

In the Matter of the Compensation of
DOUGLAS L. GREEN, Claimant
WCB Case No. 13-05639, 12-06508
ORDER ON REVIEW

Randy M Elmer, Claimant Attorneys
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Reviewing Panel: Members Johnson and Weddell.

The insurer requests review of that portion of Administrative Law Judge (ALJ) Crummé's order that set aside its denial of claimant's occupational disease claim for a right shoulder condition. On review, the issue is compensability.

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

In December 2007, claimant, a pressbrake operator, began working for the employer. His job involved operating a large press that bent flat metal sheets into industrial stair treads. When the measurements were not accurate, he banged the sheets on a concrete floor or pulled on them to correct the measurements. (Exs. 2, 4, 9-3). He worked on an average of about 300 sheets per day, with varying weights.

Before working for the employer, claimant did not have any problems with his neck or shoulders. (Tr. 12). He is right-hand dominant. (Exs. 4, 23aA-2). In about August 2012, claimant began experiencing symptoms in his shoulders, arms, and neck. (Tr. 30, 31; Exs. 1, 4). He first sought treatment for his neck and bilateral shoulder pain in October 2012. (Ex. 1). He filed an occupational disease claim with the employer. (Exs. 2, 3). Claimant was treated by Dr. Walters, as well as Dr. Hahn, orthopedic surgeon.

In December 2012, Dr. Strum examined claimant on behalf of the insurer. (Ex. 17). After the insurer denied the claim (Ex. 21), claimant requested a hearing.

On March 19, 2013, claimant was tugging on some metal at work when he felt a tearing sensation in his right shoulder. (Tr. 38). He sought treatment from Dr. Walters. (Ex. 27). On May 9, 2013, Dr. Hahn performed right shoulder surgery. (Ex. 32).

Based on the opinion of Dr. Hahn, the ALJ concluded that claimant's work activities, including the March 19, 2013 incident, were the major contributing cause of the combined right shoulder condition and pathological worsening of the condition. *See* ORS 656.266(1); ORS 656.802(2)(b).

To establish a compensable occupational disease, claimant must prove that employment conditions were the major contributing cause of his right shoulder condition. ORS 656.266(1); ORS 656.802(2)(a). If the occupational disease claim is based on the worsening of a preexisting disease or condition, claimant must prove that employment conditions were the major contributing cause of the combined condition and pathological worsening of the disease. ORS 656.802(2)(b). An occupational disease claim may be based on the cumulative effect of all of a claimant's work-related exposure, and prior work injuries may be considered as part of the overall employment conditions. *Hunter v. SAIF*, 246 Or App 755, 760 (2011); *Waste Management v. Pruitt*, 224 Or App 280, 286 (2008), *rev den*, 346 Or 66 (2009).

Here, both parties agree that ORS 656.802(2)(b) applies. The insurer argues that Dr. Hahn indicated that claimant's preexisting condition worsened due to his work activities, but did not address whether his work activities were the major contributing cause of the combined condition and pathological worsening of the disease. The insurer contends that Dr. Strum's opinion was more persuasive.

For the following reasons, we agree with the ALJ's conclusion that Dr. Hahn's opinion is the most persuasive.

Dr. Hahn was claimant's treating surgeon. He had an accurate understanding that claimant's job as a press operator required him to manipulate treads out of sheet metal in various weights. (Ex. 33B-1). He was aware that claimant frequently had to manually bend the angle of the treads to appropriate specifications, which involved heavy physical labor. (Exs. 23aA-2, 33B-1). Dr. Hahn reported that claimant had experienced progressive shoulder, arm, and neck pain since about August 2012. (Ex. 23aA-2). His injection to claimant's right shoulder provided significant relief. (Ex. 29). After the injection wore off and claimant's pain worsened, Dr. Hahn performed right shoulder surgery on May 9, 2013. (Ex. 32).

Claimant's attorney asked Dr. Hahn to address whether claimant's lifetime work activities were the major contributing cause of the right shoulder condition. (Ex. 33A-2). Dr. Hahn was also asked whether claimant's work activities contributed to the worsening of the right shoulder condition. (*Id.*)

In his response, Dr. Hahn explained that the operative findings were significantly worse than the initial November 2012 right shoulder MRI had suggested. (Ex. 33B-2; *see* Ex. 32). He noted that claimant had retracted tearing

of both the infraspinatus and the supraspinatus, which was only partially repairable. (Ex. 33B-2). Dr. Hahn explained that claimant had some rotator cuff tendinopathy and perhaps minimal rotator cuff fraying “which was preexisting due to his cumulative trauma of his shoulder over his years of work.” (*Id.*) In light of the questions from claimant’s attorney, we interpret Dr. Hahn’s statement to mean that the rotator cuff tendinopathy was caused by his cumulative work exposure.

Dr. Hahn also explained that claimant’s right shoulder significantly worsened during his work activities at the employer. (*Id.*) He based his conclusion on the fact that, after the injection, claimant went back to performing vigorous activities with his right shoulder and had a progression of his rotator cuff pathology, which was confirmed in surgery with a full thickness retracted rotator cuff tear. (*Id.*) Dr. Hahn concluded that claimant’s work “was a significant major contributing factor regarding the right shoulder condition, which I have diagnosed and treated.” (*Id.*)

Claimant’s attorney requested clarification from Dr. Hahn, asking whether he believed that the work activity was “the” major contributing cause of the right shoulder condition. (Ex. 33C). Dr. Hahn responded that claimant’s work activities at the employer were the major contributing cause of the right shoulder condition he had been treating. (Ex. 33D). He noted that the progression of the rotator cuff tear was due to the strenuous work claimant was performing. (*Id.*)

It is well-settled that we do not evaluate medical opinions based on “magic words.” *SAIF v. Strubel*, 161 Or App 516, 521-22 (1999); *Liberty Northwest Ins. Corp. v. Cross*, 109 Or App 109, 112 (1991), *rev den*, 312 Or 676 (1992). Rather, we evaluate medical opinions in context and based on the record as a whole to determine their sufficiency. *Strubel*, 161 Or App at 521-22.

We find that Dr. Hahn’s opinion, when evaluated in context, establishes that claimant’s work activities were the major contributing cause of his combined right shoulder condition and pathological worsening of the condition. *See William Karrasch*, 64 Van Natta 2157, 2164 (2012) (taken as a whole, medical opinion established that the claimant’s work exposure was the major contributing cause of his overall combined respiratory condition and pathological worsening of his preexisting respiratory disease); *William H. Wright*, 55 Van Natta 2209 (2003), *recons*, 55 Van Natta 2824, 2828 (2003), *aff’d without opinion*, 194 Or App 602 (2004) (medical opinion, when read as a whole, established that the claimant’s work activities were the major contributing cause of combined neck condition and the pathological worsening of the degenerative cervical condition).

Dr. Hahn's opinion is persuasive because he had an accurate understanding of claimant's work activities and considered his surgical observations in his analysis. *See Argonaut Ins. Co. v. Mageske*, 93 Or App 698, 702 (1988) (treating surgeon's opinion was persuasive in light of his firsthand exposure to and knowledge of the claimant's condition). Moreover, for the reasons described by the ALJ, we conclude that Dr. Hahn's opinion was more persuasive than that of Dr. Strum, who examined claimant on the insurer's behalf.

In summary, based on Dr. Hahn's opinion, we conclude that claimant's employment conditions, including his March 19, 2013 work incident, were the major contributing cause of the combined right shoulder condition and pathological worsening of the disease. *See* ORS 656.266(1); ORS 656.802(2)(b). Consequently, 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 in this case, we find that a reasonable fee for claimant's attorney's services on review is \$4,000, payable by the insurer. In reaching this conclusion, we have particularly considered the time devoted to the case (as represented by claimant's respondent's brief and his counsel's uncontested fee submission), the complexity of the issue, the value of the interest involved, and the risk that claimant's counsel might go uncompensated.

Claimant is awarded reasonable expenses and costs for records, expert opinions, and witness fees, if any, incurred in finally prevailing over the denial of the right shoulder condition, to be paid by the insurer. *See* ORS 656.386(2); OAR 438-015-0019; *Gary E. Gettman*, 60 Van Natta 2862 (2008).

ORDER

The ALJ's order dated July 1, 2014 is affirmed. For services on review, claimant's attorney is awarded an assessed fee of \$4,000, payable by the insurer. Claimant is awarded reasonable expenses and costs for records, expert opinions, and witness fees, if any, incurred in finally prevailing over the right shoulder denial, to be paid by the insurer.

Entered at Salem, Oregon on December 19, 2014