
In the Matter of the Compensation of
BLANCA E. PEREZ-ESTRELLA, Claimant
WCB Case No. 12-01207
ORDER ON REVIEW
Ernest M Jenks, Claimant Attorneys
Lyons Lederer LLP, Defense Attorneys

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

Claimant requests review of Administrative Law Judge (ALJ) Otto's order that upheld the self-insured employer's denials of her new/omitted medical condition claim for an L5-S1 disc bulge/protrusion/herniation. On review, the issue is compensability.

We adopt and affirm the ALJ's order with the following change. In the last paragraph on page 8 that continues on page 9, we delete the fourth, fifth, and sixth sentences.

ORDER

The ALJ's order dated March 18, 2013 is affirmed.

Entered at Salem, Oregon on November 13, 2013

Member Weddell dissenting.

The majority adopts and affirms the ALJ's order, which concludes that claimant did not establish that her February 15, 2010 work injury was a material contributing cause of her disability/need for treatment for an L5-S1 disc bulge/protrusion. Because I disagree with the majority's and the ALJ's analysis of the medical record, I respectfully dissent.

Claimant was compensably injured on February 15, 2010, when she slipped and fell backwards onto both hips and the gluteal area. (Ex. 2). The employer accepted "coccyx, low back, right hip, left elbow and shoulder strains, sprains, contusions." (Ex. 11).

Claimant was treated conservatively. A March 12, 2010 lumbar MRI was interpreted as showing a small left paracentral disc protrusion at L5-S1. (Ex. 6). Dr. Stapleton performed epidural steroid injections at L5-S1. (Exs. 15, 18). Dr. Tran performed bilateral sacroiliac steroid injections. (Ex. 29).

In September 2010, Dr. Rosenbaum, neurosurgeon, examined claimant on behalf of the employer. (Ex. 24). In September 2011, Dr. Lohman, orthopedic surgeon, examined her on behalf of the employer. (Ex. 41).

On January 6, 2012, claimant, *pro se* at the time, filed a new/omitted medical condition claim for a “bulging” disc. (Ex. 49). The employer interpreted the claim to be for an L5-S1 broad-based disc bulge and denied the claim. (Ex. 51). On March 7, 2012, claimant’s attorney filed a new/omitted medical condition claim for an L5-S1 “protrusion/herniation.” (Ex. 52). The employer denied the claim. (Ex. 55). Claimant requested a hearing regarding both denials.

In August 2012, claimant began treating with Dr. Soldevilla, neurosurgeon. (Ex. 57).

The ALJ determined that claimant did not have an L5-S1 disc herniation, but that she had a small disc protrusion at L5-S1. The ALJ concluded that the medical evidence was insufficient to establish that claimant’s L5-S1 disc protrusion/bulge was compensably related to the February 2010 work injury.

To prove compensability of her new/omitted medical condition claim, claimant must establish that the claimed L5-S1 disc protrusion exists and that the work injury was a material contributing cause of the disability or need for treatment for that condition. ORS 656.005(7)(a); ORS 656.266(1); *Maureen Y. Graves*, 57 Van Natta 2380, 2381 (2005). Because the employer is not asserting the existence of a “combined condition” (Tr. 4), the “material contributing cause” standard applies to determine compensability. *See Jose C. Agosto*, 57 Van Natta 849, 850 (2005), *aff’d without opinion*, 205 Or App 182 (2006).

The medical evidence establishes the existence of claimant’s L5-S1 disc protrusion/bulge. (Exs. 6, 46). Furthermore, Dr. Soldevilla’s opinion persuasively establishes that the L5-S1 disc protrusion was causally related to the work injury. I reason as follows.

Dr. Soldevilla first examined claimant in August 2012, more than two years after the work injury. He diagnosed an L5-S1 disc protrusion related to her work injury. (Exs. 57, 58).

The employer contends that Dr. Soldevilla never read or understood claimant's prior records. I disagree. Although Dr. Soldevilla apparently did not initially have claimant's prior medical records, he was later provided with a copy of the exhibit lists and was asked to review the exhibits before responding to questions from claimant's attorney. (Ex. 58-1). Dr. Soldevilla personally reviewed claimant's MRI scans and x-rays. (Ex. 58-5). He stated that he had reviewed the reports from Drs. Rosenbaum and Lohman, as well as Dr. Lorber's reports and deposition. (Ex. 58-8). In addition, claimant's attorney provided summaries of several prior medical records. (Ex. 58). Under these circumstances, Dr. Soldevilla had a sufficiently accurate and complete understanding of claimant's history. *See Jackson County v. Wehren*, 186 Or App 555, 561 (2003) (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).

Dr. Soldevilla correctly understood that claimant did not have any low back symptoms or treatment before the work injury. (Ex. 58-4, -5; Tr. 15). He had an accurate understanding that on February 15, 2010, she slipped on a wet floor at work and fell on her "rear-end" and experienced immediate back pain. (Exs. 57, 58; Tr. 11-12).

Dr. Soldevilla determined that claimant's medical records showed that a lumbar disc injury was suspected within the first month after the injury. (Ex. 58-2). He was aware that after the injury, claimant sought treatment from Dr. Mihelic, complaining of immediate pain in the coccyx area and left hip, as well as right hip pain. Claimant also complained that both proximal thighs were painful, although Dr. Mihelic did not believe that was "clearly radicular." (Ex. 58-3; *see* Ex. 2).

Dr. Soldevilla accurately understood that on February 26, 2010, claimant described right leg tingling with coccyx, low back, and right hip pain. (Ex. 58-3; *see* Ex. 4). Also on February 26, 2010, claimant described pain over the sacrum and left buttock. (Ex. 58-3; *see* Ex. 4A). On March 12, 2010, the radiologist noted that claimant had low back and bilateral leg pain. (Ex. 58-3; *see* Ex. 6). On March 15, 2010, claimant complained of radiating pain especially on the right lower and gluteal areas. (Ex. 58-3; *see* Ex. 9).

Dr. Soldevilla explained that by April 7, 2010, Dr. Lorish reported that claimant was having “more and more left leg pain and pain down into the foot.” (Ex. 58-4; *see* Ex. 14). Claimant was given two lumbar epidural steroid injections in May 2010 that provided no relief. (Ex. 58-4; *see* Exs. 15, 18). In August 2010, Dr. Gerry reported ongoing pain in the low back and into both legs. (Ex. 58-4; *see* Ex. 23). The medical records reported bilateral lower extremity pain throughout 2010 and early 2011. (Ex. 58-4; *see* Exs. 27-34). At the time of her examination by Dr. Lohman in September 2011, claimant had bilateral leg symptoms. (Ex. 58-4; *see* Ex. 41). Dr. Soldevilla reported that as of his August 2012 examination, claimant continued to have pain in the low back and left leg. (Exs. 57, 58-4).

After considering claimant’s mechanism of injury, the examination findings, her preexisting lumbar degenerative changes, her overweight condition, his personal review of the MRI scans, his review of the exhibit lists and reports from Drs. Rosenbaum and Lohman, as well as his review of Dr. Lorber’s reports and deposition, Dr. Soldevilla concluded that claimant’s work injury was the major contributing cause of the disability/need for treatment for the L5-S1 disc protrusion. (Ex. 58-4, -5, -6, 7, -8).

In reaching that conclusion, Dr. Soldevilla explained that the mechanism of claimant’s injury and the onset of lumbar and radicular symptoms were consistent with an L5-S1 disc protrusion. He relied on the fact that claimant developed bilateral hip pain and pain into the proximal thighs immediately following the work injury. He referred to claimant’s bilateral leg pain and the early concern about a disc injury, which prompted the first lumbar MRI within four weeks after the accident. (Ex. 58-5). Dr. Soldevilla also relied on the fact that claimant did not have any low back symptoms before the work injury.

Dr. Soldevilla found that claimant had normal findings at L1-2 through L4-5. (Ex. 58-5). He explained that claimant’s degenerative changes at L5-S1 were “mild” and constituted only a minimal contributing factor to the L5-S1 disc protrusion. (Ex. 58-3, -5, -6). In contrast, Dr. Rosenbaum concluded that claimant’s L5-S1 disc bulge was consistent with the degenerative process. (Ex. 50). But Dr. Soldevilla explained that if claimant’s L5-S1 disc protrusion, which was eccentric to the left and deflected the S1 nerve root, had been present before the work injury, it was probable that she would have experienced prior radicular symptoms and low back pain, but she did not experience those symptoms. (Ex. 58-6; Tr. 15).

Dr. Soldevilla noted that Dr. Rosenbaum had an inaccurate understanding that when claimant initially reported her radicular symptoms, they were on the right side. (Ex. 58-6; *see* Ex. 50-1). Dr. Soldevilla discussed the early chart notes, which referred to pain in both hips and proximal thighs and in the left buttock. Dr. Soldevilla acknowledged that some March 2010 chart notes discussed only right leg pain, but the February 2010 records referred to bilateral radicular pain and by April 7, 2010, she had more left leg pain. He determined that her complaints had become more left leg oriented over time. (Ex. 58-6).

Dr. Soldevilla explained that it was not uncommon for a patient to have radicular symptoms or findings that were contrary to the side of the disc protrusion. He concluded that claimant's initial bilateral thigh and hip pain, left buttock pain, as well as the intermittent nature of the bilateral leg pain, and more recently predominately left leg pain, were consistent with the L5-S1 disc protrusion on the left. (Ex. 58-7). He emphasized that the small eccentric disc protrusion deflecting the S1 nerve root explained claimant's examination findings and bilateral radicular symptoms. Dr. Soldevilla referred to the opinion of many medical experts that there is either a chemical change from the injury to the disc, or inflammation of the disc and surrounding tissue, that causes pain in the contralateral leg/hip. (*Id.*) Dr. Soldevilla's opinion persuasive because it is well reasoned and based on a sufficiently complete history. *See Wehren*, 186 Or App at 559.

The employer argues that Dr. Soldevilla failed to rebut the opinions of Drs. Rosenbaum and Lorber. The employer contends that the opinions of Drs. Mihelic, Tran, Lorish, Gerry, Rosenbaum, Lohman, and Lorber were more persuasive. For the following reasons, I disagree.

Dr. Rosenbaum reviewed claimant's March 2010 lumbar MRI report, explaining that it showed "mild" disc degeneration at L5-S1, with a small left protrusion. (Ex. 24-6). He determined that claimant had "very minor degenerative changes[.]" (Ex. 24-7). During the examination, Dr. Rosenbaum found an element of functional overlay. (Ex. 24-6, -7). He concluded that her lumbar strain had resolved and that the major cause of her ongoing symptoms and need for treatment was preexisting lumbar spondylosis and the functional component. (Ex. 24-7, -8, -9).

In concurrence letters from the employer's attorney, Dr. Rosenbaum explained that the work injury did not cause claimant's L5-S1 disc bulge. He opined that the disc bulge was consistent with a degenerative process and

was greatest on the left side. (Ex. 50). He concluded that claimant's symptoms after the injury did not correlate with an L5-S1 disc bulge because she denied radiating symptoms for about one month post-injury and when she initially reported radicular symptoms, they were on the right side, not the left. (Exs. 50, 54). Dr. Rosenbaum opined that, to the extent claimant was having symptoms, they did not appear to be related to or caused by the L5-S1 disc bulge. (Ex. 50).

Dr. Rosenbaum's understanding that claimant's initial symptoms were on the right side, not the left, is inconsistent with the medical records. On February 16, 2010, Dr. Mihelic explained that claimant had immediate pain in her left hip after the injury and the right hip was now sore. He reported that both proximal thighs were painful. (Ex. 2). The February 26, 2010 radiology report referred to pain in the sacrum and left buttock. (Ex. 4A). As discussed above, Dr. Soldevilla found that claimant's bilateral hip pain and pain into the proximal thighs after the injury supported his conclusion that the injury was the major contributing cause of her disability/need for treatment for the L5-S1 disc protrusion. (Ex. 58-8). I am more persuaded by Dr. Soldevilla's opinion because it was based on a sufficiently complete and accurate history. *See Wehren*, 186 Or App at 561.

In addition, Dr. Rosenbaum's opinion is not persuasive because it lacks adequate explanation. Dr. Rosenbaum initially stated that claimant's ongoing symptoms were related in part to her preexisting lumbar spondylosis.¹ (Ex. 24). But Dr. Rosenbaum later opined that her symptoms were *not* related to the degenerative L5-S1 disc bulge. (Ex. 50). Dr. Rosenbaum did not explain why the symptoms were related to the preexisting lumbar spondylosis, but were not related to the "degenerative" L5-S1 disc bulge or whether he had changed his opinion. Under such circumstances, Dr. Rosenbaum's opinion is not persuasive. *See Moe v. Ceiling Systems*, 44 Or App 429, 433 (1980) (rejecting unexplained or conclusory medical opinions).

Furthermore, Dr. Rosenbaum did not explain why claimant's degenerative changes, which he said were "very minor" (Ex. 24-7), were not symptomatic until after the work injury. Dr. Rosenbaum did not adequately address Dr. Soldevilla's well reasoned opinion that the mechanism of the February 2010 work injury was consistent with causing an L5-S1 disc protrusion and need for treatment of that condition, nor did he explain why the injury could *not* have caused an L5-S1 disc protrusion. *See Maria Santana*, 61 Van Natta 840, 850 (2009) (medical opinions

¹ Spondylosis is defined as "[a]nkylosis of the vertebra; often applied nonspecifically to any lesion of the spine of a degenerative nature." *Stedman's Electronic Medical Dictionary*, Version 7.0 (2007).

that did not address the claimant's mechanism of injury found unpersuasive in light of contrary opinion that discussed it); *Richard A. Lowe*, 60 Van Natta 2886, 2892 (2008), *aff'd without opinion*, 234 Or App 785 (2010) (medical opinions that did not address the relative contribution from the mechanism of injury or the contrary opinions regarding the temporal relationship between work incident and onset of symptoms were not persuasive). Dr. Rosenbaum's opinion is inadequately reasoned and unpersuasive.

Dr. Rosenbaum related claimant's symptoms in part to a "functional component," but Dr. Soldevilla determined that her examination findings and testing were valid, and found her presentation to be straightforward. (Ex. 58-3). Dr. Lorber found that claimant presented in a "straightforward fashion" during his November 2011 examination and found "no unusual pain behaviors," although he indicated that there may be psychosomatic factors playing a role in her symptoms. (Ex. 45). Claimant participated in a pain management program and her July 2011 discharge examination found no excessive pain behavior and no psychological diagnosis. (Ex. 40A). Based on this record, Dr. Soldevilla's opinion is more persuasive regarding claimant's presentation.

I turn to Dr. Lorber's opinion. Dr. Lorber explained that he had not read claimant's records in detail, he did not have an opinion on causation, and he would defer to the opinion of the neurosurgeons. (Exs. 47-2, 53-1, 56-10, -11, -29, -30). Nevertheless, the employer relies on Dr. Lorber's opinion that claimant's symptoms persisted for more than eight months and did not respond to epidural steroid injections to establish that the L5-S1 disc condition did not contribute to her symptoms or need for treatment. (Ex. 56-22, -34, -35). In reaching that conclusion, Dr. Lorber relied in part on claimant's October 2010 pain diagram. (Ex. 56-22, -23, -56). But that pain diagram was done for Dr. Tran and Dr. Lorber never discussed the diagram with claimant. (Exs. 56-23, -24, -26, -27). Dr. Lorber stated that by October 2010, claimant's neuritis should have resolved. (Ex. 56-22). He opined that radiculitis "is going to resolve and respond to corticosteroids, at least for a few weeks." (Ex. 56-35). However, Dr. Lorber did not address Dr. Soldevilla's opinion that claimant required surgery for the L5-S1 disc protrusion because her low back and radicular symptoms had continued despite treatment. (Ex. 58-7).

In any event, Dr. Lorber's opinion suggested at least a possibility of a causal contribution from the work injury. He explained that claimant's L5-S1 disc bulge contacted the left S1 nerve root and was potentially a source of her left leg symptoms. He stated that it was possible that the work injury aggravated the underlying L5-S1 degenerative changes and disc bulge. (Ex. 47-1).

In addition, Dr. Lorber provided support for Dr. Soldevilla's opinion that it was not uncommon for a patient to have radicular symptoms or findings that were contrary to the side of the disc protrusion. Dr. Lorber agreed that a left-sided disc bulge could cause symptoms on the right based on a chemical reaction. (Ex. 56-20, -33, -34). He also explained that claimant's right-sided symptoms could have been caused by her contusions and sprains. (Ex. 50-19, -20). Dr. Lorber's opinion does not cause me to discount Dr. Soldevilla's causation opinion, particularly since he declined to offer a causation opinion and stated that he would defer to the opinion of a neurosurgeon.

The employer also relies on the opinions of Drs. Lohman, Mihelic, Lorish, Gerry, and Tran, but those opinions are not persuasive for the following reasons.

Claimant's early medical records were not available to Dr. Lohman. (Ex. 41-19). Instead, the earliest record he described was from August 23, 2010, more than six months after the injury. (Ex. 41-6). No imaging studies were available for Dr. Lohman's personal review. (Ex. 41-18). Dr. Lohman found that, other than the accepted conditions, there were no other conditions he would relate to claimant's injury. (Ex. 41-20). Dr. Lohman's opinion is not persuasive because it was not based on a sufficiently complete review of claimant's records and imaging studies.

Dr. Mihelic treated claimant the day after the work injury. During his initial examination, he noted that her symptoms were "not clearly radicular." (Ex. 2-1). Nevertheless, he referred her for a lumbar MRI in March 2010. (Ex. 6). Dr. Mihelic last examined claimant in late March 2010 (Ex. 10), and there is no evidence that he reviewed any of her later records or provided an opinion regarding causation of claimant's L5-S1 disc protrusion. Under these circumstances, Dr. Mihelic's opinion is entitled to little weight.

The employer relies on Dr. Lorish's opinion, arguing that he never concluded that the L5-S1 disc was the source of claimant's symptoms. In March 2010, Dr. Lorish diagnosed ongoing mechanical low back pain. (Ex. 12). He last treated claimant in August 2010, when he explained that he had no more treatment to offer. (Ex. 22). Dr. Lorish's opinion is of limited value because there is no evidence that he reviewed any of her later records or provided an opinion regarding causation of claimant's L5-S1 disc protrusion.

The employer refers to Dr. Gerry's opinion that claimant's symptoms were "muscular" and did not correlate with the MRI findings. Dr. Gerry examined claimant twice in August and September 2010 and referred her for a neurosurgical

opinion. (Exs. 23, 23A). In April 2012, Dr. Gerry signed a concurrence letter from the employer's attorney, explaining that claimant's symptoms did not correlate with a left L5-S1 disc condition because she complained of symptoms on the right. (Ex. 52A). Dr. Gerry did not discuss claimant's medical records that reported some left-sided symptoms. In any event, Dr. Gerry opined that he could not determine when claimant sustained the L5-S1 disc protrusion. (*Id.*) Under these circumstances, Dr. Gerry's opinion is entitled to little weight.

The employer contends that Dr. Tran never suggested that claimant's L5-S1 disc condition played a role in her symptoms. To the contrary, when Dr. Tran performed a closing examination in July 2011, he explained that she had suffered from a combination of lumbar strain, "possible discogenic pain," and S1 dysfunction, in addition to deconditioning and her "psychological makeup." He noted that she had improved from the chronic pain program. (Ex. 40B). Thus, Dr. Tran indicated at least the possibility of discogenic pain. However, because he did not review all of claimant's medical records or provide a causation opinion, his reports are of limited value.

In conclusion, after considering all the medical opinions, I am most persuaded by Dr. Soldevilla's opinion because it is well reasoned and based on the most complete relevant information. *See Wehren*, 186 Or App at 559. Based on his opinion, claimant's February 2010 work injury was at least a material contributing cause of her disability/need for treatment for the L5-S1 disc protrusion. *See* ORS 656.005(7)(a); ORS 656.266(1). Because the majority concludes otherwise, I dissent.