656.266(1); ORS 656.802(2)(a); *Lori M. Lawrence*, 60 Van Natta 727, 728 (2008). The major contributing cause means a cause that contributes more than all other causes combined. *See Smothers v. Gresham Transfer, Inc.*, 332 Or 83, 133-34 (2001); *McGarrah v. SAIF*, 296 Or 145, 166 (1983).

³ On July 16, 2009, Dr. Staver examined claimant at SAIF's request. (Ex. 70). In November 2009 and July 2010, he agreed with SAIF's "check-the-box" summary letters. (Exs. 76E, 85). Dr. Staver was deposed in October 2010. (Ex. 87). On October 14, 2009, Dr. Dietrich examined claimant at SAIF's request. (Exs. 76C, 78). In November 2009 and July 2010, he agreed with SAIF's "check-the-box" summary letters. (Exs. 78A, 84). Dr. Dietrich was also deposed in November 2010. (Ex. 88). In August 2010, Dr. Vessely examined claimant at SAIF's request. (Ex. 86).

Determination of the major contributing cause is a complex medical question that must be resolved on the basis of expert medical opinion. *Jackson County v. Wehren*, 186 Or App 555, 559 (2003), *citing Uris v. Comp. Dep't*, 247 Or 420, 426 (1967). In evaluating the medical evidence, we rely on those opinions that are both well reasoned and based on accurate and complete information. *Somers v. SAIF*, 77 Or App 259, 263 (1986).

On review, claimant argues that the ALJ's order did not include all of the details of his work activities with SAIF's insured. For the following reasons, we agree with the ALJ's determination that claimant did not establish the compensability of his low back condition as an occupational disease. ORS 656.266(1); ORS 656.802(2)(a).

Claimant began working for SAIF's insured in 1990. (Exs. 60, 61). For approximately six months, he worked as a labeler, labeling paint cans that came in boxes, which did not require repetitive bending. (Exs. 76B-8, 76c-4-6). For two years thereafter, he worked as a helper, which required repetitive bending and lifting. (Exs. 76B-24-28, 76c-4-6). Between 1992 and 2005, claimant also worked as a paint can filler, raw material handler, and mill man, which also required repetitive bending and lifting. (*Id.*) In 2005, claimant returned to work as a labeler. (Exs. 76B-8-10, 76c-4-6). At that time, cans of paint were purchased in pallets, which required claimant to bend to the floor to lift and stack cans. (*Id.*) In approximately 2007, claimant performed his job with a coworker, and a hydraulic floor system was installed, so claimant did not have to repetitively bend. (Exs. 76B-8-10, -18-21, 76c-4-7).

Drs. Staver, Dietrich, and Vessley do not support the compensability of claimant's low back conditions as an occupational disease. (Exs. 70, 76C, 76E, 78, 78A, 84, 85, 86, 87, 88). They reviewed claimant's statements to SAIF's claim investigators regarding his work activities, and discussed those work activities with claimant at their examinations. (*Id.*; Exs. 63, 76B, 76c). The physicians opined that claimant's lifelong work exposure was not sufficiently repetitive to cause his low back condition and, instead, stated that age, genetics, and habituation to opiates were the major contributing cause of his condition. (Exs. 76C-11-13, 76E, 78-11-13, 78A, 84, 85, 86-10-12, 87-11-14, 88-5-13).

We also do not find that the opinion of Dr. Kuether persuasively establishes that claimant's work activities were the major contributing cause of his occupational disease. In a December 2010 report, Dr. Kuether agreed that "lifelong work exposure to heavy manual labor will result in increased issues with

low back disc degeneration, facet arthritis, etc.” (Ex. 90-2). However, in doing so, he noted the difficulty in separating work-related activities from “off-work” activities as causes of the condition. (*Id.*) Dr. Kuether stated that he needed to have a better understanding of claimant’s work activities, “off-work” activities, and family history. (Ex. 90-3). Dr. Kuether opined that he “would be in concurrence with concluding that [claimant’s] lifelong work exposure was a major contributing factor, if, in fact, [claimant’s] major wear and tear to his back did occur at work rather than outside of work and there was the absence of a clear significant family history.” (*Id.*)

We do not consider Dr. Kuether’s opinion sufficient to establish compensability of claimant’s occupational disease claim. Specifically, it is unclear whether he had an accurate understanding of claimant’s work activities and medical history. *See Wehren*, 186 Or App at 561 (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); *see also Claire L. Saeger*, 60 Van Natta 829, 831-32 (2008) (same). That is, Dr. Kuether’s opinion supporting a conclusion that claimant’s “lifelong work exposure was a major contributing factor,” is contingent on a particular history. (Ex. 90-3). Absent an opinion from Dr. Kuether that the record contains sufficient information to reach such a conclusion, we may not draw such an inference. *See Benz v. SAIF*, 170 Or App 22, 25 (2000) (although the Board may draw reasonable inferences from the medical evidence, it is not free to reach its own medical conclusions in the absence of such evidence); *see also SAIF v. Calder*, 157 Or App 224, 227-28 (1998) (the Board is not an agency with specialized medical expertise and must base its findings on medical evidence in the record).

Based on the aforementioned reasoning, we do not find claimant’s injury and occupational disease claims to be compensable. ORS 656.005(7)(a)(B); ORS 656.266(1), (2)(a); ORS 656.802(2)(a). Consequently, we affirm.⁴

⁴ It appears that claimant has concerns about actions taken by his former attorney on his behalf. However, we lack the authority to address such issues. If claimant has a disagreement with his former attorney’s actions, that disagreement may be a matter for another forum to resolve. *See David M. Williams*, 63 Van Natta 346 (2011); *Joseph M. Deprizio*, 60 Van Natta 488 (2008); *Becky L. Degenhardt*, 54 Van Natta 1189 (2002) (the Board is not the appropriate forum for determining the adequacy of counsel).

Claimant also contends that, because the telephonic closing arguments at hearing were not recorded, he is unable to determine what was argued at hearing. Yet, the record establishes that the parties’ counsels agreed to present unrecorded telephonic closing arguments. (Hearing File). Thus, claimant’s disagreement apparently rests with his former counsel, not this forum.

ORDER

The ALJ's order dated June 2, 2011 is affirmed.

Entered at Salem, Oregon on October 18, 2011