
In the Matter of the Compensation of
TRISHA L. SMITH, Claimant
WCB Case No. 13-00424
ORDER ON REVIEW
Dale C Johnson, Claimant Attorneys
Julie Masters, SAIF Legal Salem, Defense Attorneys

Reviewing Panel: Members Lanning and Lowell.

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

FINDINGS OF FACT

We adopt the ALJ's "Findings of Fact."

CONCLUSIONS OF LAW AND OPINION

Claimant worked for the employer, a child care center, as a cook. (Ex. 6; Tr. 5). In 2011, she began experiencing low back pain, which gradually worsened. (Tr. 8). On October 18, 2012, her low back pain worsened to the point that the employer sent her home from work. (Tr. 9-12). During the next few days, the pain began radiating down her right leg. (Tr. 13).

On October 22, 2012, claimant consulted with Dr. Gittins, a chiropractor. (Ex. 1-1). Lumbar x-rays revealed "mild to moderate DDD L5-S1 and mild hypertrophic spur anterior interior end plate of L5. Mild gradual right T-L curvature with left rotatory subluxations T11-L4." (Ex. 1-2). Noting that claimant had been "dealing with a dull achy annoying lower back discomfort for the past year" and that "one week ago she started to notice an increase in the soreness of her lower back, then suddenly * * * over a 20 min period * * * a sudden increase in pain," Dr. Gittins's assessment was "acute L4 radiculopathy with moderate to severe pelvic and lumbar joint dysfunction." (Ex. 1-1, -2).

In December 2012, Dr. Duncan, a chiropractor, examined claimant for SAIF. He attributed claimant's chronic low back pain to a "combination of pre-existing mild to moderate L5-S1 degenerative spondylosis and associated joint restrictions * * * probably exacerbated but not caused or materially worsened

by described work activities.” (Ex. 17-9). After reviewing the October 22, 2012 x-rays, Dr. Duncan opined that claimant had preexisting low back degenerative disc disease, which was “arthritic in nature,” explaining that the changes involved “constitutional and structural changes of the spine, to include changes in the metabolic status, as well as the structural status of the joints.” (Ex. 21-1).

Dr. Gittins agreed that claimant had a preexisting condition, but not that it caused her need for treatment. Reasoning that claimant had not previously experienced radiculopathy or acute low back pain of a severity requiring medical treatment, he concluded that claimant’s work activities exacerbated her underlying preexisting condition and were the major contributing cause of her need for treatment on October 22, 2012. (Ex. 23-2).

SAIF denied claimant’s claim. (Ex. 20). Claimant requested a hearing.

Reasoning that claimant’s L4 radiculopathy arose during a discrete period of time, the ALJ determined that claimant sustained an “otherwise compensable injury” on October 18, 2012. The ALJ also concluded that the low back condition was a “combined condition” and that the employer met its burden of proving that the “otherwise compensable injury” was not the major contributing cause of claimant’s disability or need for treatment of the combined condition. Finally, finding that claimant’s work activities were not the major contributing cause of her low back condition, the ALJ held that claimant’s occupational disease claim was not compensable.

On review, claimant agrees that her claim should be analyzed as an injury, but she argues that the medical evidence was insufficient to establish a statutory preexisting condition that combined with her work injury. SAIF responds that the claim should be analyzed as an occupational disease because the medical evidence establishes that claimant’s low back condition developed gradually over time. Furthermore, SAIF argues that the medical evidence does not establish compensability under either an injury or an occupational disease standard.

In deciding whether a claim is properly analyzed as an injury or an occupational disease, it is necessary to determine whether the condition developed gradually or suddenly. In making that determination, we focus on the onset of the condition itself, rather than the onset of the condition’s symptoms. *Smirnoff v. SAIF*, 188 Or App 438, 449 (2003). We must analyze the medical evidence regarding the onset of claimant’s low back *condition*, not merely the symptoms, to determine if the condition developed gradually or suddenly. *Id.* at 449; *Katrina*

Taylor, 63 Van Natta 41 (2011). Resolution of the disputed issue presents a complex medical question that must be resolved by expert medical opinion. *Barnett v. SAIF*, 122 Or App 279, 283 (1993).

Here, Dr. Gittins assessed claimant as suffering “acute symptoms” and “acute L4 radiculopathy.” (Ex. 1-2). Based on claimant’s history of increased pain during the week before her initial visit and severe pain with radiation into the thigh on the date of injury, he considered this an “acute condition.” (Ex. 23-2). He opined that claimant’s work activities on October 18, 2012 were the major cause of “exacerbating her underlying preexisting condition and causing her need for treatment.” (Ex. 23-2, -3). Dr. Duncan opined that, while claimant’s work activities may have caused symptoms, the work activities did not cause her condition. (Ex. 17-10, -11, -12).

These opinions do not establish that claimant’s *condition*, as opposed to symptoms of her condition, developed suddenly on October 18, 2012. Furthermore, claimant’s testimony and the medical record support a conclusion that her condition developed gradually. Accordingly, we analyze her claim as an occupational disease. *See Smirnoff*, 188 Or App at 443 (when the claimant experienced right knee symptoms after kneeling on concrete floors, his claim was analyzed as an occupational disease based on medical evidence that established that his underlying torn meniscus condition developed over time); *Mark Luton*, 65 Van Natta 1741 (2013) (when the claimant was evaluated for right wrist pain following a brief period of repetitive work activity, his claim was analyzed as an occupational disease where the medical opinions did not establish that his underlying triangular fibrocartilage tear condition was the result of an identified work event or discrete period of time).

To establish the compensability of her low back condition as an occupational disease under ORS 656.802(2)(a), claimant must show that employment conditions were the major contributing cause of the disease. *See* ORS 656.266(1); *William P. Zinter*, 60 Van Natta 2971, 2972 (2008). Claimant’s work activities must be the major contributing cause of the disease itself, not just the disability or need for treatment associated with it. *Tammy L. Foster*, 52 Van Natta 178 (2000). Determining major contributing cause is a complex medical question that must be resolved on the basis of expert medical opinion. *Barnett*, 122 Or App at 283.

Here, Dr. Gittins opined that claimant’s work activities were the major contributing cause of her need for treatment on October 22, 2012. (Ex. 23-2). Such an opinion does not satisfy the legal standard for a compensable occupational

disease claim. *Foster*, 52 Van Natta at 178. Furthermore, Dr. Duncan opined that claimant's low back condition was not caused or materially worsened by her described work activities. (Ex. 17-9).

In sum, the record does not support a compensable occupational disease claim. Accordingly, we affirm.

ORDER

The ALJ's order dated September 23, 2013 is affirmed.

Entered at Salem, Oregon on January 31, 2014