
In the Matter of the Compensation of
BARBARA J. DEBOARD, Claimant
WCB Case No. 13-02758
ORDER ON REVIEW
Moore Jensen, Claimant Attorneys
Sather Byerly & Holloway, Defense Attorneys

Reviewing Panel: Members Lanning and Lowell.

Claimant requests review of Administrative Law Judge (ALJ) Pardington's order that: (1) upheld the self-insured employer's denial of her new/omitted medical conditions claim for thoracic disc conditions; and (2) upheld the employer's denial of her occupational disease claim for those conditions. On review, the issue is compensability.

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

In upholding the employer's denial of claimant's new/omitted medical conditions claim, the ALJ determined that the existence of the claimed thoracic disc "protrusion" conditions had not been established. Specifically, the ALJ relied on the medical opinion of an examining physician, Dr. Arbeene, who explained that there was a difference between the claimed "protrusions" and the degenerative "bulges," which he believed more accurately described claimant's disc conditions.

On review, claimant contends that the ALJ should not have accepted Dr. Arbeene's explanation of the alleged distinction between disc "protrusions" and disc "bulges." She asserts that the medical record establishes that the physicians used the terms interchangeably and, therefore, that she established the existence of the claimed conditions. *See Maureen Y. Graves, 57 Van Natta 2380, 2381 (2005)* (proof of the existence of the condition is a fact necessary to establish the compensability of new/omitted medical condition). Claimant further argues that her compensable November 2012 injury was a material contributing cause of the claimed conditions and that the employer did not establish that the otherwise compensable injury was not the major contributing cause of the disability or need for treatment of the combined thoracic disc conditions. ORS 656.266(2)(a).

Even assuming that claimant established the existence of the claimed conditions, and further assuming that she proved an "otherwise compensable injury," we would still conclude that the otherwise compensable injury was not the major contributing cause of the disability and need for treatment of the

combined thoracic disc conditions. In reaching this conclusion, we are persuaded by the well-reasoned opinion of Dr. Arbeene that the preexisting condition was the major contributing cause of the disability and need for treatment of the combined conditions.¹ (Ex. 68-4). *Somers v. SAIF*, 11 Or App 259, 263 (1986).

Accordingly, the employer satisfied its burden of proof under ORS 656.266(2)(a). Therefore, we affirm.

ORDER

The ALJ's order dated February 6, 2014 is affirmed.

Entered at Salem, Oregon on May 27, 2014

¹ Specifically, Dr. Arbeene had a complete and accurate history of claimant's condition, including thoracic symptoms that preexisted the compensable injury. Moreover, he engaged in a thorough weighing of the potential causes of the claimed conditions. (Ex. 68). By contrast, the opinions of the two physicians supporting compensability, Drs. Russo and Bolstad, are not as persuasive because their reports did not demonstrate the same level of awareness of the preexisting symptoms. Nor do we find those opinions to be as well-reasoned and explained as that of Dr. Arbeene. (Exs. 61, 62, 66, 67).