
In the Matter of the Compensation of
DOROTHY J. CARNES, Claimant
WCB Case No. 08-05863
ORDER ON RECONSIDERATION
Jodie Phillips Polich, Claimant Attorneys
Andersen & Nyburg, Defense Attorneys

Reviewing Panel: Members Weddell and Langer.

On December 7, 2011, we affirmed an Administrative Law Judge's (ALJ's) order that upheld the insurer's denial of claimant's new/omitted medical condition claim for several bilateral sensory nerve conditions. Contesting our analysis of the medical opinions, claimant seeks reconsideration of our decision and reversal of the ALJ's order.

In requesting reconsideration, claimant challenges our reasoning that discounted the opinions expressed by Drs. Petruk and Ginocchio. Specifically, she objects to our conclusion that the absence of any consideration of claimant's "pre-March 2000 work exposure" skin problems renders their opinions less persuasive. In support of this position, claimant reiterates that no medical opinion indicates that "pre-2000 hand symptoms" had any relevance to the compensability of the claimed conditions.

To begin, our decision was not confined to the reasoning expressed in our order. To the contrary, we adopted and affirmed the ALJ's order, with supplementation. In other words, we shared the ALJ's additional reasons for finding the opinions authored by Drs. Petruk and Ginocchio insufficient to satisfy claimant's requisite burden of proof regarding the denied conditions.¹

In any event, as we explained in our previous order, the opinions from Drs. Petruk and Ginocchio were premised on the understanding that claimant's skin problems arose from her March 2000 work exposure.² Nevertheless, as

¹ Claimant also asserts that we did not analyze her claimed condition under either an injury or consequential condition theory. Yet, as explained above, we adopted the ALJ's order, which includes a recognition of the applicable compensability standards, as well as an explanation why the claim does not satisfy those standards.

² Claimant notes that the insurer's initial defense to the claim was not based on this "incomplete/inaccurate history" theory and that the insurer did not "adopt" the ALJ's reasoning on review. Yet, in its respondent's brief, the insurer's conclusion included the statement that the ALJ's order "should be affirmed on the medical merits." Because the ALJ's decision included an "incorrect/incomplete history" rationale, the insurer's appellate argument, in effect, included such grounds (among others) for discounting the opinions from Drs. Petruk and Ginocchio.

detailed in the ALJ's findings (which we adopted) and summarized in our order, claimant experienced such problems for several decades before that work exposure. Moreover, although Dr. Melson did not expand on this historical factor in offering his opinion, he did mention this "difficulty with her hands prior to the [March 2000] episode noted * * *." (Ex. 77-7). Under such circumstances, the absence of either an accurate history or discussion from Drs. Petruk and Ginocchio that such "pre-2000 work exposure" skin problems provide no contribution to claimant's currently claimed conditions causes us to discount their opinions to such a degree that we consider them insufficient to establish the compensability of the denied claim under either statutory standard.³

Finally, claimant asserts that our order lacked an analysis of the contrary opinions from Drs. Ali and Melson. However, as previously explained, our adoption of the ALJ's order (which included an analysis of those opinions) provides such an analysis. Furthermore, the burden of establishing her entitlement to compensation statutorily rests with claimant. *See* ORS 656.266(1). Therefore, if the evidence supporting her claim is considered insufficient to meet the requisite standards for compensability, further discussion of the opposing medical opinions is unnecessary.

In conclusion, for the reasons articulated in the ALJ's order, as well as though expressed in our prior decision and as supplemented herein, we continue to find that the medical evidence does not persuasively establish the compensability of the claimed conditions. Consequently, we adhere to our affirmance of the ALJ's decision to uphold the insurer's denial of claimant's new/omitted medical condition claim.

Moreover, on review, claimant did not raise any procedural challenges to the ALJ's inclusion of the "incomplete/inaccurate history" reasoning. Instead, she asserted that, contrary to the ALJ's conclusion, the medical opinions offered in support of her claim persuasively established the compensability of the disputed conditions. Under such circumstances, we decline to consider claimant's "procedural" challenge to this portion of the ALJ's reasoning, which is being raised for the first time on reconsideration. *See Vogel v. Liberty Northwest*, 132 Or App 7, 13 (1994) (Board has discretion not to address arguments raised for the first time on reconsideration).

³ Noting that we found Dr. Petruk's opinion "less persuasive," claimant asserts that we are obliged to identify the opinion(s) to which we were comparing Dr. Petruk's opinion. On further reflection, rather than the phrase "less persuasive," a more apt description of our assessment is that, because of the inadequacies perceived in the opinions expressed by Drs. Petruk and Ginocchio (as set forth in the ALJ's opinion and our orders), we consider their opinions insufficient to meet claimant's statutory burden of proving the compensability of her claimed conditions (under either a direct injury or consequential condition theory).

Accordingly, we withdraw our December 7, 2011 order. On reconsideration, as supplemented herein, we republish our December 7 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 January 5, 2012