
In the Matter of the Compensation of
MICHAEL W. DAVIS, Claimant
WCB Case No. 12-05971
ORDER ON REVIEW
Heather Holt, Claimant Attorneys
Sather Byerly & Holloway, Defense Attorneys

Reviewing Panel: Members Langer and Weddell.

The insurer requests review of that portion of Administrative Law Judge (ALJ) Jacobson's order that set aside its denial of claimant's injury claim. On review, the issue is course and scope of employment and compensability.

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

In April 2012, claimant arose from his desk to assist a customer when he felt his left knee "pop." He had immediate left knee pain and sought medical treatment from Dr. Steinman, a family medicine/occupational health practitioner, who diagnosed a left knee strain. (Exs. 3, 24).

Claimant filed an injury claim for his left knee condition. The insurer denied the claim, asserting that the injury did not arise out of and in the course of employment and was not compensable. Claimant requested a hearing.

In setting aside the insurer's denial, the ALJ found that claimant's left knee injury arose out of and in the course of his employment, and that the injury claim was compensable.

On review, citing *Robert M. Coleman*, 65 Van Natta 1748 (2013) and *William F. Gilmore*, 46 Van Natta 999 (1994), the insurer contends that claimant's injury did not "arise out of" his employment. The insurer also maintains that the April 2012 work event was not a material cause of claimant's disability/need for treatment and, even assuming it was, that his left knee condition is not compensable as part of a "combined condition." For the following reasons, we disagree with those contentions.

A "compensable injury" is an accidental injury "aris[ing] out of" and "in the course of" employment requiring medical services or resulting in disability. ORS 656.005(7)(a). The phrases "arise out of" and "in the course of" are two prongs of a single inquiry into whether an injury is work related and is called the work-connection test. *Fred Meyer, Inc. v. Hayes*, 325 Or 592, 596 (1997); *Frederick A.*

Labasan, 58 Van Natta 2621, 2622 (2006). The requirement that the injury occur “in the course of” employment concerns “the time, place and circumstances of the injury.” *Hayes*, 325 Or at 596. The “‘arise out of’ prong * * * requires that a causal link exist between the worker’s injury and his or her employment.” *Id.*

To meet the unitary work-connection test, an injury must to some degree meet both parts. *Krushwitz v. McDonald’s Restaurants*, 323 Or 520, 531 (1996). The work-connection test may be satisfied if the factors supporting one prong are minimal while the factors supporting the other prong are many. *Id.*; *Labasan*, 58 Van Natta at 2622.

Here, the parties agree that claimant’s injury occurred “in the course of” employment; *i.e.*, his injury occurred while he was at work performing work duties. The parties dispute, however, whether his injury meets the “arising out of” prong. In other words, they contest whether claimant has proven a causal relationship between his injury and his employment. This causal relationship requires more than a mere showing that the injury occurred at the workplace and during work hours. *Norpac Foods v. Gilmore*, 318 Or 363, 366 (1994). This causal link, however, “does *not* require that a claimant’s specific employment ‘create’ or ‘enhance’ the injury causing risk.” *William H. Schaefer*, 59 Van Natta 3029, 3030 (2007) (emphasis in original) citing *Redman Industries, Inc., v. Lang*, 326 Or 32, 36 (1997).

The factors supporting satisfaction of the “arising out of” prong need only be minimal because the “course of employment” prong has been strongly satisfied. *See Krushwitz*, 323 Or at 531. With this consideration in mind, we find the record sufficient to establish that claimant’s work conditions exposed him to a risk of injury in the manner that occurred. Specifically, he was performing his usual work duties, at his customary work station, when he stood up from his desk to assist a customer and his left knee “popped out,” resulting in immediate pain. (Tr. 7-8).

Thus, claimant’s job duties put him in a position to be injured while standing up from his work station to assist a customer. For these reasons, we conclude that claimant’s left knee injury “arose out of” his employment. Applicable case precedent supports our conclusion.

In *Wilson v. State Farm Ins.*, 326 Or 413 (1998), the court analyzed whether an injury incurred as the result of the claimant’s “skip-stepping” around the corner while returning to her work area “arose out of” employment. Concluding that the injury did “arise out of” claimant’s employment, the court reasoned that the “fact that the employer did not contemplate or expect claimant’s precise method of

rounding the corner as she returned to her office does not render her resulting injury noncompensable.” *Id.* at 418; *see also Schaefer*, 59 Van Natta at 3031 (a truck driver’s right knee injury, which occurred when his knee locked while he was returning to the cab of his truck after conducting a safety inspection, “arose out of” his employment); *Nicholas B. Martin*, 59 Van Natta 7 (2007) (knee injury to carpenter while walking away from a truck to get more tools “arose out of” employment); *Labasan*, 58 Van Natta 2621 (2006) (knee injury while walking on level ground to deliver a package “arose out of” employment).

We acknowledge the employer’s reliance on the reasoning expressed in *Coleman* and *Gilmore*. Those cases, however, are distinguishable.

In *Coleman*, we applied the “coming and going” rule and concluded that the claimant was not acting “in the course of” employment when he was injured in the parking lot of a hospital he was required to enter for his employment. 65 Van Natta at 1749-50. Thus, *Coleman* was focused on the “in the course of” employment prong of the work-connection test. Accordingly, our discussion of the “arising out of prong” was not determinative.

In *Gilmore*, after completing his work day, the claimant injured himself while getting into his car, which was parked in the employer’s parking lot. 46 Van Natta at 1000. In that case, we concluded that the claimant’s injury did not “arise out of” his employment. We reasoned that, because the claimant had completed his work for the day and was on his way home when he was injured while getting into his car, “[his] injury did not result from an act which was an ordinary risk of, or incidental to, his employment and, therefore, did not ‘arise out of’ his employment.” *Id.* In contrast, in this case, claimant was injured while at his customary work station, during work hours, and while performing work activities. Thus, *Gilmore* is distinguishable.

We turn to the compensability issue under ORS 656.005(7)(a)(8) and ORS 656.266(2)(a). To establish the compensability of his injury claim, claimant has the initial burden to prove that his work injury was a material contributing cause of his disability or need for treatment. ORS 656.005(7)(a); ORS 656.266(1). “Material contributing cause” is a substantial cause, but not necessarily the sole cause or even the most significant cause. *See Van Blokland v. Oregon Health Scis. Univ.*, 87 Or App 694, 698 (1987); *Summit v. Weyerhaeuser Co.*, 25 Or App 851, 856 (1976) (“material contributing cause” means something more than a minimal cause; it need not be the sole or primary cause, but only the precipitating factor, and it need not be unusual). Claimant need not prove that his work injury caused

his left knee condition 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).

Because of the divergent medical opinions regarding the cause(s) of the claimed condition, expert medical opinion is necessary to resolve the compensability issue. *Barnett v. SAIF*, 122 Or App 279, 282 (1993); *Stephanie J. Bowens*, 60 Van Natta 1573, 1574 (2008). We give more weight to those opinions that are both well reasoned and based on complete information. *Somers v. SAIF*, 77 Or App 259, 263 (1986).

In this case, each of the doctors agrees that the medical evidence establishes that claimant's disability/need for treatment results from a "loose body" in his left knee. (Exs. 10, 15, 17, 18, 20-7, 21). They disagree, however, regarding the cause of the "loose body."

According to the insurer, the opinions of Drs. Woodward and Bents, orthopedic specialists, establish that claimant's disability/need for treatment resulted from his preexisting degenerative conditions, which caused a "loose body" in his left knee. (Exs. 20, 25). The insurer contends that Dr. Steinman's contrary opinion is insufficient to meet the material cause standard because she did not address the contrary opinions and her opinion is based solely on a temporal relationship. We reject those contentions.

First, we do not consider Dr. Steinman's opinion to be solely based on a temporal relationship between claimant's symptoms and the work injury. Rather, Dr. Steinman expressly premised her opinion on "the lack of prior injury to claimant's left knee, the mechanism of the injury and the manner of symptoms that claimant continues to experience since the injury." (Ex. 24-2). Dr. Steinman reasoned that the mechanism of injury—putting his weight on his left knee while standing up from his workstation and turning towards a customer—more likely than not dislodged a piece of bone or meniscus in claimant's left knee which interfered with his "ability to utilize his knee properly, causing the pain and 'locked-up' knee symptoms." (*Id.*) After considering such reasoning, we find Dr. Steinman's opinion to include factors other than the temporal relationship between claimant's symptoms and his work injury. *See Kevin R. Plaza*, 55 Van Natta 2327, 2328 (2003) (medical opinion not solely based on a temporal relationship where the physician also considered the mechanism of injury).

Second, Dr. Steinman adequately addressed the contrary medical opinions of Drs. Woodward and Bents. (*See* Exs. 21-3, 26-47-49). Specifically, she disagreed with their shared opinion that “standing up from a chair does not cause a loose body.” As noted above, Dr. Steinman explained that when claimant stood up from his chair and twisted his knee that “caused either a creation of or a dislodging of the loose body.” (Ex. 26-47).

In contrast, we are not persuaded by the opinions of Drs. Woodward and Bents. According to those doctors, claimant’s left knee condition could not have resulted from standing up from his chair. (Exs. 20-8, 25-2). They concluded that the loose body in claimant’s knee resulted from his preexisting degenerative conditions. But, neither doctor persuasively rebutted Dr. Steinman’s opinion that, while claimant’s preexisting degenerative conditions may have made it easier to have a piece of bone or tissue separate and become loose, the mechanism of injury was a material cause of claimant’s need for treatment or disability for the “loose body” condition. Moreover, unlike Dr. Steinman, Drs. Woodward’s and Bents’s opinions did not address the temporal relationship between claimant’s work injury and his onset of symptoms. In the absence of such an analysis, we consider the opinions of Drs. Woodward and Bents less persuasive. *See Allied Waste Indus., Inc. v. Crawford*, 203 Or App 512, 518 (2005), *rev den*, 341 Or 80 (2006) (although medical opinions based solely on a temporal relationship are generally not persuasive, the temporal relationship between a work injury and the onset of symptoms is one factor that should be considered, and it may be the factor that weighs more heavily than all others); *see also Robert D. Kallio*, 59 Van Natta 535 (2007) (medical opinion that did not address temporal relationship not persuasive).

Therefore, based on Dr. Steinman’s persuasive opinion, we conclude that claimant’s April 2012 injury was at least a material contributing cause of his disability or need for medical treatment for his left knee condition. Consequently, claimant established an “otherwise compensable injury.”

If, however, the otherwise compensable injury has combined with a preexisting condition, the insurer has the burden to prove that the “otherwise compensable injury” is not the major contributing cause of the disability or need for treatment of the combined condition. ORS 656.005(7)(a)(B); ORS 656.266(2)(a); *Jack G. Scoggins*, 56 Van Natta 2534, 2535 (2004). Assuming, without deciding, that claimant’s left knee condition qualifies as a “combined condition,” we conclude that the insurer has not met its burden of proof under ORS 656.266(2)(a). *Hopkins v. SAIF*, 349 Or 348 (2010); *Donald Peterson*, 65 Van Natta 2509 (2013).

As discussed above, we find Dr. Steinman's opinion more persuasive than the opinions of Drs. Woodward and Bents. Thus, it follows that we find the insurer has not met its required burden of proof under ORS 656.266(2)(a).¹

In summary, we conclude that claimant's April 2012 injury arose out of and in the course of his employment and that it was at least a material cause of his disability or need for treatment of his left knee condition. We also conclude that the insurer did not sustain its burden to prove that the "otherwise compensable injury" was not the major contributing cause of disability/need for medical treatment for any combined left knee condition. Thus, claimant's left knee condition is compensable. We, therefore, 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 to this case, we find that a reasonable fee for claimant's attorney's services on review is \$3,500, 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), the complexity of the issue, the value of the interest involved, and the risk that counsel may 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 the insurer. *See* ORS 656.386(2); OAR 438-015-0019; *Gary Gettman*, 60 Van Natta 2862 (2008).

ORDER

The ALJ's order dated July 3, 2013 is affirmed. For services on review, claimant's attorney is awarded an assessed attorney fee of \$3,500, to be paid 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 denial, to be paid by the insurer.

Entered at Salem, Oregon February 5, 2014

¹ Dr. Woodward agreed that the April 2012 work incident was the major contributing cause of claimant's left knee condition at least for some period of time. (Ex. 20-9). Such an opinion would support the denied claim. *William Koepnick*, 65 Van Natta 853, 854 (2013) (physician's opinion concluding that work related injury was "on a temporary basis" the major contributing cause of disability/need for treatment supported the initial compensability of a combined condition); *see also Braden v. SAIF*, 187 Or App 494, 500 (2003) (a combined condition must first be accepted and processed before a carrier may issue a "ceases" denial under ORS 656.262(6)(c)).