

In the Matter of the Compensation of
JEFRE C. BROWN, Claimant
WCB Case No. 15-01459
ORDER ON RECONSIDERATION
Dale C Johnson, Claimant Attorneys
MacColl Busch Sato PC, Defense Attorneys

Reviewing Panel: Members Lanning and Curey.

On September 21, 2016, we abated our previous order that affirmed an Administrative Law Judge's (ALJ's) order that upheld the self-insured employer's denial of claimant's occupational disease claim for bilateral carpal tunnel syndrome (CTS). We took this action to consider claimant's motion for reconsideration, along with his submission of further medical records. Having received the employer's response, we proceed with our reconsideration. Based on the following reasoning, we adhere to our prior decision.

Our review is limited to the record developed by the ALJ. ORS 656.295(5). However, we may remand to the ALJ for further taking of evidence if we find that the case has been "improperly, incompletely or otherwise insufficiently developed[.]" *Id.* Accordingly, we treat claimant's submission of a "post-hearing" document as a motion to remand to the ALJ for the taking of additional evidence. *Michael L. Stroup*, 58 Van Natta 1598, 1598 (2006).

We remand to the ALJ for the taking of additional evidence if we find a compelling reason to do so. *See SAIF v. Avery*, 167 Or App 327, 333 (2000); *Jack R. Puz*, 57 Van Natta 202 (2005). A compelling reason to remand exists if evidence: (1) concerns disability; (2) was not obtainable with due diligence at the time of the hearing; and (3) is reasonably likely to affect the outcome of the case. *Compton v. Weyerhaeuser Co.*, 301 Or 641, 646 (1986); *Avery*, 167 Or App at 333-34 (citing *Compton*); *Patrick B. Gulick*, 58 Van Natta 1627 (2006).

Here, claimant submits the results of an August 2016 blood test, which was interpreted as negative for diabetes. In submitting this information, claimant does not explain why this proffered evidence was unobtainable at the time of the October 2015 hearing. Moreover, in January 2015, nine months before the hearing, Dr. Bell, a neurologist, recommended blood testing to screen claimant for possible diabetes. (Ex. 9-9). In the absence of a persuasive explanation for this delay in submitting this report regarding claimant's blood test, we are not persuaded that the information contained in this proposed evidence was unobtainable at the time of the hearing in the exercise of due diligence.

In addition, referring to Dr. Bell's opinion (Ex. 17-2), claimant argues that our previous decision concerning the compensability issue was based on speculation by Dr. Green that claimant had diabetes. However, in expressing her opinion, Dr. Bell mentioned diabetes as a "possible explanation" of claimant's polyneuropathy that merited further investigation. (Ex. 17-2). In doing so, Dr. Bell also explained that claimant's work activities were not of the type known to cause CTS, and that claimant's obesity, age and genetic factors were the major contributing cause of his bilateral CTS.

Thus, Dr. Bell identified possible diabetes as one potentially contributing factor to claimant's bilateral CTS. However, more importantly, Dr. Bell's opinion that claimant's work activities were not the major cause of claimant's bilateral CTS was based on multiple factors. Given such circumstances, we do not consider the blood test results, submitted to show that claimant did not have diabetes, to be reasonably likely to affect the outcome of our decision to uphold the employer's denial.

Consequently, based on the aforementioned reasoning, we conclude that there is no compelling reason to remand this case for the admission of additional evidence. Accordingly, remand is not warranted.

Finally, claimant contends that our reasoning regarding the compensability issue confuses the diagnosis of "polyneuropathy" with the causes of CTS. In doing so, he describes polyneuropathy as a systemic disease process affecting the nerves, in contrast to CTS, which he describes as a compression neuropathy. Reasoning that Dr. Bell did not diagnose polyneuropathy and that Dr. Green's diagnosis of CTS does not support a diagnosis of polyneuropathy, claimant argues that these physicians' opinions should be discounted. Based on the following reasoning, we adhere to our previous analysis, as supplemented below.

Dr. Bell explained that claimant's "polyneuropathy" had been documented based on his upper extremity neuropathies diagnosed by an electrodiagnostic study, as well as his complaints of lower extremity numbness in February 2014. (Ex. 17-2). In addition, Dr. Green noted that claimant had compression at the elbows affecting both ulnar nerves, as well as bilateral CTS. Dr. Green explained that "[t]he occurrence of compressive mononeuropathies at four distinct locations – all at around the same time – strongly suggests that intrinsic or idiopathic personal factors are the primary cause of the condition," referring to the diagnosed CTS. (Ex. 14-3). Thus, Drs. Green and Bell considered the simultaneous presence of several compressive neuropathies to weigh against work-related causes of claimant's bilateral CTS.

Based on the description of claimant's complaints expressed in the opinions offered by Drs. Green and Bell, regardless of the possible definitions of "polyneuropathy" in other circumstances,¹ Dr. Bell used the term to indicate the presence of neuropathies (compressive or otherwise) in multiple parts of the body. As explained above, and elsewhere in our previous decision, claimant's presentation was consistent with Dr. Bell's description of "polyneuropathy."

In conclusion, in rendering their opinions, Drs. Bell and Green considered the presence of multiple neuropathies, including the claimed bilateral CTS, in identifying non-work related factors as the major contributing cause of claimant's bilateral CTS condition. Dr. Meldrum did not address their reasoning in that regard. In the absence of a persuasive response to such reasoning, we continue to discount Dr. Meldrum's opinion. *See 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). Consequently, because the burden of proving the compensability of his disputed claim rests with claimant, we adhere to our conclusion that the record does not persuasively establish that his work activities were the major contributing cause of his claimed bilateral CTS condition. *See* ORS 656.266(1); ORS 656.802(2)(a).

Accordingly, on reconsideration, as supplemented, we republish our prior orders. The parties' 30-day statutory rights of appeal shall begin to run from the date of this order.

IT IS SO ORDERED.

Entered at Salem, Oregon on October 17, 2016

¹ The record does not establish that "polyneuropathy" and "compression neuropathy" are mutually exclusive diagnoses.