
In the Matter of the Compensation of
SHEILA L. MINOR, Claimant
WCB Case No. 14-01736
ORDER ON REVIEW
Dale C Johnson, Claimant Attorneys
SAIF Legal Salem, Defense Attorneys

Reviewing Panel: Members Weddell, Johnson and Somers. Member Weddell dissents.

Claimant requests review of Administrative Law Judge (ALJ) Fulsher's order that upheld the SAIF Corporation's denial of claimant's occupational disease claim for post-traumatic stress disorder (PTSD). On review, the issue is compensability.

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

In December 2012, claimant, an emergency dispatcher for approximately 28 years, was diagnosed with PTSD by her attending psychiatrist, Dr. Reagan. (Ex. 24A).

In January 2014, she received a verbal and written reprimand regarding a failure to follow procedure. (Ex. 26A). According to a supervisor, claimant had a significant emotional reaction after receiving the reprimand. (Tr. 74). Claimant returned to work, but less than two weeks after the reprimand, Dr. Reagan took her off work due to "work stress." (Ex. 27).

Claimant filed a claim for PTSD, which SAIF denied, prompting claimant's hearing request.

The ALJ upheld the denial. In doing so, the ALJ did not consider Dr. Reagan's opinion sufficiently persuasive due to a lack of detailed analysis regarding claimant's nonwork-related and statutorily excluded work-related factors and how they compared to contributions from her "nonexcludable" work exposures (*i.e.*, her exposure to traumatic events at work).

On review, claimant contends that the record persuasively supports the compensability of her claimed condition. Based on the following reasoning, we disagree.

Claimant must prove that employment conditions were the major contributing cause of her mental disorder. ORS 656.266(1); ORS 656.802(2)(a). For a mental disorder claim to be compensable, there must be a diagnosis of a mental or emotional disorder generally recognized in the medical or psychological community, and the employment conditions producing the mental disorder must exist in a real and objective sense. ORS 656.802(3)(a), (c). The employment conditions producing the mental disorder must be conditions other than conditions generally inherent in every working situation or reasonable disciplinary, corrective or job performance evaluation actions by the employer, or cessation of employment or employment decisions attendant upon ordinary business or financial cycles. ORS 656.802(3)(b).

In the context of a mental disorder claim, both those factors excluded by ORS 656.802(3)(b) and nonwork-related factors must be weighed against nonexcluded work-related factors. *Liberty Northwest Ins. Co. v. Shothafer*, 169 Or App 556, 565-66 (2000). Only if the nonexcluded work-related causes outweigh all other causes combined is the claim compensable. *Id.*

The existence and causation of claimant's claimed PTSD condition is a complex medical question that must be established by expert opinion. *See Uris v. Comp. Dep't.*, 247 Or 420 (1967). When there is a dispute between medical experts, more weight is given to those medical opinions that are well reasoned and based on complete information. *See Somers v. SAIF*, 77 Or App 259, 263 (1986).

Here, we acknowledge claimant's contention that Dr. Reagan was in an advantageous position to diagnose claimant's mental status and offer an opinion on causation due to his multiple examinations over a longer period, including examinations before and after the employer's written January 2014 reprimand. *See Kienow's Food Stores v. Lyster*, 79 Or App 416, 421 (1986) (greater probative weight accorded to opinion of physician who had observed the claimant's condition before and after the pivotal event); *Weiland v. SAIF*, 64 Or App 810, 814 (1983) (greater weight given to treating physician's opinion because of a better opportunity to evaluate the claimant's condition). However, we evaluate the circumstances of each case to determine whether deference to the attending physician is warranted. *See Dillon v. Whirlpool Corp.*, 172 Or App 484, 489 (2001).

We conclude that the record raises several grounds that cast doubt on the underlying assumptions of Dr. Reagan's opinion.

First, Dr. Reagan considered claimant to be an accurate historian. (Ex. 39-8). In contrast, Dr. Telew observed that claimant's recollection was vague and evasive when answering questions regarding details of events at work and her prior history of psychiatric medical treatment. (Ex. 35-9).

Our review of the record is more consistent with Dr. Telew's assessment. For example, at hearing, claimant was questioned about off-work stressors,¹ which she either downplayed or denied. (Tr. 35-40). Her treatment records, however, contain references to off-work stressors such as financial and care giving difficulties. (Ex. 25A). Furthermore, in attributing claimant's PTSD condition to her work, Dr. Reagan believed that she took traumatic emergency calls from close friends and relatives. (Ex. 39-3). However, claimant gave only a few examples of traumatic incidents involving people she knew personally, none of whom she described as close friends or relatives. (Tr. 9-10, 29-33).

In light of such circumstances, we do not consider Dr. Reagan's opinion to be based on an accurate history. Consequently, we find Dr. Reagan's opinion to be unpersuasive. *See Miller v. Granite Constr. Co.*, 28 Or App 473, 478 (1977) (medical evidence that was based on inaccurate information was not persuasive). Accordingly, in the absence of any other persuasive medical opinion, claimant has not established the compensability of her mental disorder claim. *See* ORS 656.266(1); ORS 656.802(2)(a), (3); *Frank L. Farrell*, 58 Van Natta 3213, 3215 (2006) (dispositive issue is whether the claimant met his burden of proof to establish compensability of a mental disorder).

Finally, claimant argues that her PTSD condition was diagnosed in December 2012, before the January 2014 reprimand,² and is, therefore, primarily related to "nonexcludable" work exposure. However, Dr. Reagan's December 2012 chart note first discussed claimant's issues with her supervisors and her perception of being "singled out." (Ex. 24A-1). Dr. Reagan's subsequent chart notes also contain multiple references to stress caused by claimant's problems

¹ Claimant also argues that her off-work stressors should not be considered in the context of causation of her claimed PTSD condition because they were not "traumatic" or "life or death" events and, therefore, are not relevant. However, no medical opinion concludes that only "traumatic" or "life or death" events are capable of causing claimant's mental health condition (however classified). Moreover, we do not have the medical expertise to evaluate such a contention. *SAIF v. Calder*, 157 Or App 224, 227-28 (1998) (the Board is not an agency with specialized medical expertise and must base its findings on medical evidence in the record).

² Claimant does not dispute that the January 2014 reprimand was a reasonable disciplinary, corrective, or job performance evaluation action, and therefore an excluded cause under ORS 656.802(3)(b).

with her supervisor. (See Exs. 24A, 25B, 25C, 25G). Such a contributing factor cannot be statutorily considered because such stress is generally inherent in every workplace. ORS 656.802(3)(b); see *Grasiela Rodriguez-Real*, 67 Van Natta 547, 548 (2015); *Leanna J. Duchek*, 54 Van Natta 1149, 1151 (2002) (interpersonal conflict between coworkers is a common stressor that is generally inherent in every work place), cf. *Patti E. Bolles*, 49 Van Natta 1159, 1161 (1997) (supervisor's behavior was not "generally inherent" in working situation).

Dr. Reagan's December 2012 chart note also refers to a shooting incident after which claimant began to have nightmares. That incident, which occurred in January 1996, was previously the subject of a Disputed Claim Settlement (DCS). (Ex. 20). As such, this incident cannot be considered in analyzing the compensability of claimant's mental disorder claim. See *Gilkey v. SAIF*, 113 Or App 314 (1992); *James M. Steele*, 51 Van Natta 1031, 1032 (1999) (where a DCS established that there was no work relationship between an injury and a condition, the parties were bound by the agreement and could not re-litigate the issue); *Judy A. Tuttle*, 45 Van Natta 165, 166 (1993) (the preclusive effect of a DCS could be avoided only if the claimant established that her current need for treatment was for a condition different from the condition in existence at the time of the DCS).

Accordingly, even without considering the January 2014 reprimand, we do not conclude that claimant has established that her PTSD condition was caused by nonexcluded work-related factors. See ORS 656.802(3); *Laurentino F. Calderon-Flores*, 67 Van Natta 634, 638 (2015).

Based on the above reasoning, as well as that included in the ALJ's order, we affirm.

ORDER

The ALJ's order dated January 22, 2015 is affirmed.

Entered at Salem, Oregon on August 25, 2015

Member Weddell dissenting.

The majority concludes that the opinion of claimant's attending physician, Dr. Reagan, who treated her for over a year before her claim filing, is inadequate to persuasively meet her burden of proof regarding the compensability of her PTSD

condition. Because I find that Dr. Reagan's opinion persuasively explains how claimant's work exposure is the major contributing cause of her PTSD condition, I respectfully dissent.

First, claimant treated with Dr. Reagan for over a year during the course of eleven appointments before her written reprimand in January 2014. Given Dr. Reagan's familiarity with claimant, we should give his opinion deference absent significant and persuasive reasons not to do so. See *Dillon v. Whirlpool Corp.*, 172 Or App 484, 489 (2001); *Weiland v. SAIF*, 64 Or App 810, 814 (1983).

Dr. Reagan outlined the criteria for diagnosis of PTSD and applied those criteria to claimant's symptoms. (Ex. 39). He explained how her symptoms met seven criteria, each with its own set of qualifying symptoms. (*Id.*) Dr. Reagan is experienced in the diagnosis and treatment of PTSD from his training in a Veteran's Affairs hospital, and subsequently treating patients in his practice. (*Id.* at 9).

In contrast, Dr. Telew simply stated, summarily, that claimant "denied the full spectrum of symptomatology that would be consistent with a PTSD diagnosis." (Ex. 35-10). While Dr. Reagan's analysis considered the relevant exposure to traumatic circumstances, intrusive memories, nightmares, and prolonged distress among others, Dr. Telew conclusorily stated that claimant did not have the requisite symptoms of PTSD. (*Id.*) Furthermore, Dr. Telew did not respond to Dr. Reagan's detailed analysis of claimant's condition and its relationship to PTSD criteria. The absence of such a response considerably weakens Dr. Telew's opinion. Considering Dr. Reagan's familiarity with claimant's condition and her work and "off-work" exposures, I find his opinion more persuasive.

The ALJ found that Dr. Reagan did not adequately consider the contribution to her PTSD condition from the January 2014 written reprimand and her emotional reaction to it. However, Dr. Reagan had been treating claimant for PTSD for over a year when the January 2014 reprimand issued. Rather than weighing against the compensability of her claim, I consider claimant's actions that led to the reprimand as supporting a conclusion that her declining performance was due to her PTSD, which had developed well before the reprimand. This conclusion is supported by the testimony of claimant's supervisor that she had never seen claimant previously make a similar mistake. (Tr. 81).

Furthermore, while claimant has been characterized as a poor historian, Dr. Telew noted that she was being prescribed Topamax, which was “notorious” for having side effects of causing memory difficulties. (Ex. 35-10). In a similar vein, while not specifically endorsed as an observed symptom, Dr. Reagan noted that the inability to recall key features of traumatic events is a known PTSD symptom. (Ex. 39-4).

The ALJ reasoned that claimant’s testimony lacked sufficient detail regarding traumatic events to establish that her work exposure was similar to listening to a “war zone” as characterized by Dr. Reagan. Yet, the record supports a determination that claimant was reluctant to relate such incidents in all of their detail, likely in part because of her memory difficulties. In any event, the record contains ample evidence that she was exposed to a significant number of disturbing, upsetting and stressful events.

For example, claimant informed Dr. Telew that she had taken approximately 10 calls for service regarding trauma and death involving infants. (Ex. 35-2). In addition, she specifically recalled instructing a grandmother on how to care for a prematurely born infant of only 16 weeks gestation who was unexpectedly born at her daughter’s home, despite knowing that the child would not (and ultimately did not) survive. (*Id.*) She recalled an instance where a mother rolled over her infant in bed, and it did not survive. (*Id.*) Claimant also described providing dispatch during two separate, but simultaneous, incidents involving gun threats when the radio was overwhelmed by multiple officer calls. (Tr. 10). Finally, she recounted taking a call and interviewing a man who reported that his wife had committed a “gun shot” suicide right next to him. (Tr. 32). Disturbing as that would be in and of itself, further investigation quickly discovered that the man was actually his wife’s murderer. (*Id.*)

Based on this description, I consider Dr. Reagan’s characterization of claimant’s employment conditions as similar to a “war zone,” to be adequately supported. Therefore, I disagree with the majority’s conclusion that Dr. Reagan’s opinion was based on an inaccurate history. Moreover, Dr. Reagan excluded the effects from claimant’s reprimand and generally inherent work stressors in offering his opinion. After doing so, Dr. Reagan concluded that claimant’s work-related nonexcludable factors were the major contributing cause of her claimed PTSD condition. Because I consider Dr. Reagan’s opinion to be persuasive, I would conclude that claimant has met her statutory burden of proof. Because the majority reaches a different result, I respectfully dissent.