
In the Matter of the Compensation of
BRITNEY BERNABO, Claimant
WCB Case No. 13-01067
ORDER ON REVIEW
Glen J Lasken, Claimant Attorneys
Julie Masters, SAIF Legal, Salem, Defense Attorneys

Reviewing Panel: Members Lowell and Lanning.

Claimant requests review of that portion of Administrative Law Judge (ALJ) Mills's order that upheld the SAIF Corporation's denial of her new/omitted medical condition claim for concussion and post-concussion syndrome (PCS). On review, the issue is compensability.

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

On December 23, 2012, claimant, a community training specialist, was injured in a motor vehicle accident (MVA) while transporting a client. (Tr. 5; Ex. 1). SAIF accepted a right foot contusion and right ankle contusion. (Ex. 12). Subsequently, claimant requested that SAIF accept cervical strain, low back strain, left shoulder strain, right foot neuritis, concussion, and PCS. (Ex. 34).

SAIF denied the claims, and claimant requested a hearing. (Exs. 42, 43).

The ALJ set aside SAIF's denial of all requested conditions except the concussion and PCS. On review, claimant relies on the opinion of Dr. Koller, contending that these denied conditions are compensable. SAIF responds that Dr. Koller's opinion is not sufficiently persuasive to meet claimant's burden of proof. Based on the following reasoning, we affirm.

To establish compensability of the claimed conditions, claimant must prove that they exist, and that the work injury was a material contributing cause of the disability/need for treatment for the conditions. *See* ORS 656.266(1); ORS 656.005(7)(a); *Betty J. King*, 58 Van Natta 977 (2006); *Maureen Y. Graves*, 57 Van Natta 2380, 2381 (2005). Because of the possible alternative causes of claimant's condition, expert medical opinion is required to resolve the question of causation. *Barnett v. SAIF*, 122 Or App 279 (1993); *Linda E. Patton*, 60 Van Natta 579, 582 (2008). In evaluating medical opinions, more weight is generally given to those opinions that are well reasoned and based on accurate and complete information. *Somers v. SAIF*, 77 Or App 259, 263 (1986); *Patton*, 60 Van Natta at 582.

A concussion was first noted on February 28, 2013, in a discharge summary from claimant's physical therapist. (Ex. 29). The summary reported that claimant was ending physical therapy because she felt it was increasing her cervical pain. The summary further noted that "[claimant] is concerned that she may also have sustained a concussion." (*Id.*)

The next day (March 1, 2013), claimant was seen in the emergency room, where, for the first time, she gave a history of blackouts, dizziness, nausea, near-syncope, visual changes, and mood disturbances occurring since her December 2012 MVA.¹ (Ex. 30-2). Before this emergency room visit, claimant had been seen by medical providers/physical therapists approximately 15 times, yet had not mentioned these symptoms, nor had any provider suggested that she might have a head injury.² (*See, e.g.* Exs. 6, 9, 16).

On March 7, 2013, claimant saw Dr. Wagner, who took a history of headaches and memory difficulties that began "about 48 hours after the [MVA]." (Ex. 36-1). However, on May 4, 2013, after examining claimant at SAIF's request, Dr. Ireland reported that claimant did not have any significant head trauma as a result of the MVA.³ (Ex. 41-6). He also noted that, even if she had sustained a minor blow to the head, "[I]t was not [of] a sufficient severity to produce concussion." Moreover, Dr. Ireland observed that claimant did not describe PCS symptoms until "long after the motor vehicle accident." (*Id.*)

Furthermore, when Dr. Koller examined claimant in May 2013, he was unable to determine the cause of her blackouts. (Ex. 39). Yet, ultimately, in a concurrence letter authored by claimant's counsel, Dr. Koller opined that it was medically probable that claimant suffered a whiplash during the MVA, and that "the nature of her symptoms *immediately following* this accident are consistent with a mild traumatic brain injury having occurred." (Ex. 47-2) (emphasis added). Based on the following reasoning, we do not find Dr. Koller's history of claimant's symptoms to be accurate.

¹ A brain MRI was read as being normal. (Ex. 32).

² Claimant testified that these blackouts began "a couple days before that ER visit." (Tr. 16).

³ Claimant testified that she was not certain if she struck her head. (Tr. 8). However, within 20 minutes of the December 23, 2012 MVA, claimant met with her employer and told him that she had not hit her head. (Tr. 30). Moreover, the emergency room chart note, which was written several hours later that same day, stated that there was "no history to suggest any head injury." (Ex. 2-1). Finally, some three months later, in March 2013, when claimant sought treatment at the emergency room, it was again noted that there was "no history to suggest any head injury." (Ex. 30-2).

Specifically, Dr. Koller was asked to assume that the type of symptoms indicating a possible concussion and resulting PCS (*e.g.*, nausea, blackouts, vision difficulties, etc.) occurred either “immediately following” the accident, “about 48 hours after the accident,” or “shortly after” the December 2012 MVA. (Exs. 36-1, 47-1). Yet, as previously discussed, the record establishes that claimant’s “concussion and PCS-related” symptoms were first described in March 2013, and that, despite receiving ongoing medical care since the MVA, claimant had not complained of these symptoms to her physicians.

Under such circumstances, we are unable to conclude that Dr. Koller had an accurate history of the onset of claimant’s symptomatology. Therefore, we do not find his opinion persuasive.⁴ *Somers*, 77 Or App at 263. Accordingly, we affirm.

ORDER

The ALJ’s order dated November 12, 2013 is affirmed.

Entered at Salem, Oregon on May 9, 2014

⁴ In addition, Dr. Koller initially stated that claimant’s headaches were likely musculoskeletal in origin. (Ex. 39). Later, however, he cited claimant’s ongoing headaches as a reason for diagnosing her with PCS. (Ex. 47). The record does not contain a reasonable explanation for Dr. Koller’s apparent change in opinion concerning the reason claimant was having headaches, which further detracts from the persuasiveness of Dr. Koller’s opinion. *See Reanna R. Rodriguez*, 59 Van Natta 2865, 2867 (2007) (opinion unpersuasive where there was no reasonable explanation for change of opinion).