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In the Matter of the Compensation of  
**MARC DICKINSON, Claimant**  
WCB Case No. 12-01177  
ORDER ON REVIEW  
John M Hoadley, Claimant Attorneys  
MacColl Busch Sato PC, Defense Attorneys

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

The self-insured employer requests review of Administrative Law Judge (ALJ) Mills's order that set aside its denial of claimant's new/omitted medical condition claim for a T5 fracture. On review, the issue is compensability.

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

On May 26, 2011, claimant compensably injured his back when he fell off a trailer. (Ex. 19). He felt "extreme pain," and was transported to the emergency department on a backboard, where the triage nurse noted pain in the right upper back, right flank, right elbow, and left leg. (Tr. 7; Ex. 17).

The next day, claimant sought treatment from Dr. Thiessen, who diagnosed multiple back contusions and a left leg laceration. Dr. Thiessen also noted stiffness with trunk range of motion. (Ex. 21). On claimant's second visit (June 3, 2011), Dr. Thiessen took a history of left posterior rib area pain, and diagnosed a left chest wall injury. (Ex. 25). Claimant saw Dr. Thiessen for the last time on July 8, 2011, when his condition was declared medically stationary. (Ex. 29).

The employer accepted a back contusion, puncture wound to left shin, and right elbow abrasion. (Ex. 28-1).

On October 7, 2011, claimant consulted with Dr. Brett, a neurosurgeon, for persistent upper back pain. (Ex. 34). A thoracic MRI revealed a T5 compression fracture with loss of 50 percent of the disc height, which the radiologist indicated could be subacute or chronic. (Ex. 34B).

On November 18, 2011, Dr. Brett noted that claimant's pain complaints were localized at the T5 region. Dr. Brett opined that the T5 fracture was partially healed, and was "consistent with the date and mechanism of [claimant's] fall and injury in May 2011." (Ex. 35-1).

On February 14, 2012, Dr. Thompson, an orthopedic surgeon, examined claimant for the employer. (Ex. 37). Diagnosing preexisting cervical and thoracic spondylosis, and a T5 compression fracture (age undetermined), Dr. Thompson opined that the compression fracture was not due to claimant's work incident because that type of fracture normally heals within six to 12 weeks. (Ex. 37-8). Subsequently, after reviewing claimant's imaging studies, Dr. Thompson concluded that claimant's T5 compression fracture appeared to be "a very old" fracture or wedging due to degenerative changes in the superior portion of T5, and not to trauma. (Ex. 39-2). Dr. Thiessen concurred with Dr. Thompson's opinion. (Ex. 40).

The employer denied claimant's request to accept the T5 compression fracture. (Ex. 38). Claimant requested a hearing.

In setting aside the employer's denial, the ALJ found Dr. Brett's opinion to be the most persuasive. On review, the employer contends that, based on the opinions of Drs. Thiessen and Thompson, claimant's T5 fracture is not compensable. Based on the following reasoning, we disagree.

To establish compensability of his claimed T5 compression fracture condition, claimant must prove that it exists, and that the work injury was a material contributing cause of the disability/need for treatment for the condition. *See* ORS 656.266(1); ORS 656.005(7)(a); *Betty J. King*, 58 Van Natta 977 (2006); *Maureen Y. Graves*, 57 Van Natta 2380, 2381 (2005). In evaluating medical opinions, more weight is generally given to those opinions that are well reasoned and based on accurate and complete information. *Somers v. SAIF*, 77 Or App 259, 263 (1986); *Linda E. Patton*, 60 Van Natta 579, 582 (2008).

Because the parties do not question the existence of the T5 compression fracture, the issue to be determined is whether the May 2011 injury was a material contributing cause of the need for treatment of the fracture. Dr. Brett disagreed with Dr. Thompson's and Dr. Thiessen's statements that claimant's pain after the incident was not sufficiently significant for him to have sustained the fracture at that time. He noted claimant's extreme pain after the fall, his transportation to the emergency department (by ambulance) on a backboard, and the emergency physician's report of back pain—all facts supportive of significant pain. (Ex. 41a-2).

Although Dr. Thompson identified the T5 fracture as "very old," Dr. Brett responded that claimant had no prior symptoms or injuries that would indicate a previous compression fracture, and that he was too young for a degenerative

condition to have caused such a fracture. (Ex. 41a-2). Due to claimant's ongoing mid-back pain, which continued even after Dr. Thiessen declared his condition medically stationary, Dr. Brett requested a thoracic MRI scan, which revealed the fracture. Disagreeing with Dr. Thompson and Dr. Thiessen (who opined that a compression fracture requires, at most, 12 weeks to heal), Dr. Brett stated that such a fracture routinely takes close to a year to heal, making the timeline of claimant's injury consistent with the healing process revealed on the MRI, performed some six months after the work incident. (Ex. 41a-1).

In sum, the record supports a conclusion that claimant injured his back in the May 2011 work incident. He complained of severe back pain when initially treated, and when the pain, which eventually localized to his mid back, did not resolve, he consulted Dr. Brett. Dr. Brett performed a thorough examination, had an accurate history, and understood the mechanics of claimant's work injury. He addressed the contrary opinions of Drs. Thiessen and Thompson, and offered a well-reasoned opinion. Under such circumstances, we find that claimant has proven the compensability of his claimed T5 compression fracture. Thus, we affirm.

Claimant's attorney is entitled to an assessed fee for services on review. ORS 656.382(2). 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 on review is \$3,500, payable by the employer. In reaching this conclusion, we have particularly considered the time devoted to the case (as represented by claimant's respondent's brief), the complexity of the issue, and the value of the interest involved.

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; *Gary E. Gettman*, 60 Van Natta 2862 (2008).

#### ORDER

The ALJ's order dated August 29, 2012 is affirmed. For services on review, claimant's attorney is awarded an assessed fee of \$3,500, payable 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 March 22, 2013

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Member Langer dissenting.

Relying on Dr. Brett, the majority finds claimant's T5 fracture compensable. Because I disagree with the majority's evaluation of the evidence, I dissent.

Claimant fell off a trailer on May 26, 2011. On the same day, he was thoroughly examined in an emergency room, including chest and ribs x-rays and a CT scan of the cervical spine. (Exs. 14 through 18). The physical exam included the head, neck, abdomen, back and extremities. Cervical spine injury precautions were taken because of neck pain. No fractures were present. Claimant was discharged the same evening in a stable condition, was ambulatory, in no acute distress, and his wife drove him home. (Exs. 16 through 18).

The next day, claimant sought treatment from Dr. Thiessen, reporting a pain level of 5/10, but was in "no apparent distress." (Ex. 21-1). The cervical spine range of motion (ROM) was excellent. Although claimant had some stiffness with trunk rotation, Dr. Thiessen noted excellent ROM, and released him to modified work the next day. (Ex. 21-2). When Dr. Thiessen treated claimant again on June 3, 2011, he noted complaints of tenderness to palpation on the left side at approximately the ninth rib posteriorly. Dr. Thiessen diagnosed a left chest wall injury. (Ex. 25-1).

On June 17, 2011, claimant informed Dr. Thiessen that his condition had improved and he was no longer taking any pain medications. (Ex. 26). Claimant's last examination with Dr. Thiessen was on July 8, 2011, at which time he was nontender to lateral rib compression, with excellent trunk ROM and a pain level of 2/10. Dr. Thiessen declared claimant's chest wall injury medically stationary. (Ex. 29).

Neither of the two physicians who examined claimant immediately after his work incident diagnosed a T5 compression fracture or noted any problems with his thoracic spine. Dr. Thiessen opined that if claimant had such a fracture when he treated him, "you would have expected [him] to be in extreme pain. Palpation to his back would have resulted in symptoms of back pain." (Ex. 40). Noting that the emergency department physician had reported normal ROM and had not found tenderness on palpation, Dr. Thiessen explained that a person with an acute T5 fracture would normally be in extreme pain, perhaps needing immobilization through a back brace, and be on narcotic pain medications. Moreover, Dr. Thiessen (and Dr. Thompson, who examined claimant for the employer) stated that thoracic spine fractures typically heal within eight to 12 weeks. Consequently,

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because claimant's fracture was not diagnosed until six months after the May 2011 work incident, the timing of the injury is inconsistent with the fracture being caused by the fall.

In contrast, Dr. Brett did not examine claimant until five months after the accident. Dr. Brett is the only physician to opine that the May 2011 fall was responsible for claimant's T5 compression fracture. He based his opinion on the fact that claimant was free of symptoms before the fall and had pain afterward. (Ex. 41a-1). However, the two physicians who cared for claimant in the weeks after his injury did not report thoracic pain, tenderness, or reduced ROM. Claimant needed no narcotic medication, and was ambulatory when he left the emergency department. He returned to modified work within two days, and, within six weeks, his condition was declared medically stationary.

I am persuaded by the detailed contemporaneous medical charts that a significant injury, such as the claimed thoracic spine fracture, would not have escaped the two physicians' and emergency medical center personnel's attention. To find otherwise is a sheer speculation. Furthermore, the well-documented course of claimant's recovery contradicts Dr. Brett's assumptions many months later. Accordingly, I find Dr. Brett's opinion unpersuasive. Because the majority holds otherwise, I respectfully dissent.