

In the Matter of the Compensation of
DORIS L. LOWELLS, Claimant

WCB Case No. 12-02172

ORDER ON REVIEW

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Reviewing Panel: Members Lanning and Lowell.

Claimant requests review of Administrative Law Judge (ALJ) Naugle's order that upheld the SAIF Corporation's denial of her occupational disease claim for a low back condition. On review, the issue is compensability.

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

Claimant worked as a home health care worker (HCW) from 1991 through 2011. (Tr. 5). She has a history of prior unclaimed low back injuries and an accepted July 26, 2011 lumbosacral strain injury claim that was closed without a permanent disability award. (Exs. 20, 26, 27, 35).

On December 27, 2011, claimant filed an occupational disease claim for a low back condition. (Ex. 32). Her attending physician, Dr. Ingle, attributed claimant's low back pain to underlying, preexisting lumbar degenerative changes,¹ her age, weight, and deconditioning. (Exs. 38, 41-31).

Dr. Staver examined claimant for SAIF in July 2012. (Ex. 40). Diagnosing chronic low back pain and mild degenerative changes of the lower lumbar spine, Dr. Staver believed that claimant's work activities as an HCW contributed to her current symptoms. However, he also noted that there was little in the way of objective findings, and opined that the major contributing cause of her low back condition was a combination of nonwork-related factors, including her elevated body mass index, deconditioning, and a history of chronic tobacco use. (Ex. 40-6, -7).

In a subsequent deposition, Dr. Ingle agreed with Dr. Staver that claimant's work activities were a significant factor in her symptoms, but did not conclude that her back complaints (*i.e.*, pain) constituted a disease. (Ex. 41-7). Opining that her

¹ A September 2011 lumbar MRI revealed mild degenerative L5-S1 end-plate changes with disk bulging, and some mild facet degenerative changes. The overall impression was lumbar spine mild degenerative change with no focal disk protrusion, central canal, or neural foraminal narrowing. (Ex. 23).

degenerative lumbar changes were normal for someone her age (56 years old at the time of the hearing), Dr. Ingle found no sign of any pathology that would cause pain with activity. (*Id.*)

Dr. Staver was also deposed. (Ex. 42). Stating that symptoms alone do not identify a diagnosable condition, he was unable to relate claimant's pain to any objective findings, and considered her lumbar examination to be normal. (Ex. 42-18, -26).

SAIF denied the claim, and claimant requested a hearing.

In upholding SAIF's denial, the ALJ found that the medical record did not establish that claimant's work activities were the major contributing cause of her claimed low back condition. On review, claimant contends that Dr. Ingle's and Dr. Staver's inability to diagnose the underlying pathology causing her low back pain does not render her claim noncompensable. Based on the following reasoning, we affirm.

To establish a compensable occupational disease, claimant's work activities must be the major contributing cause of her low back condition. ORS 656.266(1); ORS 656.802(2)(a). The major contributing cause means a cause that contributes more than all other causes combined. *Smothers v. Gresham Transfer, Inc.*, 332 Or 83, 133-34 (2001); *McGarrah v. SAIF*, 296 Or 145, 166 (1983). Although claimant need not prove a specific diagnosis, an occupational disease claim must be proved with the presence of a condition and not merely with symptoms. *Tripp v. Ridge Runner Timber Servs.*, 89 Or App 355 (1988); *Daymen C. Kessler*, 60 Van Natta 2285 (2008). Determination of the major contributing cause is a complex medical question that must be resolved on the basis of expert medical opinion. *Jackson County v. Wehren*, 186 Or App 555, 559 (2003) citing *Uris v. Comp. Dep't*, 247 Or 420, 426 (1967).

Claimant relies on *Tripp* and *Boeing Aircraft Co. v. Roy*, 112 Or App 10 (1992), asserting that they support her contention that she does not have to prove a specific diagnosis, as long as the medical evidence shows that her low back pain is attributable, in major part, to her work activities. We acknowledge that a specific diagnosis is not required to prove compensability of an occupational disease claim. However, even if claimant's pain complaints constituted a "condition" for purposes of an occupational disease claim, the record does not persuasively establish that her work activities were the major contributing cause of her symptoms.

Both Dr. Ingle and Dr. Staver opined that personal factors (*e.g.*, claimant's age, weight, and overall deconditioning) were the major contributors to her low back pain.² Accordingly, the record does not persuasively establish the compensability of claimant's claimed low back "condition." Thus, we affirm.

ORDER

The ALJ's order dated March 28, 2013 is affirmed.

Entered at Salem, Oregon on October 24, 2013

² Dr. Ingle stated that "her symptoms are not due to use. [They] are due to the fact that she's weak and deconditioned." (Ex. 41-10). Similarly, Dr. Staver opined that claimant's pain was attributable to her elevated body mass index and her deconditioning, rather than to her work activities. (Ex. 42-20).