
In the Matter of the Compensation of
MARIO CARRILLO, Claimant
WCB Case No. 13-03729
ORDER ON REVIEW
Black Chapman et al, Claimant Attorneys
SAIF Legal Salem, Defense Attorneys

Reviewing Panel: Members Johnson and Lanning.

Claimant requests review of Administrative Law Judge (ALJ) Ogawa's order that upheld the SAIF Corporation's denial of his injury claim for a left shoulder condition. On review, the issue is compensability.

We adopt and affirm the ALJ's order with the following supplementation.¹

In February 2013, claimant, a lead custodian at an elementary school, experienced pain and tightness in his shoulder after moving and stacking boxes of paper weighing 50 to 90 pounds each. Multiple coworkers testified that claimant had told them about his shoulder problem on the same day that he moved the boxes of paper. (Tr. 15, 28).

Claimant scheduled an appointment with Dr. O'Sullivan, who was not able to see him until late March 2013. Claimant continued to work, but limited the use of his left arm. (Ex. 27A-1; Tr. 69). His shoulder continued to feel worse before his evaluation. (Tr. 71). He told Dr. O'Sullivan that he did not injure his shoulder at work, and that he had shoulder pain that gradually increased over the last couple of years, and even more so in the last few weeks. (Ex. 2).

Claimant testified that he provided Dr. O'Sullivan with this history because he already had a workers' compensation claim for his right shoulder that had been surgically repaired by Dr. O' Sullivan, and he knew the doctor would instruct him to file another claim. (Tr. 67). Claimant was concerned about his job security because of his prior claim, and also because his wife was working reduced hours. (*Id.*) He ultimately decided to file his claim for the left shoulder condition after the extent of his injury became more clear, and he was reassured by his employer that he would not face discipline for filing another claim. (Tr. 68).

¹ Our decision is based on a *de novo* review of the entire record, including Exhibit a.

Claimant subsequently sought treatment from nurse practitioner Hagen and was placed on work restrictions limiting the use of his left arm and shoulder. (Ex. 3). He relayed a history of onset of left shoulder symptoms after his lifting activities at work. (*Id.*)

In May 2013, claimant was evaluated by Dr. Toal at SAIF's request. Dr. Toal noted that claimant had a prior left shoulder decompressive acromioplasty about 10 years earlier. (Ex. 6-4). Dr. Toal also noted the discrepancy in claimant's history of symptoms as related to Dr. O'Sullivan and to occupational medicine. He concluded that if claimant's subsequent history was accurate, his work activities would be considered a material cause of his left shoulder impingement. (Ex. 6-5). He deferred giving an opinion as to the major contributing cause of claimant's need for treatment/disability for the left shoulder condition until an MRI was obtained. (Ex. 6-6).

The MRI was completed and Dr. Toal interpreted it as showing moderate to severe acromioclavicular joint arthritis, a complete tear of the supraspinatus tendon and tearing of the infraspinatus muscle. Dr. Toal explained that this pathology was chronic and, while the work activities combined to cause claimant's shoulder pain, the major contributing cause of his disability/need for treatment was his preexisting shoulder arthrosis. (Ex. 11-2).

Based on Dr. Toal's conclusions, SAIF issued a denial of claimant's combined left shoulder condition. (Ex. 12). Claimant requested a hearing.

In June 2013, a left shoulder arthroscopy was performed by Dr. Knoblich. (Ex. 16). After the surgery, Dr. Knoblich concurred with the conclusions and reasoning of Dr. Toal. (Ex. 20).

In January 2014, Dr. Maurer reviewed claimant's medical records at his request. Dr. Maurer opined that claimant's history was consistent with an acute subluxation of the biceps tendon, which was the major contributing cause of his disability/need for treatment after the work injury. (Ex. 21-4). He agreed that claimant had preexisting rotator cuff tears. (Ex. 21-3).

In June 2014, Dr. LeClere examined claimant at SAIF's request. He disagreed with Dr. Maurer's conclusion regarding an acute biceps tendon subluxation. (Ex. 22). Instead, Dr. LeClere considered claimant's symptoms to be more consistent with a preexisting subluxation combined with a flare of symptoms from his work injury.

Claimant continued to have left shoulder pain and was evaluated by Dr. Denard in August 2014. Dr. Denard recommended a reverse shoulder arthroplasty. However, because claimant would not be able to continue working with the necessary permanent work restrictions following such a procedure, a revision repair of the rotator cuff with allograft was performed. (Exs. 23B, 24). After performing the surgery, Dr. Denard agreed with the conclusions of Drs. Toal, Knoblich and LeClere. (Ex. 28).

The ALJ concluded that claimant established legal causation of his injury claim and that the work injury was a material contributing cause of the disability/need for treatment of his left shoulder condition. However, finding that SAIF established a “preexisting condition” and “combined condition,” the ALJ determined that SAIF met its burden to show that the work injury was not the major contributing cause of the disability/need for treatment of claimant’s combined condition. *See* ORS 656.266(2)(a).

On review, claimant contends that Dr. Mauer’s opinion is more persuasive than those of Drs. Toal and LeClere, and that SAIF did not establish that he had a legally cognizable “preexisting condition,” and combined condition.² Based on the following reasoning, we affirm.

Claimant must prove that the February 2013 work injury was a material contributing cause of the disability/need for treatment related to his claimed condition. ORS 656.005(7)(a); ORS 656.266(1); *Tricia A. Somers*, 55 Van Natta 462, 463 (2003). If claimant establishes an “otherwise compensable injury,” and a “combined condition” is present, SAIF must prove that the otherwise compensable injury was not the major contributing cause of claimant’s disability or need for treatment of the combined condition. ORS 656.266(2)(a); *SAIF v. Kollias*, 233 Or App 499, 505 (2010); *Jack G. Scoggins*, 56 Van Natta 2534, 2535 (2004). The “otherwise compensable injury” means the “work-related injury incident.” *Brown v. SAIF*, 262 Or App 640, 652 (2014); *see also Jean M. Janvier*, 66 Van Natta 1827, 1832-33 (2014) (applying the *Brown* definition of an “otherwise compensable injury” to ORS 656.266(2)(a)).

² Claimant notes the absence of a specific demeanor-based determination from the ALJ regarding claimant’s and other witness’ credibility. Although such determinations can assist us in conducting our review, an ALJ is not required to make such a finding. *See, e.g., James J. Lascari*, 51 Van Natta 965, 966 (1999). Moreover, here, the disputed compensability issue turns on the persuasiveness of the physicians’ opinions.

Because of conflicting medical opinions regarding the cause of the claimed condition, this claim presents multiple complex medical questions that must be resolved by expert medical evidence. *Uris v. State Comp. Dep't*, 247 Or 420, 426 (1967); *Barnett v. SAIF*, 122 Or App 279, 283 (1993).

Here, we find that the medical evidence supports a conclusion that claimant's February 27, 2013 work injury was a material contributing cause of the disability/need for treatment of his left shoulder condition. Dr. Toal, who examined claimant at SAIF's request, initially stated that based on his history, the work injury was a material cause of his disability/need for treatment. (Ex. 6-5). After reviewing the MRI, Dr. Toal reasoned that claimant's lifting activities on the date of injury combined with his preexisting condition to cause shoulder pain. (Ex. 11-3). Under such circumstances, claimant has established that he sustained an "otherwise compensable injury."³ ORS 656.005(7)(a); ORS 656.266(1); *Tricia A. Somers*, 55 Van Natta 462, 463 (2003).

Because SAIF asserts the presence of a "combined condition," it has the burden of proving the existence of a "preexisting condition," as defined by ORS 656.005(24), and that claimant's condition is a "combined condition." ORS 656.005(7)(a)(B); ORS 656.266(2)(a); *Kollias*, 233 Or App at 505. For the following reasons, we find that SAIF has met these requirements.

For purposes of determining the presence of a "preexisting condition" under ORS 656.005(24)(a)(A), the Supreme Court has determined that the legislature intended the term "arthritis" to mean the "inflammation of one or more joints, due to infectious, metabolic, or constitutional causes, and resulting in breakdown, degeneration, or structural change." *Schleiss v. SAIF*, 354 Or 637, 652-53 (2013); *Hopkins v. SAIF*, 349 Or 348, 364 (2010); *see also Daniel B. Slater*, 66 Van Natta 335, 337 (2014). To establish the existence of arthritis, a carrier must establish that the claimant suffers from "inflammation of whatever joint or joints it contends are affected by the arthritic condition." *Schleiss*, 354 Or at 653; *Hopkins*, 349 Or at 363; *see Staffing Services, Inc. v. Kalaveras*, 241 Or App 130, 137-38, *rev den*, 350 Or 423 (2011) ("despite the existence of medical opinions in the record that [the] claimant's condition is arthritis or arthritic, the board was required to determine in the first instance whether the record was sufficient to establish that [the] claimant suffers from that condition as legally

³ Considering Dr. Toal's opinion, we need not address the persuasiveness of Dr. Maurer's opinion (which also supports a connection between claimant's work injury and his claimed condition) regarding the "otherwise compensable injury" issue.

defined”); *Michael Kelson*, 65 Van Natta 32 (2013) (interpreting *Kalaveras* to mean that there is no “arthritis” or “arthritic condition” without evidence of joint inflammation); *Paul D. Beer*, 63 Van Natta 975, *recons*, 63 Van Natta 1191 (2011) (same).

Here, claimant contends that the opinions of Dr. Toal and Dr. LeClere do not persuasively establish that he had a legally cognizable “preexisting condition.” Asserting that both physicians refer to multiple preexisting conditions, he argues that their opinions are imprecise as to which conditions causally contributed to his shoulder condition. Claimant also contends that these opinions do not establish the presence of inflammation sufficient to find a legally cognizable arthritis/arthritic condition. *See Kalaveras*, 241 Or App at 137-38.

However, Dr. Toal identified acromioclavicular joint arthrosis and massive rotator cuff tears as preexisting conditions. (Ex. 11-3). Additionally, Dr. Toal diagnosed left shoulder impingement syndrome, which was previously treated by acromioplasty and decompression about 10 years before the work injury. (Exs. 6-5, 11-2). In doing so, he described impingement syndrome as an inflammatory condition of the shoulder joint due to constitutional causes, anatomy and use. (Ex. 6-5). Finally, Dr. Toal explained that the etiology of claimant’s impingement syndrome and rotator cuff tears was his preexisting shoulder arthrosis. (Ex. 11-2).

Dr. LeClere similarly noted claimant’s “pre-work injury” history of left shoulder impingement and surgical treatment. (Ex. 22-10). Drs. Toal and LeClere both explained that claimant’s rotator cuff tears were the cause of his disability and need for treatment, and that the tears were long-standing, chronic, and preexisted claimant’s February 2013 work injury. (Exs. 6, 11, 19, 22). Claimant’s treating surgeons, Dr. Knoblich and Dr. Denard, concurred with these opinions. (Exs. 20, 28).

Finally, Dr. Maurer agreed that claimant had preexisting, post-surgical left shoulder pathology before the work injury. (Ex. 21-3). While Dr. Maurer disagreed with Drs. Toal and LeClere regarding the cause of claimant’s current need for treatment, he did not take issue with their characterization of claimant’s acromioclavicular joint arthritis and degenerative rotator cuff tears as being preexisting arthritic conditions. (Exs. 21, 27A).

Based on these opinions, the record persuasively establishes that claimant had legally cognizable “preexisting conditions” due to prior medical treatment and the presence of arthritis/arthritic conditions. ORS 656.005(24)(a)(A). Consequently, we turn to the “combined condition” issue.

Citing *Arms v. SAIF*, 268 Or App 761, 771 (2015), claimant contends that SAIF must establish that there are two medical conditions constituting the component parts of the combined condition. Consistent with the *Brown* rationale, we have previously reasoned that a combined condition is a preexisting condition combined with a work-related “injury incident.” *Ryan J. Jones*, 67 Van Natta 161, 163-4 (2015); *Janvier*, 66 Van Natta at 1830. In any event, claimant relies on Dr. Maurer’s opinion, who concluded that claimant had two conditions including preexisting rotator cuff tears and an acute biceps subluxation.⁴ (Ex. 27A).

Furthermore, we do not interpret the court’s discussion of “combined conditions” in *Arms* to reject the *Brown* decision’s characterization of a “combined condition” as a preexisting condition combined with a work-related “injury incident.” Instead, *Arms* analyzed a medical services claim within the context of ORS 656.225, and the court’s holding did not precisely concern the definition of a “combined condition.” 268 Or App at 768.

Here, the medical evidence establishes that claimant had a preexisting condition that combined with the work-related “injury incident” to cause or prolong disability or need for treatment. See ORS 656.266(2)(a); ORS 656.005(7)(a)(B); *Vicky L. Broucher*, 67 Van Natta 325, 328-29 (2015) (relying on physician’s opinion that established the claimant’s work injury combined with preexisting lumbar spondylosis). Dr. Toal explained that claimant’s lifting activities caused his preexisting rotator cuff pathology to become symptomatic. (Ex. 11-3). Dr. Maurer agreed that claimant had a preexisting degenerative rotator cuff tear, but opined that his biceps tendon subluxation was caused by the work injury and was the major contributing cause of his need for medical treatment. (Ex. 21). In response, Dr. LeClere explained that the rotator cuff tears of the supraspinatus and subscapularis would contribute to instability of the biceps tendon, making it more likely to be a preexisting or chronic subluxation. (Exs. 22-8, 23-28-29). In reply, Dr. Maurer did not express any disagreement with Dr. LeClere’s opinion regarding the stability provided to the biceps tendon by an intact rotator cuff, though he disagreed with Dr. LeClere’s conclusion about the cause of the biceps subluxation.

Regardless of this “causation” disagreement regarding claimant’s biceps subluxation, Dr. Maurer did not dispute the existence of a combined condition. Under such circumstances, the aforementioned physicians’ opinions support the existence of a “combined condition.”

⁴ In addition, Dr. Maurer’s opinion satisfies the Supreme Court’s characterization of a “combined condition” as “two medical problems simultaneously.” See *Multifoods Specialty Distrib. v. McAtee*, 333 Or 629, 636 (2002); *Janvier*, 66 Van Natta at 1830.

Finally, we address whether SAIF has proved that the “otherwise compensable injury” was not the major contributing cause of claimant’s disability or need for treatment of the combined condition. ORS 656.266(2)(a); *Kollias*, 233 Or App at 505; *Scoggins*, 56 Van Natta at 2535. In doing so, we look to the medical evidence supporting SAIF’s denial. *Jason J. Skirving*, 58 Van Natta 323, 324 (2006), *aff’d without opinion*, 210 Or App 467 (2007).

We find that the opinion of Dr. LeClere, as supported by Drs. Toal, Knoblich, and Denard, satisfies SAIF’s aforementioned burden of proof. Dr. LeClere persuasively explained that the preexisting conditions were the major contributing cause of the combined left shoulder condition. Specifically, he reasoned that the preexisting rotator cuff tears would lead to instability of the biceps tendon making a chronic/preexisting subluxation very likely. (Exs. 22-8, 23-28-29). He also noted that claimant’s biceps pathology was strongly correlated with, and almost an expected finding of, rotator cuff tears like claimant had developed. (Ex. 23-29). Moreover, Dr. LeClere’s opinion is consistent with that of Dr. Toal, and is also supported by the opinions expressed by Drs. Knoblich and Denard.

While claimant contends that Dr. Maurer persuasively rebutted the opinions of the other examiners, we disagree. In his final comments, Dr. Maurer did not find it particularly relevant which part of the anatomy worsened to cause claimant’s need for treatment. (Ex. 27A-3). He stated that a more general proposition was probable; *i.e.*, that work events as described in February 2013 “materially altered” claimant’s “shoulder function.” (*Id.*) Such an opinion is not necessarily inconsistent with SAIF’s burden to establish that the work-related injury/incident was not the major contributing cause of claimant’s disability/need for treatment for his combined left shoulder condition. In any event, Dr. Maurer’s opinion did not persuasively provide reasoning to explain the contribution (or lack thereof) of claimant’s preexisting rotator cuff tears to his disability/need for treatment of the left shoulder, nor did he directly contradict Dr. Toal’s and Dr. LeClere’s major contributing cause opinions. In the absence of such a response, we discount the persuasiveness of Dr. Maurer’s opinion. *See Somers v. SAIF*, 77 Or App 259, 263 (1986) (more weight is given to medical opinions that are well reasoned); *Janet Benedict*, 59 Van Natta 2406, 2409 (2007), *aff’d without opinion*, 227 Or App 289 (2009) (medical opinion less persuasive when it did not address contrary opinions).

In conclusion, the persuasive medical evidence establishes that claimant's work-related "injury incident" was not the major contributing cause of his disability/need for treatment for his combined left shoulder condition. Consequently, the disputed claim is not compensable. Accordingly, we affirm.

ORDER

The ALJ's order dated December 11, 2014 is affirmed.

Entered at Salem, Oregon on July 7, 2015