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In the Matter of the Compensation of  
**DAVID M. WILLIAMS, Claimant**  
WCB Case No. 12-00237  
ORDER ON REVIEW  
Ronald A Fontana, Claimant Attorneys  
David Runner, SAIF Legal Salem, Defense Attorneys

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

The SAIF Corporation requests review of Administrative Law Judge (ALJ) Otto's order that set aside its denial of claimant's new/omitted medical condition claim for a thoracic spine Tarlov cyst.<sup>1</sup> On review, the issue is compensability.

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

Claimant was compensably injured on March 10, 2006, when he fell through some rotting boards while walking on a ramp. (Tr. 81). He described the pain as "like being kicked in the back by a horse \* \* \*." (*Id.*) Three days later, claimant was evaluated at a trauma center where a possible T5-6 facet joint fracture was diagnosed. (Ex. 8-1).

On March 23, 2006, claimant saw Dr. Ha, who diagnosed a severe thoracic strain. (Ex. 11). SAIF accepted a thoracic strain. (Ex. 13).

In July 2006, Dr. Ha found the thoracic strain medically stationary without permanent impairment, having no explanation for claimant's persistent severe thoracic symptoms. (Ex. 17, 20). A July 27, 2006 Notice of Closure did not award permanent impairment. (Ex. 19).

Claimant continued to experience thoracic pain and spasms. An April 2007 MRI revealed mild posterior T7-8 and T8-9 disc protrusions, only partially effacing the anterior subarachnoid space, but not displacing or flattening the cord. (Ex. 29). The MRI scan also showed a nerve root sheath cyst (Tarlov cyst) on the left at T5-6. The radiologist noted that the cyst was likely an incidental finding "despite the fact that it is at the level of [claimant's] reported pain and muscle spasms." (*Id.*) A May 2008 MRI revealed multiple Tarlov cysts throughout the thoracic spine neural foramina. (Ex. 37).

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<sup>1</sup> A Tarlov cyst is a "perineural [surrounding a nerve] cyst found in the proximal radicles of the lower spinal cord \* \* \*." *Stedman's Medical Dictionary* 483 (26<sup>th</sup> ed 2006).

Claimant conducted his own research concerning possible diagnoses for his continuing, long-term symptoms. He also sought treatment from at least 16 physicians over a four-and-a-half year period, but there was no consensus on the cause of his thoracic problems. Eventually, claimant believed that the Tarlov cysts were the cause of his symptoms.

Claimant contacted Dr. Feigenbaum, a physician who specializes in the treatment/surgery of Tarlov cysts. Dr. Feigenbaum examined claimant in October 2010, opining that the T5 Tarlov cyst was responsible, at least in part, for his thoracic symptoms, and recommending surgery. (Ex. 61-1). In November 2010, Dr. Feigenbaum performed a left T5 laminectomy and treatment of a left T5 meningeal (Tarlov) cyst. (Ex. 62B). After the surgery, claimant's symptoms almost completely resolved. (Ex. 63B). Dr. Feigenbaum opined that the March 2006 work injury caused the T5 Tarlov cyst to become symptomatic and require treatment. (Ex. 81-4).

In April 2012, Dr. Sabahi, who had previously opined that claimant's Tarlov cysts were not causing his symptoms, acknowledged that it was conceivable that the T5 cyst repaired by Dr. Feigenbaum was responsible for the "radicular-type pain from [claimant's] mid back extending around to the front of his chest on the left \* \* \*." (Ex. 77-9). However, Dr. Sabahi did not consider the cyst's etiology to be related to claimant's work injury.<sup>2</sup> (*Id.*)

At SAIF's request, Dr. Rosenbaum examined claimant in December 2011. (Ex. 70). In his initial report, Dr. Rosenbaum stated that Tarlov cysts could not become symptomatic, and that there was no relationship between the cysts and claimant's work injury. (Ex. 70-13, -14, -15). Subsequently, Dr. Rosenbaum opined that the Tarlov cysts were preexisting and did not "[occur] as a result of the injurious event." (Ex. 78-6).

On December 15, 2011, SAIF denied claimant's T5 Tarlov cyst claim. (Ex. 71). Claimant requested a hearing.

The ALJ set aside SAIF's denial. In doing so, the ALJ found Dr. Feigenbaum's opinion to be the most persuasive. On review, SAIF challenges the ALJ's discounting of Dr. Rosenbaum's experience and expertise. SAIF also argues that the evidence does not establish a material relationship between claimant's work injury and the allegedly symptomatic T5 Tarlov cyst. Based on the following reasoning, we find the claim compensable.

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<sup>2</sup> Dr. Sabahi performed two medical record reviews. (Exs. 42, 43, 77).

To establish compensability of his claimed T5 Tarlov cyst, claimant must prove its existence, 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). Claimant need not prove that his work injury caused the T5 Tarlov cyst itself; rather, the relevant inquiry is whether it caused the disability/need for treatment for the condition. *See Jaymin Nowland*, 63 Van Natta 1377, 1382 n 3 (2010).

Resolution of claimant's injury claim concerns a complex medical question that must be resolved by expert medical opinion. *Barnett v. SAIF*, 122 Or App 279, 283 (1993); *Randy M. Manning*, 59 Van Natta 694, 695 (2007). Also, where medical opinions are divided, we generally rely on physicians who are specialists in the field in question. *See Abbott v. SAIF*, 45 Or App 657, 661 (1980); *Lynda J. Zeller*, 47 Van Natta 1581, 1583 (1995) (deferring to physician's specialized expertise).

The parties do not dispute the proposition that claimant has several Tarlov cysts along his thoracic spine, including the claimed T5 cyst. Accordingly, the record establishes the existence of the cysts.

There is disagreement among the medical opinions, however, as to whether Tarlov cysts can be symptomatic and cause pain as claimant experienced. Dr. Feigenbaum cites to a chapter he cowrote in a spinal surgery textbook, which describes the majority of such cysts as asymptomatic, with a small percentage causing symptoms.<sup>3</sup> (Ex. 81-10). Similarly, Drs. Kaplan, Sabahi, Grose, Sibell, and Schott all made statements indicating that Tarlov cysts could produce symptoms (albeit in a minority of cases). (*See* Exs. 43-3, 54-6, 57A-6, 74, 80-4, -7). In light of these medical opinions, we are persuaded that such cysts may become symptomatic.

We turn to the issue of causation. We acknowledge SAIF's contention that Dr. Rosenbaum is a more experienced neurosurgeon than Dr. Feigenbaum. Nevertheless, this record does not support a compelling reason for either

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<sup>3</sup> SAIF questions the ALJ's interpretation of the percentage of Tarlov cysts that become symptomatic, which the ALJ stated was one percent. This number actually refers to the percentage of all meningeal cysts (of which Tarlov cysts are a subset) that become symptomatic. (Ex. 81-10). Thus, we do not adopt this portion of the ALJ's reasoning. Nevertheless, for the reasons expressed above, we agree with the ALJ's ultimate conclusion that the disputed claim is compensable.

promoting Dr. Rosenbaum's opinion or discounting Dr. Feigenbaum's opinion based on their respective years of experience.<sup>4</sup> We agree with the ALJ's determination, however, that Dr. Rosenbaum's opinion is unpersuasive for other reasons.

Unlike Dr. Sabahi, who (although not supporting compensability) was familiar with Tarlov cysts from his practice and was of the opinion that some Tarlov cysts could produce pathology, Dr. Rosenbaum initially denied that such cysts could be symptomatic. (Ex. 70-14). He also opined that a Tarlov cyst "should not be confused with a perineural cyst," when, as explained by Dr. Sabahi, the record establishes that they are synonymous.<sup>5</sup> (Ex. 80-6).

Moreover, Dr. Rosenbaum reasoned that if claimant's T5 cyst was symptomatic, he would have expected to find "pain located at that level and radiating to the anterior chest." Yet, claimant has exhibited such symptoms on numerous occasions since his March 2006 injury. For example, Dr. Ha, who first treated claimant less than two weeks after the March 2006 injury, noted severe pain in his thoracic region, and off to the left between his interscapular region, with accompanying muscle spasms. (Ex. 11-1). Dr. Ha continued to document thoracic muscle pain and spasms, reporting in August 2008 "objective findings demonstrate pain in the thoracic region that radiates both proximally and distally." (Ex. 20-1).

Consequently, for the above-stated reasons, and those expressed by the ALJ, we discount Dr. Rosenbaum's opinion. Therefore, we do not rely on Dr. Rosenbaum's opinion in analyzing the compensability issue.

Dr. Sabahi had encountered Tarlov cysts in his practice, and having reviewed the medical literature, was aware that a minority of these cysts could become symptomatic. (Ex. 80-6). He conceded that the T5 cyst could be the cause of "radicular-type pain from [claimant's] mid back extending around to the front of his chest on the left \* \* \*," but believed that the cyst was probably too small to produce symptoms. (Ex. 80-9). However, Dr. Feigenbaum persuasively

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<sup>4</sup> SAIF also challenges the ALJ's determination that Dr. Feigenbaum has a "vastly superior expertise" concerning Tarlov cysts. For the reasons noted by the ALJ, the record supports a conclusion that Dr. Feigenbaum has a greater familiarity with Tarlov cysts. Nonetheless, we do not consider that point to be determinative. Instead, our conclusion is premised on the reasoning discussed above.

<sup>5</sup> See also footnote 1.

addressed this point. Specifically, when questioned regarding the size of the cyst, Dr. Feigenbaum explained that “the cyst existed in a tight space; it’s more about where the cyst is located and what it’s pressing on.” (Ex. 77-3).

Dr. Sabahi also noted that claimant’s symptoms had resolved after his surgery, but posited that these results could be due to a “placebo effect,” because he had recurrent back pain after a subsequent August 2011 injury.<sup>6</sup> (*Id.*) Ultimately, Dr. Sabahi did not support the compensability of the claimed condition, stating that “the mechanism of injury described in March 2006 is not consistent with development of traumatic perineural cysts.” (Ex. 80-10).

Yet, as previously noted, claimant need not prove that the injury caused the cysts; rather, he must establish that the injury was a material cause of his disability/need for treatment for the claimed condition. *Nowland*, 63 Van Natta at 1382 n 3. Under such circumstances, we consider Dr. Sabahi’s opinion less persuasive in resolving the compensability issue.

SAIF contends that the ALJ “particularly emphasized” a “diagnostic nerve block” that was actually a “trigger point injection.” Although claimant and Dr. Feigenbaum understood the August 2010 procedure in question to be a nerve block,<sup>7</sup> the ALJ found “an absence of explicit verification” of the type of injection. In any event, we agree with the ALJ’s reasoning that, even if Dr. Feigenbaum’s understanding of the nerve block was incorrect, “the successful surgery was even more indicative of an association between claimant’s Tarlov cyst at T5 and his four and one half years of symptoms.”

In addition, the record does not establish that claimant’s complaints were attributable to his accepted thoracic strain. As Dr. Sabahi explained, a thoracic strain is a “self-limiting condition that usually resolves with conservative therapy

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<sup>6</sup> Claimant stated that the pain after the August 2011 injury was in a different part of his back, and was not the stabbing, “ice pick” pain he experienced from the Tarlov cyst. (Tr. 75). Furthermore, a January 2012 MRI, when compared to the February 2011 scan, revealed a new left-sided T8-9 disc protrusion. (Ex. 73A). Under such circumstances, we discount Dr. Sabahi’s “placebo” theory.

<sup>7</sup> Dr. Feigenbaum was subsequently provided with a description of the August 9, 2010 injection (Ex. 57A), and agreed that it was the same procedure that he had referred to as a “diagnostic nerve root block.” (Ex. 77-2). SAIF argues that the type of injection is important because it was a basis for Dr. Feigenbaum’s decision to perform claimant’s surgery. Yet, Dr. Feigenbaum also studied claimant’s imaging studies, which revealed that the T5 cyst was compressing the nerve root fibers, and had caused some bone erosion. (Ex. 61-1). He opined that the size and location of the T5 cyst correlated with claimant’s symptoms, and offered a choice of conservative or surgical treatment. Claimant chose to proceed with the surgery. (Ex. 61-2).

in a matter of weeks or months (generally in 6 weeks or so).” (Ex. 42-9). Yet, claimant’s pain symptoms did not abate until his November 2010 Tarlov cyst surgery. Such circumstances do not support a proposition that claimant’s thoracic strain was responsible for his “presurgery” complaints.

In a letter to claimant’s attorney, Ms. Hiers (a registered nurse), the President of the Tarlov Cyst Disease Foundation, explained that even small perineural (Tarlov) cysts can cause compression, inflammation, and pain because they form around the spinal nerves. (Ex. 68-1). She noted that symptoms include pain, severe muscle spasms, and sometimes paresthesias (strange sensations such as burning, numbness, tingling, and shock-like feelings). (Ex. 68-2).

Here, claimant has complained of thoracic pain since his March 2006 work injury (“like being kicked in the back by a horse”). (Tr. 81). Yet, the connection between the symptoms and the T5 cyst was not made for many years.<sup>8</sup> Furthermore, the record contains numerous medical reports documenting claimant’s thoracic and interscapular pain, along with muscle spasms and pain “like an ice pick jabbing at T5.” (See, e.g., Exs. 16-1, 22-1, 34-3, 44-2). For example, Dr. Ragel, a consulting neurologist, noted in May 2010 that claimant had “pain between shoulder blades x 4 years.” (Ex. 53-1). Dr. Ragel described claimant’s pain as feeling like a “cattle prod,” reporting that it intermittently radiated around his chest into the xyphoid just below the nipples, and was often accompanied by muscle spasms. (*Id.*) Under these circumstances, the record preponderates that claimant has suffered from a symptomatic Tarlov cyst since his work-related March 2006 fall.

Additionally, a physician who performs surgery on an injured body part may be in a better position to evaluate the injury or disease than other medical experts. See *Argonaut Ins. Co. v. Mageske*, 93 Or App 698, 702 (1988) (special deference was provided to a treating surgeon’s opinion due to the unique opportunity to view the claimant’s condition firsthand). Here, during surgery, Dr. Feigenbaum observed that claimant’s T5 cyst “[arose] from 1 of the 2 rami of the nerve root. The cyst [had] been compressing the contralateral ramus.” (Ex. 62B-1). He then dissected the cyst away from the nerve root, opened it to remove trapped cerebral spinal fluid (CSF), and sewed it shut to prevent it from refilling with CSF. (*Id.*) Explaining the correlation of his surgical findings with

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<sup>8</sup> For example, Dr. Drutman, the radiologist who interpreted claimant’s April 2007 MRI, identified the T5 Tarlov cyst, but opined “This is likely to represent an incidental finding despite the fact that it is at the level of [claimant’s] reported pain and muscle spasms.” (Ex. 29-1).

claimant's symptoms, Dr. Feigenbaum noted that by "obliterating" the cyst, he was able to relieve the pressure on the T5 nerve root, which, by his (and by claimant's) account, relieved the symptoms. (Tr. 73, 74; Ex. 77-5, -8). Based on these observations and results, Dr. Feigenbaum concluded that the March 2006 work injury caused claimant's need for treatment for his T5 Tarlov cyst.<sup>9</sup>

While SAIF attempts to interject references to claimant's alleged spinal myoclonus, a preponderance of the medical evidence does not establish that the condition exists. As determined in prior litigation, only Dr. Schott, who is a family practitioner, supported the existence of such a condition, and he admitted that he had little expertise in that medical area. (Ex. 58-10, -11). Furthermore, Drs. Bell and Sabahi both opined that claimant did not have myoclonus. (Ex. 58-10). Finally, Dr. Feigenbaum stated that myoclonus had no connection to the Tarlov cysts. (Ex. 82-3).

SAIF also contends that Dr. Feigenbaum did not review claimant's "post-2009" records. Yet, SAIF does not cite to any contrary medical opinions that are based on "post-2009" medical records. Therefore, even if Dr. Feigenbaum did not consider claimant's "post-surgical" medical records, it would not cause us to discount his opinion. In any event, the record indicates that Dr. Feigenbaum reviewed claimant's medical records in conjunction with the November 30, 2010 surgery, and performed a "presurgery" examination.<sup>10</sup> (Ex. 62).

In conclusion, based on the foregoing reasoning, we find persuasive Dr. Feigenbaum's opinion that claimant's fall "[caused] irritation to the already tenuous nerves/cyst that [could not] recover from the trauma." (Ex. 77-7). In other words, Dr. Feigenbaum's observations and analysis, as supported by the MRIs and other studies, persuasively establish that claimant's work-related injury was a material cause of his disability/need for treatment of his T5 Tarlov cyst.

Accordingly, we find that claimant has established the compensability of the disputed claimed condition. Thus, we affirm.

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<sup>9</sup> SAIF makes various arguments concerning the adequacy of Dr. Feigenbaum's opinion. Although we acknowledge that Dr. Feigenbaum's written statements are terse, for the reasons expressed above, we consider them sufficiently persuasive to establish compensability.

<sup>10</sup> Claimant sent Dr. Feigenbaum medical records detailing his symptoms/treatment from March 2006 through December 2009. He also spoke to him by phone (Dr. Feigenbaum was located in Kansas City, Missouri). (Tr. 72).

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 \$5,500, payable by SAIF. In reaching this conclusion, we have particularly considered the time devoted to the case (as represented by claimant's respondent's brief, his counsel's fee submission, and SAIF's objection), the complexity of the issue, the value of the interest involved, and the risk that claimant's counsel might 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 SAIF. *See* ORS 656.386(2); OAR 438-015-0019; *Gary E. Gettman*, 60 Van Natta 2862 (2008).

### ORDER

The ALJ's order dated November 5, 2012 is affirmed. For services on review, claimant's attorney is awarded an assessed fee of \$5,500, payable by SAIF. 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 SAIF.

Entered at Salem, Oregon on November 8, 2013

Member Langer dissenting.

The majority finds that claimant has proven the compensability of his claim for a T5 Tarlov cyst. Because I disagree with that decision, I respectfully dissent.

When claimant was compensably injured in March 2006, he fell about 28 inches through some rotting boards and landed in the dirt on his right heel. (Tr. 81). From 2006 to 2010, he received extensive diagnostic services and treatment by multistate specialists for a variety of symptoms of an undetermined etiology.

For example, in November 2006, claimant reported diffuse jerking involving his entire trunk and sometimes facial muscles, the cause of which Dr. Denekas, a neurologist who examined claimant on SAIF's request, was unable to determine.

(Ex. 26-7, 9). Claimant's treating neurologist suspected myoclonus, even though claimant's complaints of paraspinal and lower extremity spasms that sometimes caused his leg to raise up off the bed were of unclear etiology.<sup>11</sup> (Ex. 28-1).

In July 2007, claimant was evaluated at the Oregon Health & Science University for continued spasms. He described "ice-pick" like pain and "always changing" spasms that sometimes affected his speech and caused stuttering. Movements of uncertain etiology were diagnosed. (Ex. 31). In November 2007, claimant consulted with Dr. Shook at the Cleveland Clinic Neurologic Institute regarding possible spinal myoclonus. Claimant reported ice-pick sensation in his back with nearly simultaneous hip and knee flexion occurring up to thousands times a day (20-30 per minute). Dr. Shook evaluated the reported symptoms as having "no associated radicular quality to the pain, and no associated weakness, or sensory loss at any time." (Ex. 34-1). He diagnosed abnormal involuntary movement and spasm of muscle and changed claimant's medication (Ex. 34-3, 4), after which claimant experienced "huge improvement." (Ex. 35-1). He also was aware of the diagnosis of multiple Tarlov cysts in claimant's thoracic spine, but concluded that the cysts were insignificant in the setting of the normal EMG. (Ex. 40-1).

Subsequently, throughout 2009 and 2010, claimant was examined and evaluated by multiple physicians, specialists in radiology, orthopedic surgery, neurology, neurosurgery, pain management and psychology. There was no consensus on the cause of his problems. (Exs. 42 through 44, 46, 48, 53 through 57).

After considering the medical opinions concerning the compensability issue, I find Dr. Feigenbaum's opinion insufficient to persuasively establish that claimant's work injury was a material contributing cause of his need for treatment/disability for his claimed T5 Tarlov cyst. I base my conclusions on the following reasoning.

Dr. Sabahi, who performed two medical record reviews, interpreted 2006 and 2007 MRI studies of claimant's thoracic spine as showing "small perineural (Tarlov) cysts on the left at T 5-6 and T7-8 – incidental findings." (Ex. 43-2). He explained that Tarlov cysts are "focal dilatations of the portion of the dural sac

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<sup>11</sup> Myoclonus is symptomatic jerking activity of musculature present in multiple diseases in the central nervous system. (Ex. 78-3). Claimant filed a claim for that condition, which was denied. The denial has become final. (Exs. 45, 58, 59, 64).

through which he spinal nerve roots pass so that they do not impinge on the exiting nerve root.” (Ex. 43-3). He noted that if these cysts are larger, over 1.5 cm, and located more centrally within the spinal canal, they may compress other nerve roots passing adjacent to them. (*Id.*). Dr. Sabahi further opined that it was conceivable that claimant’s Tarlov cyst accounted for some component of his left thoracic radicular symptoms, but that this was a coincidental event and not causally related to the March 2006 injury. (Ex. 80-11).

Dr. Rosenbaum, who examined claimant in December 2011, agreed with Dr. Sabahi’s description of Tarlov cysts. He further distinguished relatively common Tarlov cysts, which do not cause symptoms, from arachnoid cysts, which are rare and can enlarge over time and cause symptoms. (Ex. 70-13, 14).

In contrast, Dr. Feigenbaum evaluated claimant’s imaging studies as showing “a large left T5 nerve root meningeal cyst/Tarlov cyst within the foramen, which appears to be compressing elements of the same T5 nerve root.” (Ex. 61-1). When asked, after he performed the 2010 surgery, how large the cyst was, he responded that “the cyst existed in a tight space, it’s more about where the cyst is located and what it’s pressing on.” (Ex. 76-3). Further, citing to a chapter he cowrote in a spinal surgery textbook, Dr. Feigenbaum opined that most Tarlov cysts are asymptomatic, with a small percentage causing symptoms. (Ex. 81-10). He also reported that the work injury was responsible for claimant’s symptoms because it was common for Tarlov cysts to become symptomatic after a traumatic event. (Ex. 82-4).

In response to Dr. Feigenbaum’s opinion, Dr. Rosenbaum acknowledged that Tarlov cysts remain a controversy within the neurosurgical community, with the overwhelming opinion being that these cysts are essentially asymptomatic abnormalities and a “contingency” believing that they can produce symptoms. (Ex. 78-4). In addition, based on his evaluation of claimant’s extensive medical record, Dr. Rosenbaum reported that claimant did not have symptomatic abnormalities consistent with a T5 Tarlov cyst. (Ex. 78-3 through 5).

Although the experts disagree whether Tarlov cysts have a general potential of causing symptoms, I consider it unnecessary to resolve that question. In other words, even assuming that Tarlov cysts can cause symptoms and claimant’s T5 cyst was large enough to cause such symptoms, I find Dr. Feigenbaum’s causation opinion inadequate to support compensability of claimant’s claim because it is insufficiently explained. *See Moe v. Ceiling Sys., Inc.*, 44 Or App 429, 433 (1980) (rejecting unexplained or conclusory opinion).

When asked to explain how the 2006 injury caused claimant's Tarlov cyst to become symptomatic, Dr. Feigenbaum responded that "It is common for Tarlov cysts to become symptomatic after a traumatic event, probably due to further or worsening nerve compression or inflammation." (Ex. 82-4). This statement, however, is general in nature, and does not explain how the mechanics of claimant's particular injury caused, or contributed to, his disability/need for treatment of the Tarlov cyst. As such, it is conclusory, and therefore, unpersuasive. *See Sherman v. Western Employers Ins.*, 87 Or App 602 (1987) (physician's comments that were general in nature and not addressed to the claimant's situation in particular were not persuasive); *Linda E. Patton*, 60 Van Natta 579, 584 (2008).

Furthermore, Dr. Feigenbaum assumed a close temporal relationship between claimant's work injury and the onset of symptoms radiating into his chest that signified the T5 nerve root involvement. (Ex. 61). Yet, claimant did not report any symptoms radiating into his chest until May 2010, four years after his injury. (Ex. 53-1, -3).

The ALJ relied on an August 2006 report by Dr. Ha, stating that claimant had pain in the thoracic region that "radiated both proximally and distally," as evidence of symptoms radiating into claimant's chest. Dr. Ha stated on the same occasion, however, that claimant was neurologically intact. (Ex. 20). Dr. Ha previously made the same findings in May 2006. (Ex. 14-1). Furthermore, other physicians explicitly assessed claimant's 2006 and 2007 symptoms as *not* radiating around his chest. (Ex. 26-1, 2); *see also* Ex. 29 (the 2007 MRI showing no abnormal cord signal or enhancement); (Ex. 34-1) (Dr. Shook's evaluation of claimant's symptoms as *not* having associated radicular quality); Ex. 40-1 (Dr. Shook's finding of the cysts in the setting of the normal EMG as insignificant). In contrast, a neurologist's 2010 note specifically described symptoms "radiating around the chest \* \* \* just below the nipples." (Ex. 53-1). Without further detail, it is not proper to infer from Dr. Ha's reports that claimant developed symptoms consistent with the T5 nerve root compression as early as May or August 2006.

Additionally, Dr. Feigenbaum did not rebut or even respond to Dr. Rosenbaum's opinion that claimant's post-injury symptoms were inconsistent with a symptomatic Tarlov cyst. (Ex. 78-3 through 5). *See Janet Benedict*, 59 Van Natta 2406, 2409 (2007) (medical opinion unpersuasive when it did not address contrary opinions); *Claudia J. Stacy*, 58 Van Natta 2998, 3000 (2006) (medical opinion that did not rebut contrary opinion was unpersuasive). Nor did

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Dr. Feigenbaum explain a relationship between the T5 Tarlov cyst and claimant's then-prevalent symptoms described as diffuse jerking involving his entire trunk and sometimes facial muscles, "always changing" spasms, and speech problems. (Exs. 26-7, 28-1, 31).

Therefore, even assuming that Dr. Feigenbaum's opinion establishes that at the time of his 2010 surgical treatment of claimant, claimant suffered from a Tarlov cyst that compressed a thoracic nerve and was accountable for his symptoms at that time, that opinion does not address claimant's symptomatology documented in the previous four years and does not persuasively support a causal relationship between claimant's work injury and the surgically-treated Tarlov cyst. *See Somers*, 77 Or App at 263 (inadequate reasoning not persuasive); *Miller v. Granite Constr. Co.*, 28 Or App 473, 478 (1977) (medical evidence based on inaccurate information insufficient to prove compensability).

In conclusion, based on the aforementioned reasoning, I am not persuaded by Dr. Feigenbaum's opinion. Consequently, I do not consider the compensability requirements of ORS 656.005(7)(a) to have been established. *See* ORS 656.266(1). Accordingly, I would uphold SAIF's denial of the claimed T5 Tarlov cyst. Because the majority holds otherwise, I respectfully dissent.