
In the Matter of the Compensation of
EVERETT J. LONG, DCD, Claimant
WCB Case No. 12-01992
ORDER ON REVIEW
J R Perkins III, Claimant Attorneys
Julie Masters, SAIF Legal Salem, Defense Attorneys

Reviewing Panel: Members Lanning and Langer.

Claimant,¹ the surviving spouse of the deceased worker, requests review of Administrative Law Judge (ALJ) Dougherty's order that upheld the SAIF Corporation's denial of her claim for death benefits. On review, the issue is death benefits.

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

The decedent had worked for the employer's orchard for over 35 years. Mr. Thomsen, one of the owners, testified that the decedent did "everything" involved with the orchard, including driving semi-trucks and tractors. (Tr. II-8, -10, -11).

On December 20, 2011, the decedent's coworkers were cutting tree limbs and the decedent was pushing the limbs with a tractor to the burn pile, which was a depression in the ground. The decedent's tractor became stuck about 15 feet from the burn pile. The decedent and coworkers pulled the tractor out. After they pulled the tractor out, they spoke for a few minutes. The decedent indicated to the coworkers that he would do another load or two and the others went back to pruning.

Shortly thereafter, the coworkers noticed the decedent's tractor "jumping," stuck on a tree. They raced to the decedent and found him lying beside the tractor. They called 911 and the emergency providers arrived. The decedent initially did not have a pulse, but he was defibrillated twice with recovery of sinus rhythm and blood pressure. The decedent was flown to a hospital. (Exs. 23-29, 31). Despite treatment, the decedent passed away on December 22, 2011.

After SAIF denied claimant's claim for death benefits (Ex. 35), she requested a hearing.

¹ Claimant, Maxine Long, is the surviving spouse and statutory beneficiary of the deceased worker, Everett J. Long.

Because claimant argued that decedent's cardiac arrest was caused in part by factors related to mental stress, the ALJ determined that the "mental disorder" requirements of ORS 656.802(3) applied. *See SAIF v. Falconer*, 154 Or App 511 (1998). The ALJ concluded that the record did not establish "clear and convincing" evidence that the cardiac arrest arose out of and in the course of employment under ORS 656.802(3)(d).² The ALJ also determined that the medical evidence was not sufficient to support claimant's theory that the decedent's cardiac event was caused by inhalation and the exertion of getting the tractor away from the burn pile.³

On review, both parties agree that ORS 656.802 applies. Claimant argues that the decedent's death was caused by mental stress precipitating the ventricular fibrillation that resulted in the cardiac arrest. She relies on the opinions of Dr. Banitt and Mr. Wilson, medical legal consultant.

To be compensable, an occupational disease must arise out of and in the course of employment. ORS 656.802(1)(a). Employment conditions must be the major contributing cause of the disease. ORS 656.802(2)(a). For any physical disorder caused or worsened by mental stress, claimant must also establish the requirements set forth in ORS 656.802(3)(a) through (d). ORS 656.802(1)(b).

For a "mental disorder" claim, the evidence that the "mental disorder" arose out of and in the course of employment must be clear and convincing. ORS 656.802(3)(d). To be "clear and convincing," the truth of the facts asserted must be highly probable. *Riley Hill Contractor Inc. v. Tandy Corp.*, 303 Or 390, 402 (1987); *Oskar Hess*, 52 Van Natta 1428, 1429 (2000) (mental disorder/heart attack claim was not established by clear and convincing evidence where medical opinion attributed the major contributing cause to underlying coronary artery disease).

Because of the multiple potential causes of decedent's cardiac arrest, the causation issue presents a complex medical question that must be resolved on the basis of expert medical evidence. *See Barnett v. SAIF*, 122 Or App 281 (1993). When there is a dispute between medical experts, we give more weight to opinions that are well reasoned and based on the most complete relevant information. *Jackson County v. Wehren*, 186 Or App 555, 559 (2003).

² Under the circumstances, the ALJ determined that it was not necessary to address the other requirements of ORS 656.802(3).

³ Because claimant does not challenge the portion of the ALJ's order regarding the "inhalation" theory, we do not address that issue on review.

Dr. Banitt, cardiologist, performed a records review on claimant's behalf and concluded that decedent's acute stressful event at work on December 20, 2011 was the "precipitating" factor that led to his fatal cardiac event. (Ex. 44A-1).

Claimant acknowledges that Dr. Banitt did not expressly refer to the stressful work event as the "major contributing cause," but she contends that his opinion meets that standard because he concluded that the work-induced stress was the only cause of decedent's ventricular fibrillation, cardiac stress, and death. She argues that Dr. Banitt provided "clear and convincing" evidence that the decedent did not have cardiovascular disease sufficient to cause cardiac arrest.

We agree with claimant that "magic words" are not required to satisfy medical causation. See *Liberty Northwest Ins. Corp. v. Cross*, 109 Or App 109 (1991), *rev den*, 312 Or 676 (1992). Nevertheless, we are not persuaded that Dr. Banitt's opinion meets the necessary standard. We reason as follows.

In concluding that the work event was the precipitating factor that led to the decedent's cardiac event, Dr. Banitt acknowledged that decedent had several "risk factors" for coronary artery disease, including hypertension, history of tobacco use, and an unfavorable lipid profile. (Ex. 44A-1). He also noted that decedent had previous surgeries to address a narrowed artery in his neck, as well as the superficial femoral arteries in his legs. (*Id.*) However, Dr. Banitt stated that claimant never displayed any symptoms of symptomatic coronary artery disease and was never diagnosed with "significant" coronary artery disease. On the other hand, Dr. Banitt opined that almost everyone in the United States over age 50 has some atherosclerotic vascular disease. (*Id.*) He also stated that atherosclerosis is potentially a systemic disease that could affect the heart arteries. (*Id.*) Dr. Banitt explained that, although the decedent might have had some mild coronary artery disease, it was not functionally significant. (Ex. 44A-2).

Dr. Banitt's opinion regarding the decedent's lack of coronary artery disease was persuasively contradicted by the opinions of Drs. Semler and Li, as well as Mr. Wilson.

Dr. Semler, cardiologist, performed a records review on behalf of SAIF. He explained that the decedent's July 29, 2010 EKG indicated "lvh," which stands for left ventricular hypertrophy, which is a sign of coronary artery disease. (Ex. 42-2; *see* Ex. 19A-7). Dr. Semler explained that the decedent had significant atherosclerosis of both superficial femoral arteries and both carotid arteries. He noted that the April 14, 2010 operative report showed that the decedent's left superficial femoral artery had a complete occlusion for the majority of its length.

(Ex. 42-2; *see* Ex. 16-2). He also noted that the decedent's left carotid artery was severely abnormal with an estimated 80 percent occlusion. (Ex. 42-2; *see* Ex. 16A-2). Based on his clinical experience as a cardiologist and his familiarity with the medical literature, Dr. Semler concluded that it was "virtually certain" that the decedent had significant atherosclerosis in the coronary arteries. (Ex. 42-2).

Dr. Banitt's opinion regarding the decedent's lack of coronary artery disease was also contradicted by Dr. Li, pathologist and autopsy director, who performed a records review on behalf of claimant. Dr. Li concluded that the decedent suffered from a fatal arrhythmia, which was likely related to hypertensive and arteriosclerotic vascular disease that was well documented in the medical records. She determined that claimant likely had coronary artery disease, given that he had severe peripheral vascular disease, including carotid artery stenosis. (Ex. 35b-1). However, she noted that the coronary artery disease was not "entirely absolute" because it was not documented. (*Id.*)

Mr. Wilson was previously licensed as an emergency medical technician and was trained as a physician's assistant. (Tr. I-21-23). He has worked independently as a "medical legal consultant" since 2005. (Tr. 1-21, -24, -25). He performed a records review on behalf of claimant and testified. Mr. Wilson explained that the decedent had peripheral vascular disease, hypertension, and hypercholesterolemia. He noted that there was a strong association between peripheral vascular disease and coronary artery disease. (Ex. 35a-1). Mr. Wilson testified that there was a 90 percent probability that the decedent had coronary artery disease, given his peripheral vascular disease and other risk factors. (Tr. I-38). He explained that the "gold standard" for diagnosing coronary artery disease was a coronary angiogram, which had not been done for the decedent. (Tr. 1-38, -39).

In light of the opinions of Drs. Semler and Li, as supported by Mr. Wilson, we do not agree with claimant that Dr. Banitt provided "clear and convincing" evidence regarding the decedent's lack of coronary artery disease. In particular, Dr. Banitt's opinion that the decedent never displayed symptoms of symptomatic coronary artery disease is not persuasive because he did not respond to Dr. Semler's opinion regarding the decedent's July 29, 2010 EKG finding that was a sign of coronary artery disease. *See Janet Benedict*, 59 Van Natta 2406, 2409 (2007), *aff'd without opinion*, 227 Or App 289 (2009) (medical opinion unpersuasive when it did not address contrary opinion). SAIF also refers to Dr. Williamson's August 6, 2010 operative report for the left carotid endarectomy, which explained that the decedent had coronary disease, as well as severe peripheral occlusive disease and cerebrovascular occlusive disease. (Ex. 20).

Claimant argues that Dr. Banitt's opinion's persuasively concluded that the work event was the only cause of decedent's ventricular fibrillation, cardiac stress, and death. We disagree, reasoning as follows.

A determination of the major contributing cause involves the evaluation of the relative contribution of different causes of the disputed condition and deciding which is the primary cause. *Dietz v. Ramuda*, 130 Or App 397 (1994), *rev dismissed*, 320 Or 416 (1995). Although activities that precipitate a claimant's injury or disease may be the major contributing cause of the condition, that is not always the case. *Id.* at 401. The medical expert must take into account all contributing factors in order to determine their relative weight. *SAIF v. Strubel*, 161 Or App 516, 521 (1999).

Here, Dr. Banitt concluded that decedent's acute stressful event at work on December 20, 2011 was the "precipitating" factor that led to his fatal cardiac event. (Ex. 44A-1). He opined that the cardiac arrest was "triggered" by the decedent's stressful event at work. (Ex. 44A-4). He explained that there were "many potential triggers" to sudden cardiac death or ventricular arrhythmias, one of which was "acute emotional stress." (Ex. 44A-2). However, Dr. Banitt did not identify the other potential triggers or explain why they did not contribute to the decedent's death. Because Dr. Banitt did not adequately consider all contributing factors, we are not persuaded that it is "highly probable" that the decedent's stress-induced work event arose out of and in the course of employment and that the work event was the major contributing cause of his cardiac arrest. *See Hess*, 52 Van Natta at 1429 (medical opinion did not establish that it was highly probable that the work stress was the major contributing cause of the claimant's heart attack).

The remaining medical opinions are not sufficient to sustain claimant's burden of proof. Dr. Semler concluded that the major contributing cause of decedent's heart attack/cardiac arrest was coronary artery disease (*i.e.*, arteriosclerosis of the coronary arteries), which was due to his elevated cholesterol and blood pressure, as well as his history of smoking. (Exs. 34-3, -4, 37, 42). Dr. Harris, the decedent's primary care physician, concurred with Dr. Semler's opinion. (Ex. 36).

Dr. Li concluded that the decedent suffered from a fatal arrhythmia, which was likely related to hypertensive and arteriosclerotic vascular disease that was well documented in the medical records. (Ex. 35b-1). She concluded that it was "possible" that the decedent's physical exertion of attempting to remove the stuck tractor and running to get help from coworkers "may" have solicited the fatal

arrhythmia. (Ex. 35b-2). Dr. Li's opinion suggests only the possibility that the decedent's work event was causally related to the fatal arrhythmia. *See Gormley v. SAIF*, 52 Or App 1055, 1060 (1981) (use of the words "could," "can," "it is reasonable to assume" and "we would like to assume" militated against a finding of medical causation in terms of probability). In addition, Dr. Li did not provide an opinion regarding the "major contributing cause" of the decedent's death.

Mr. Wilson testified that the decedent's emotional distress was a "precipitating factor" in his cardiac event. (Tr. I-41, -42). He explained that the emotional distress was a "material contributing factor" to his death. (Tr. I-50). He also testified that the decedent had some significant risk factors for cardiac arrest, including hypertension, hypercholesterolemia, peripheral vascular disease, and carotid artery disease. (Tr. I-32). He explained that the risk factors put him at a high probability of having coronary artery disease, which was a big risk factor sudden cardiac death, specifically stress-induced sudden death. (Tr. I-33). We conclude that Mr. Wilson's opinion that the work-induced stress was a "precipitating" and "material" factor in the decedent's death is not sufficient to sustain claimant's burden of proof.

In summary, for the foregoing reasons, as well as the ALJ's analysis, we conclude that the medical evidence is not sufficient to establish that the decedent's employment conditions were the major contributing cause of his cardiac arrest or that there was "clear and convincing" evidence that the decedent's cardiac arrest arose out of and in the course of employment. In light of our conclusion, it is not necessary to address whether the other elements of a compensable mental disorder under ORS 656.802(3) have been satisfied.⁴ Accordingly, we affirm.

ORDER

The ALJ's order dated October 3, 2013 is affirmed.

Entered at Salem, Oregon on February 12, 2014

⁴ Given our disposition, it is not necessary to address SAIF's argument that ORS 656.802(2)(b) applies and that claimant did not meet that standard of proof.