
In the Matter of the Compensation of
CARMEN S. LOPEZ, Claimant
WCB Case No. 12-02194
ORDER ON RECONSIDERATION
M & L Legal Attorneys, Claimant Attorneys
James B Northrop, SAIF Legal Salem, Defense Attorneys

Reviewing Panel: Members Langer and Lanning.

On July 24, 2013, we affirmed an Administrative Law Judge's (ALJ's) order that upheld the SAIF Corporation's denial of claimant's occupational disease claim for an L5-S1 disc condition. Asserting that our order was not mailed to his current attorney of record and that his attorney was not notified of the decision until "a few days ago," claimant seeks reissuance of our order to provide him with "the full 30 day appeal period."

Because there is no contention that our order was not mailed to a party, our decision is not invalid. *See Berliner v. Weyerhaeuser Company*, 92 Or App 264, 266, n. 1 (1988); *Anthony D. Cayton*, 63 Van Natta 797 (2011). Nevertheless, because claimant's current counsel notified us of this change of legal representation before the issuance of our July 24 decision and because this counsel has only recently become aware of the decision, we consider it appropriate to withdraw our July 24 order for reconsideration. Consequently, on reconsideration, we replace our July 24 order with the following order. The parties' 30-day rights of appeal shall begin to run from the date of this order.

Claimant requests review of that portion of Administrative Law Judge (ALJ) Naugle's order that upheld the SAIF Corporation's denial of claimant's occupational disease claim for an L5-S1 disc condition. On review, the issue is compensability.

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

On January 11, 2011, claimant alleged that she hurt her back lifting a bag of fertilizer at work on July 21, 2010. (Ex. 244). On March 16, 2011, SAIF denied the claim as time-barred and not compensably related to claimant's employment. (Ex. 249). Claimant requested a hearing, but then withdrew her request. The denial of the July 21, 2010 injury claim became final.

On January 20, 2012, claimant asked SAIF to accept L3-4 and L5-S1 disc bulges, as well as any arthritic conditions at those levels, as an occupational disease. (Ex. 253A). On March 13, 2012, SAIF denied that claimant's work was the major contributing cause of her disease. (Ex. 255). Claimant requested a hearing.

In upholding SAIF's denial, the ALJ found the opinions of Dr. Vessely (a SAIF-arranged medical examiner) and Dr. Di Paola (the attending physician) more persuasive than the opinion of Dr. Puziss (a claimant-arranged medical examiner) as to whether claimant's work activities were the major contributing cause of her occupational disease claim. The ALJ was not persuaded that claimant's work activities were the major contributing cause of the claimed conditions.

On review, claimant contends that the opinion of Dr. Puziss is sufficient to prove a compensable occupational disease claim. For the following reasons, we disagree.

To establish a compensable occupational disease, claimant must prove that her employment conditions were the major contributing cause of the disease. ORS 656.266(1); ORS 656.802(2)(a). Such employment conditions may include prior work injuries, including claims that are time-barred. *Kepford v. Weyerhaeuser Co.*, 77 Or App 363, 366, *rev den*, 300 Or 722 (1986); *Patricia Jenkins*, 57 Van Natta 1835, 1838 (2005). However, a condition that is due solely to a specific work injury, without contribution from general employment conditions, is not an occupational disease. *Ryan S. Henderson*, 62 Van Natta 1189 (2010) (an occupational disease claim was not compensable where the medical evidence was more consistent with a condition attributable to a specific injurious event rather than a result of the claimant's ongoing work activities); *Michael G. O'Connor*, 58 Van Natta 689 (2006), *aff'd without opinion*, 215 Or App 358 (2007) (where the medical evidence attributed the claimant's condition to two distinct injuries, and did not establish that it was related to his work activities in general or in combination with the work injuries, the occupational disease claim was not compensable); *Linda Berry*, 54 Van Natta 396 (2002) (where the claimant's doctor's opinion attributed causation to a specific injury and not to the claimant's general work activities, claimant did not establish a compensable occupational disease).

Here, the causation issue presents a complex medical question that must be resolved by expert medical evidence. See *Uris v. State Comp. Dep't*, 247 Or 420, 426 (1967); *Barnett v. SAIF*, 122 Or App 279, 283 (1993). When presented with disagreement among experts, we give more weight to those opinions that are well reasoned and based on complete information. *Somers v. SAIF*, 77 Or App 259, 263 (1986).

Dr. Puziss is the only medical expert who supports the compensability of the claim. In response to a question about major contributing cause, he opined that it was reasonable to conclude that the L5-S1 disc condition was due either to the July 21, 2010 work injury or to claimant's occupation. Dr. Puziss concluded that the "main contributing cause of the L5-S1 right herniated disc, the resultant radiculopathy, and discogenic pain is the injury of 7/21/10." In supporting this conclusion, he explained that claimant's history of the July 21, 2010 injury was accurate and suggestive of an acute L5-S1 disc herniation rather than a chronic one. He noted that claimant had no demonstrable L5-S1 herniated disc on the last MRI scan preceding the injury, "so the disc herniation is obviously new."

However, Dr. Puziss also said that claimant "sustained an accumulative injury combined with a lifting event on 7/21/10, very likely causing the L5-S1 disc to herniate." And, when asked to indicate all causal factors involved, how they interacted and the relative causal contribution of each, Dr. Puziss answered that claimant had degenerative disc disease, was mildly overweight and had some theoretical factors of genetics, but "the most important factor of all is her work activities and the specific work injury event of 7/21/10." (Ex. 257-11, -12) Nonetheless, he also stated that the nature of claimant's injury and her physical findings over time, her MRI and his findings "are all consistent with the specific injury event on 7/21/10 where she injured her L5-S1 disc." (Ex. 257-12, -13)

We evaluate medical opinions in context and based on the record as a whole to determine sufficiency. *SAIF v. Strubel*, 161 Or App 516, 521-22 (1999). Here, the most reasonable interpretation of Dr. Puziss's opinion, viewed as a whole, is that the L5-S1 disc herniated as a result of claimant's July 21, 2010 work injury. Thus, we conclude that Dr. Puziss's opinion did not establish that claimant's work activities in general (or in combination with her work-related injury) were the major contributing cause of her occupational disease claim.¹

¹ Alternatively, considering that Dr. Puziss has offered conflicting theories concerning the cause of claimant's condition (one based on her work activities, including her July 2010 work injury, and another based only on the July 2010 work injury), we find his opinion inconsistent and, as such, insufficient to persuasively satisfy the major contributing cause standard for compensability of the disputed occupational disease claim.

The other medical opinions did not establish the compensability of the occupational disease claim. Dr. Vessely attributed the L5-S1 condition to degenerative processes that occur with aging and genetics, rather than to work activities. (Exs. 248-11, 254). Dr. Di Paola concurred. (Ex. 256).

In sum, the record does not establish a compensable occupational disease claim. Accordingly, we affirm.

ORDER

The ALJ's order dated December 17, 2012 is affirmed.

Entered at Salem, Oregon on August 16, 2013