

In the Matter of the Compensation of
FRANKLIN D. JANTZEN, Claimant
WCB Case No. 14-04913, 14-03397
ORDER ON REVIEW
Julene M Quinn LLC, Claimant Attorneys
SAIF Legal Salem, Defense Attorneys

Reviewing Panel: Members Weddell, Curey and Somers. Member Weddell concurs in part and dissents in part.

Claimant requests review of Administrative Law Judge (ALJ) Sencer's order that: (1) upheld the SAIF Corporation's denial of his injury/occupational disease claim for a low back condition; and (2) upheld SAIF's denials of his new/omitted medical condition claim for sciatica and L3-4, L4-5, and/or L5-S1 disc pathology. On review, the issue is compensability. We reverse in part and affirm in part.

FINDINGS OF FACT

We adopt the ALJ's "Findings of Fact" with the following summary and supplementation.

In April 2008, claimant began working for the employer as a mechanic, servicing and repairing farm equipment. (Tr. 8, 9). His work involved lifting up to 130 pounds. (Tr. 9).

In May and June 2010, claimant consulted Dr. Soudah, a family physician, about multiple health conditions, including low back pain. Dr. Soudah recommended home physical therapy exercises and over-the-counter medication. (Exs. 1-2, 2-2).

In September 2010, claimant developed cramping low back pain that radiated down his right leg. (Ex. 5; Tr. 10, 11). He woke up in pain on September 14, 2010. (Ex. 5). He did not recall a specific injury, but thought he twisted his back at work the day before while "air[ing] up" truck tires. (Exs. 5, 9).

On September 23, 2010, Dr. Serrano diagnosed a low back strain. (Ex. 5). A November 4, 2010 MRI showed L2-3 and L3-4 degenerative changes, an L4-5 left-sided disc herniation and right-sided stenosis with near complete effacement of the epidural fat around the nerve root, and bilateral L5 pars defects. (Ex. 10).

On November 18, 2010, SAIF accepted a low back strain. (Ex. 10A).

On December 17, 2010, claimant asked Dr. Martinez, his then-attending physician, to release him to regular work. (Exs. 11, 14). On January 6, 2011, claimant advised Dr. Martinez that he was unable to work full-time at his regular work due to recurrent back pain. (Ex. 15). Dr. Martinez restricted him to part-time light duty work. (*Id.*)

On March 31, 2011, claimant saw Dr. Gehling, a neurosurgeon. (Ex. 18-1). Dr. Gehling interpreted the MRI as showing right L4-5 foraminal stenosis and diagnosed a “resolved” right L4 radiculopathy. (Ex. 18-4).

On June 10, 2011, claimant followed-up with Dr. Martinez, who diagnosed chronic back pain, sciatica, lumbar strain, and degenerative disc disease. (Ex. 20). On July 15, 2011, he reported that the low back strain was medically stationary. (Ex. 21A).

A July 27, 2011 Notice of Closure awarded no permanent disability. (Ex. 21B). Claimant did not challenge the Notice of Closure.

Between 2011 and 2014, claimant continued to work for the employer, but he worked fewer hours than he had before the injury and limited lifting to 45 pounds. (Tr. 11). When he lifted more than 45 pounds or worked in awkward positions, he had back soreness and occasional right leg numbness. (Tr. 12).

On May 6, 2014, claimant experienced acute back and right leg pain when he tried to straighten up after bending over while working on a belt on the underside of a potato piler. (Tr. 12, 13). On May 12, 2014, Dr. Johnson assessed low back pain with right leg radicular symptoms, a history of back problems, and some “new” elements with pain down the right leg. (Ex. 22A). Dr. Johnson did not know whether claimant had a “new event or a flare-up of an old event.” (Ex. 22A).

A May 20, 2014 lumbar MRI showed advanced degenerative changes at multiple levels, most significant on the right at L4-5. (Ex. 23).

Claimant filed a new initial claim for his low back condition, as related to the May 6, 2014 work incident. (Ex. 22).

On July 8, 2014, Dr. Vetter, an orthopedic surgeon, performed an examination and radiographic review at SAIF's request. He thought that the lumbar MRIs showed multilevel degenerative disease and no substantive change between 2010 and 2014. (Ex. 27-6). After questioning claimant and reviewing the record, Dr. Vetter found no work-related activity or event that could have caused the lumbar spine disease that he considered responsible for claimant's impairment. (*Id.*) He asked claimant to demonstrate the position he was in on May 6, 2014, as well as other positions he assumed in carrying out his work activities. (Ex. 27-7). Dr. Vetter concluded that the 2014 work event, which he viewed as "simply arising from a bent position," was not "injurious" (*i.e.*, not a material contributing cause of the need for treatment/disability). (Ex. 27-10). In addressing SAIF's questions regarding combined condition and major contributing cause, he opined that the only contributory cause was the preexisting condition. (Ex. 27-11). He also concluded that claimant's work-related activities were not of a type, frequency, and duration to cause significant low back difficulties because, although heavy, they were not performed in repetitive awkward positions. (Ex. 27-6, -8).

On July 10, 2014, SAIF denied compensability of claimant's May 6, 2014 "low back condition" claim under both injury and occupational disease theories. (Ex. 28). Claimant requested a hearing.

On July 18, 2014, referring to the 2010 injury, claimant initiated a new/omitted medical condition claim for lumbar sciatica and L3-4, L4-5, and/or L5-S1 disc pathology. (Ex. 30).

On September 16, 2014, SAIF denied the lumbar sciatica condition on the basis that it was not compensably related to claimant's 2010 work injury. (Ex. 34). On the same day, in a separate document, SAIF denied the L3-4, L4-5, and L5-S1 disc pathology on the basis that claimant's request did not clearly specify the location or nature of a specific medical condition.¹ (Ex. 35). Claimant requested a hearing.

On November 3, 2014, claimant consulted Dr. Dreyer, a neurosurgeon, who performed an examination and radiographic review. (Exs. 36, 38-1). Dr. Dreyer opined that claimant's work injuries and activities were the major cause of his L4-5 disc pathology and lumbar sciatica. (Ex. 38-9). He also concluded that the

¹ SAIF's September 16, 2014 denial denied "L-4 disc pathology." (Ex. 35-1). At hearing, SAIF amended and clarified its denial to also include L3-4 disc pathology. (Tr. 3).

2010 work injury was the major cause of the “new and now current condition” and that the 2014 injury was the major contributing cause of claimant’s injury, disability, and need for treatment. (Ex. 38-12). He explained that the 2010 injury compressed and materially and pathologically damaged the L4-5 disc and surrounding structures and, together with ongoing work activities and the 2014 work injury, accelerated and worsened the degenerative process, making it painful and causing impaired functioning in 2014. (Ex. 38-12).

On December 3, 2014, Dr. Johnson adopted the opinion of Dr. Dreyer and disagreed with that of Dr. Vetter. (Ex. 39-1). Dr. Johnson also stated that the major contributing cause of claimant’s current disability and need for medical treatment “has been, and remains, his work injury.” (Ex. 39-2). Dr. Johnson did not indicate whether he was referring to the 2010 injury or the 2014 injury.

Dr. Vetter disputed the opinions of Drs. Dreyer and Johnson. He asserted that the lumbar MRIs showed that all of the degenerative change had taken place before the 2010 work injury and did not support a conclusion that the L4-5 disc pathology was changed by that injury or that the sciatica was caused in major part by the 2010 injury. (Ex. 41-2). He concluded that the degenerative disease (which he described as “at its end stages”) outweighed any contribution from either work injury, neither of which was described as significant in the contemporaneous medical record. (Ex. 41-3). He noted that the MRIs showed that the nerve had zero cushioning such that any insult could result in symptoms. (*Id.*) He also noted that neither his examination nor that of Dr. Martinez on December 1, 2010, showed a neurologic deficit. (*Id.*) Thus, to the extent that claimant ever had a sciatica condition, Dr. Vetter concluded that the major contributing cause of any associated disability/need for treatment was the preexisting condition. (*Id.*)

Relying on Dr. Vetter’s opinion, the ALJ upheld SAIF’s denials of claimant’s May 6, 2014 injury/occupational disease claim and the new/omitted medical conditions claimed under the 2010 injury. The ALJ found that Dr. Vetter had an accurate understanding of the work-related events, whereas Dr. Dreyer’s opinion was based on an inaccurate understanding of those events. The ALJ also reasoned that, even if the 2010 and 2014 work events were a material contributing cause of claimant’s need for treatment, the preexisting condition was the major contributing cause of the disability/need for treatment under a “combined condition” analysis.

On review, claimant contests the ALJ's evaluation of the medical opinions. For the following reasons, we affirm those portions of the ALJ's order that concerned the May 6, 2014 injury/occupational disease claim and the new/omitted medical condition claim for sciatica, and reverse that portion that upheld SAIF's denial of claimant's L3-4, L4-5, and L5-S1 disc pathology.

July 10, 2014 Denial

Claimant relies on the opinions of Drs. Dreyer and Johnson to prove the compensability of his 2014 occupational disease/injury claim for a "low back" condition. (Ex. 38, 39). For the following reasons, we find the medical evidence insufficient to establish compensability under either theory.

Occupational Disease

To prevail on his occupational disease claim, claimant must establish that employment conditions, including work injuries, were the major contributing cause of the disease. *See* ORS 656.266(1); ORS 656.802(2)(a); *Hunter v. SAIF*, 246 Or App 755, 760 (2011); *Kepford v. Weyerhaeuser Co.*, 77 Or App 363, 366, *rev den*, 300 Or 722 (1986). A condition that is due solely to a specific work injury, without contribution from general employment conditions, is not considered a compensable occupational disease. *See Carmen S. Lopez*, 65 Van Natta 1629, 1631 (2013), *aff'd without opinion*, *Lopez v. SAIF*, 271 Or App 862 (2015) (where the most reasonable interpretation of a medical opinion was that a disputed condition resulted from a work injury, the opinion did not establish that the claimant's work activities in general, or in combination with the work-related injury, were the major contributing cause of her occupational disease claim); *Ryan S. Henderson*, 62 Van Natta 1189 (2010) (an occupational disease claim was not compensable where the medical evidence was more consistent with a condition attributable to a specific injurious event rather than a result of the claimant's ongoing work activities).

Considering the disagreement between medical experts regarding the cause of claimant's "low back condition," this claim presents a complex medical question that must be resolved by expert medical opinion. *See Barnett v. SAIF*, 122 Or App 279, 282 (1993). We give more weight to those medical opinions that are well reasoned and based on complete information. *See Somers v. SAIF*, 77 Or App 259, 263 (1986).

As described above, Dr. Dreyer offered seemingly inconsistent conclusions about whether the major contributing cause of claimant's low back condition was his 2010 injury, his 2014 injury, or some combination with claimant's ongoing work activities. For instance, he opined that claimant's work injuries and activities were the major cause of his L4-5 disc pathology and sciatica. (Ex. 38-9). Yet, he also stated that the 2010 work injury was the major cause of the "new and now current condition." (Ex. 38-12). He further observed that the 2014 work injury was the major contributing cause of claimant's injury, disability, and need for medical treatment. (*Id.*) Absent further explanation for these inconsistent positions, we do not find his opinion persuasive. See *Howard L. Allen*, 60 Van Natta 1423, 1424 (2008) (internally inconsistent medical opinion, without explanation for the inconsistencies, was unpersuasive).

Furthermore, Dr. Dreyer does not explain how the ongoing work activities accelerated/worsened the degenerative process or rebut Dr. Vetter's opinion that the activities were not of a type, frequency, and duration to cause significant low back difficulties. (Ex. 27-8). Finally, Dr. Dreyer did not address Dr. Vetter's opinion that there was no interval change between the 2010 MRI and the 2014 MRI, because by the time of the 2010 MRI, claimant's preexisting degenerative disease was "fully progressed" (*i.e.*, "end state"). (Ex. 41-2). For these reasons as well, we find Dr. Dreyer's opinion unpersuasive. See *Moe v. Ceiling Sys., Inc.*, 44 Or App 429, 433 (1980) (rejecting unexplained or conclusory opinion); *Janet Benedict*, 59 Van Natta 2406, 2409 (2007), *aff'd without opinion*, 227 Or App 289 (2009) (medical opinion unpersuasive when it did not address contrary opinions).

Dr. Johnson's opinion (*i.e.*, that the major contributing cause of claimant's disability and need for medical treatment was his "work injury") does not establish that employment conditions in general, or in combination with the work injuries, were the major contributing cause of claimant's low back condition. (Ex. 39-2). See *Michael G. O'Connor*, 58 Van Natta 689 (2006), *aff'd without opinion*, 215 Or App 358 (2007) (where the medical evidence attributed the claimant's condition to distinct injuries, and did not establish that it was related to his work activities in general or in combination with the work injuries, the occupational disease claim was not compensable). Therefore, Dr. Johnson's opinion does not support the compensability of an occupational disease.

Finally, Dr. Vetter's opinion does not support compensability of an occupational disease. Therefore, we are not persuaded that claimant's occupational disease claim is compensable.

Injury Claim

To establish a compensable injury, claimant must prove that the May 6, 2014 work incident was a material contributing cause of his disability or need for treatment. ORS 656.005(7)(a); ORS 656.266(1). If claimant meets that burden and the medical evidence establishes that an “otherwise compensable injury” combined with a “preexisting condition” to cause or prolong disability or need for treatment, the burden shifts to SAIF to prove that the otherwise compensable injury was not the major contributing cause of the disability or need for treatment of the combined condition. ORS 656.005(7)(a)(B); ORS 656.266(2)(a); *Jack G. Scoggins*, 56 Van Natta 2534, 2535 (2004).

Claimant relies first on Dr. Dreyer’s opinion that the 2014 injury was the major contributing cause of his disability and need for medical treatment. Yet, as previously described, Dr. Dreyer took seemingly inconsistent positions with regard to the cause of claimant’s low back condition in 2014. As we reasoned above, in the absence of further explanation, Dr. Dreyer’s fluctuating opinion is ambiguous and is not sufficient to establish that the 2014 injury was a material contributing cause of claimant’s disability or need for treatment. *See Moe*, 44 Or App at 433 (rejecting unexplained, conclusory opinion); *Allen*, 60 Van Natta 1424 (internally inconsistent medical opinion, without explanation for the inconsistencies, was unpersuasive).

Additionally, Dr. Dreyer opined that the 2014 “injury” accelerated and worsened the “degenerative process, making it symptomatic, painful, and causing impaired functioning,” but he did not explain how this occurred or address Dr. Vetter’s opinion that explained why the event did not contribute to an injury. (Exs. 27-10, 38-12). Therefore, we find Dr. Dreyer’s opinion insufficiently explained. *See Moe*, 44 Or App at 433 (rejecting unexplained or conclusory opinion); *Benedict*, 59 Van Natta at 2409 (medical opinion unpersuasive when it did not address contrary opinions).

Claimant argues that Dr. Vetter’s acknowledgment that work activity can cause symptoms supports the premise that the 2014 event was a material contributing cause of the need for treatment. We disagree with this contention.

Dr. Vetter opined that claimant’s low back condition is such that certain activities, such as bending forward at the waist with relatively straight knees, can bring out symptoms. (Ex. 27-8). He explained that the “nerve effectively had zero cushioning since 2010, so any insult could create symptoms.” (Ex. 41-3). Yet,

when Dr. Vetter was asked if the 2014 work event was a material contributing cause of claimant's need for medical treatment, he responded that the work event was not "injurious." (Exs. 27-10, 38-12). He further opined that the *only* contributory cause to claimant's disability or need for treatment was the preexisting condition. (Ex. 27-11). Therefore, Dr. Vetter's opinion does not satisfy claimant's initial burden.

Consequently, because the medical record does not persuasively establish an "otherwise compensable injury" with regard to the 2014 work event, the burden does not shift to SAIF under ORS 656.266(2)(a). Accordingly, we affirm the ALJ's decision to uphold SAIF's denial of the 2014 injury claim.

September 16, 2014 "Sciatica" Denial

To prevail on his new/omitted medical condition claim for sciatica, claimant must prove that the claimed condition exists and that the 2010 work injury was a material contributing cause of the disability or need for treatment of the condition. *See* ORS 656.005(7)(a); ORS 656.266(1); *Maureen Y. Graves*, 57 Van Natta 2380, 2381 (2005). If claimant establishes an "otherwise compensable injury" and a "combined condition" is present, the burden of proof rests with the employer to 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).

Considering the conflicting evidence regarding the nature and cause of the claimed condition, the compensability issue presents complex medical questions that must be resolved by expert medical evidence. *Barnett*, 122 Or App at 283. We give more weight to those opinions that are well reasoned and based on complete information. *Somers*, 77 Or App 263.

In support of this theory of compensability, claimant again relies on the opinion of Dr. Dreyer, who attributed the sciatica condition to the 2010 work injury. (Ex. 38-12). Referring to Dr. Gehling's description of the 2010 MRI as showing a bulging L4-5 disc, foraminal stenosis, interspace collapse, and facet joint telescoping, Dr. Dreyer surmised that the 2010 injury caused the disc to become unstable and irritated, resulting in a painful sciatica condition. (Exs. 18-4, 38-12).

Dr. Vetter disputed Dr. Dreyer's opinion on the basis that it was not supported by the MRIs. (Ex. 41-2). Dr. Vetter opined that the 2010 MRI showed degenerative changes (specifically, a disc osteophyte, changes in the shape of the vertebral body, and loss of disc space height) that took months or years to develop and were not the result of a single acute incident. (Ex. 41-2, -3). He further opined that these degenerative changes represent "arthritis or an arthritic condition in that they involve inflammation of one or more joints, due to infectious, metabolic, or constitutional causes, and resulting in breakdown, degeneration, or structural change." (Ex. 41-3).

Dr. Vetter noted that the history that claimant provided to him differed from the history that claimant provided to Drs. Dreyer and Johnson. (Ex. 41-2). Dr. Vetter reported that he "spent some time" discussing claimant's symptoms with both claimant and his wife, and reviewing claimant's pain diagram with him. (*Id.*) Dr. Vetter observed that claimant's only complaint was midline lumbar pain, with no mention of buttock or leg issues. (*Id.*) Dr. Vetter concluded that the 2010 work incident, which was not specifically identified in the contemporaneous medical record, was insignificant and contributed only minimally to claimant's symptoms. (*Id.*) Dr. Vetter determined that, to the extent that claimant ever had sciatica, the major contributing cause of any associated disability or need for treatment was the preexisting condition. (Ex. 41-3).

Dr. Dreyer did not dispute Dr. Vetter's opinion. Accordingly, we find that neither Dr. Vetter's opinion nor Dr. Dreyer's opinion persuasively establish that the 2010 work event was a material contributing cause of claimant's disability/need for treatment for lumbar sciatica. *See Benedict*, 59 Van Natta at 2409.

Because claimant did not establish an "otherwise compensable injury" involving sciatica, the burden does not shift to SAIF under ORS 656.266(2)(a). Accordingly, we affirm the ALJ's order upholding SAIF's denial of the new/omitted medical condition claim for sciatica.

September 16, 2014 Denial (L3-4, L4-5, and/or L5-S1 Disc Pathology)

To initiate a new/omitted medical condition claim, ORS 656.267(1) requires a claimant to "clearly request formal written acceptance of a new medical condition or an omitted medical condition from the insurer or self-insured employer." A "medical condition" is "the physical status of the body as a whole * * * or one of its parts." *Young v. Hermiston Good Samaritan*, 233 Or App 99, 104 (2008). Whether

a claim is for a medical “condition” is a question of fact to be decided based on the medical evidence in individual cases. *Id.* at 107 (finding that “radiculopathy,” defined by the medical evidence as “pain that radiates along the course of a nerve root that exists from the spine,” was a “symptom and not a condition”).

Here, claimant asked SAIF to accept L3-4 disc pathology, L4-5 disc pathology, and/or L5-S1 disc pathology. (Ex. 30). SAIF’s denial asserted that claimant’s request did “not clearly specify the location or nature of a specific medical condition.” (Ex. 35). At hearing, SAIF’s counsel argued that “disc pathology [was] not explained to be a condition.” (Tr. 32). The ALJ’s order did not address whether disc pathology is a “medical condition.” On review, SAIF reiterates its argument that “disc pathology” is not a “condition.”

Dr. Vetter’s assessment was multilevel lumbar spinal degenerative disc disease. (Ex. 27-6). His opinion did not address whether the claimed disc pathology was a “medical condition.”

Dr. Dreyer’s assessment was lumbar spondylosis (as the primary diagnosis), lumbar stenosis, lumbar radicular pain, and lumbago. (Ex. 36-5). He explained that “spondylosis” is “often applied nonspecifically to any lesion of the spine of a degenerative nature,” and describes the same condition as degenerative disc disease or disc pathology. (Ex. 38-8). He opined that these terms “represent a physical status of the body existing in the lumbar spine.” (*Id.*)

Accordingly, in the absence of countervailing medical evidence, Dr. Dreyer’s opinion supports a conclusion that claimant’s new/omitted medical condition claim is for a “medical condition.” *See Fernando Felipe-Cumplido*, 67 Van Natta 1746, (2015) (medical opinion established that the claimed “adjacent segment disease” described the physical status of the claimant’s L4-5 disc); *Nicholas P. McCarthy*, 62 Van Natta 2421 (2010) (medical opinion established that the claimed cervical facet syndrome was a “condition”).

Because SAIF denied claimant’s new/omitted medical condition claim for disc pathology only on the basis that it did not sufficiently describe a “condition,” its denial must be set aside. *David G. Estes*, 67 Van Natta 1511, 1514 (2015) (where the only basis for a denial was that the claimed sciatica was not a “medical condition,” denial set aside where medical opinion established that the claimed sciatica was a “medical condition”).

Claimant's attorney is entitled to an assessed fee for services at hearing and on review in regard to the disc pathology denial. ORS 656.386(1). After considering the factors set forth in OAR 438-015-0010(4) and applying them to this case, we find that a reasonable fee for claimant's attorney's services at hearing and on review in regard to the disc pathology denial is \$12,000, payable by SAIF. In reaching this conclusion, we have particularly considered the time devoted to the issue presented by the "disc pathology" denial (as represented by the record, claimant's appellate briefs, his counsel's fee submissions, and SAIF's objection), the complexity of the issue, the value of the interest involved, and the risk that claimant's counsel may go uncompensated.

Finally, claimant is awarded reasonable expenses and costs for records, expert opinions, and witness fees, if any, incurred in finally prevailing over the disc pathology denial, to be paid by SAIF. *See* ORS 656.386(2); OAR 438-015-0019; *Nina Schmidt*, 60 Van Natta 169 (2003); *Barbara Lee*, 60 Van Natta 1, *recons*, 60 Van Natta 139 (2008). The procedure for recovering this award, if any, is prescribed in OAR 438-015-0019(3).

ORDER

The ALJ's order dated February 6, 2015 is affirmed in part and reversed in part. That portion of the ALJ's order that upheld SAIF's denial of L3-4, L4-5, and/or L5-S1 disc pathology as a new/omitted medical condition is reversed. That denial is set aside and the claim is remanded to SAIF for processing in accordance with law. The remainder of the ALJ's order is affirmed. For services at hearing and on review regarding the aforementioned new/omitted medical condition claim denial, claimant's attorney is awarded an assessed fee of \$12,000, payable by SAIF. Claimant is also awarded reasonable expenses and costs for records, expert opinions, and witness fees, if any, incurred in finally prevailing over this new/omitted medical condition claim denial, to be paid by SAIF.

Entered at Salem, Oregon on April 13, 2016

Member Weddell dissenting in part and concurring in part.

I agree with the majority's reasoning that the new/omitted medical condition claim for L3-4, L4-5, and L5-S1 disc pathology was for a "medical condition." However, in upholding the July 10, 2014 denial of claimant's injury/occupational disease claim for a low back condition and September 16, 2014 denial of

claimant's new/omitted medical condition claim for lumbar sciatica, the majority finds the opinion of Dr. Vetter more persuasive than that of Dr. Dreyer. Because I disagree with the majority's analysis of these opinions, I respectfully dissent.

To establish a compensable occupational disease, claimant must show that employment conditions, when weighed against all other causes, were the major contributing cause of the disease. *See* ORS 656.266(1); ORS 656.802(2)(a). Employment conditions may include work-related injuries. *Hunter v. SAIF*, 246 Or App 755, 760 (2011). Predispositions and susceptibilities do not constitute "causes" contributing to the disease. *See* ORS 656.005(24)(c); *Multnomah County v. Obie*, 207 Or App 482, 488 (2006) (2001 amendments to ORS 656.005(24)(c) were intended to eliminate predispositions from the definition of "preexisting condition" in both injury and occupational disease claims).

To establish a compensable new/omitted medical condition claim, claimant must prove the existence of the disputed condition and that the relevant work incident was a material contributing cause of his disability or need for treatment. *See* ORS 656.005(7)(a); ORS 656.266(1); *Maureen Y. Graves*, 57 Van Natta 2380, 2381 (2005).

Considering the disagreement between medical experts regarding the cause of claimant's conditions, these claims present complex medical questions that must be resolved by expert medical opinion. *See Barnett v. SAIF*, 122 Or App 279, 282 (1993). 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).

For the following reasons, I would find Dr. Dreyer's opinion persuasive and Dr. Vetter's opinion unpersuasive.

Dr. Dreyer, a neurosurgeon, reviewed, and discussed in detail, claimant's medical records and MRIs. (Ex. 38-1, -7). He concluded that "claimant's L4-5 disc pathology and lumbar sciatica are related to his work injuries and activities, more than anything else (51% or more), even after considering all other possible contributing causes." (Ex. 38-9). In support of that opinion, he acknowledged that claimant had preexisting lumbar spondylosis, but he also observed that claimant was not limited in his activities or ability to work before the 2010 injury. (Ex. 38-11). Dr. Dreyer considered the work activity leading to the 2010 injury, claimant's subsequent inability to return to regular work, the acute onset of low back and right leg pain in 2014, after claimant was bent over working on a piece of equipment, and claimant's MRI findings. (Ex. 38-11, -12). Dr. Dreyer opined that the 2010 MRI showed "new damage" to the anatomical structure of the L4-5

disc and to the shock absorbing function of the lumbar discs, resulting in lumbar sciatica and an accelerated protrusion, bulge, or herniation of the L4-5 disc. (Ex. 38-12). Based on those findings, Dr. Dreyer reasoned that the 2010 work injury was the major cause of claimant's L4-5 disc pathology and sciatica, and that ongoing work activities and the 2014 work injury accelerated and worsened the degenerative process, making it painful and causing impairment. (*Id.*) In sum, he concluded that the 2014 work injury was the major contributing cause of claimant's injury, disability, and need for treatment. (*Id.*)

I do not consider Dr. Dreyer's opinion to be inconsistent. Rather, I interpret his opinion to be that the 2010 injury was the major contributing cause of claimant's condition (including sciatica and lumbar disc pathology), which evolved with ongoing work activity and the 2014 injury, so that, ultimately, claimant's work activities, including the 2010 and 2014 work injuries, were the major contributing cause of his back condition, disability, and need for treatment. Dr. Dreyer's thorough and well-reasoned opinion supports claimant's 2014 occupational disease claim, as well as his new/omitted medical condition claim for sciatica. *See* ORS 656.266(1); *Stephen F. Kamin*, 64 Van Natta 2329, 2330 (2012), *aff'd without opinion*, 236 Or 714 (2014) (because the persuasive medical evidence established that the claimant's work activities, including his work injuries, were the major contributing cause of the right rotator cuff tear, the occupational disease claim was compensable).

In contrast, Dr. Vetter diagnosed multilevel lumbar spinal degenerative disc disease due to "constitutional" factors, which he defined as a "combination of [claimant's] genetic makeup and general life experiences." (Ex. 27-6). He reasoned that claimant's lumbar disc degenerative change was so similar level to level, that it "has to be a problem to which claimant was constitutionally/genetically predisposed." (Ex. 27-8). He also thought that claimant's L4-5 nerve had "zero cushioning since 2010, so any insult could create symptoms." (Ex. 41-3). While claimant's "genetic makeup" may make him more *susceptible* to a back condition or injury, it does not constitute a causative factor. *See Corkum v. Bi-Mart Corp.*, 271 Or App 411, 422 (2015) ("the text, context, and legislative history of ORS 656.005(24)(c) show that a condition merely renders a worker more susceptible to injury if the condition increases the likelihood that the affected body part will be injured by some other action or process and does not actively contribute to damaging the body part"). Therefore, I do not consider Dr. Vetter's analysis persuasive.

Likewise, Dr. Vetter's reference to claimant's "general life experiences" is not helpful because he does not identify any specific "life experiences" or explain how they caused claimant's low back condition. He described claimant as enjoying an "active lifestyle," but did not identify any "off-work" factors that contributed to the back condition. (Ex. 27-8). He also opined that claimant's work activities were not of a type, frequency, and duration to cause significant low back difficulties. (*Id.*) Accordingly, I would find Dr. Vetter's opinion lacking in reasoning and explanation. *See Moe v. Ceiling Systems, Inc.*, 44 Or App 429, 433 (1980) (rejecting unexplained medical opinion).

Finally, Dr. Vetter did not rely on accurate mechanisms of injury. Regarding the 2010 injury, he observed that claimant woke up with back pain and, while there was "mention of something happening possibly while changing a tire or while twisting," did not identify a discrete injurious event. (Ex. 41-2). Dr. Vetter did not acknowledge the heavy work that claimant had performed "airing up" truck tires or that he had a compensable injury. As to the 2014 injury, Dr. Vetter found it "hard to imagine" how claimant injured his back when he "went from a bent-over to a standing position." (Ex. 27-11). Dr. Vetter did not acknowledge that claimant had been bending over to work on a belt on the underside of the potato piler or that he experienced acute right leg symptoms when he tried to straighten up. (Tr. 12, 13). These omissions caused Dr. Vetter to trivialize the work events. (Ex. 41-2). Accordingly, I am not persuaded that his opinion was based on an accurate history. *See Miller v. Granite Constr. Co.*, 28 Or App 473, 478 (1977) (medical evidence that was based on inaccurate information was not persuasive).

Based on Dr. Dreyer's thorough and well-reasoned opinion, I would conclude that claimant established a compensable occupational disease for the claimed low back condition, as well as a new/omitted medical condition claim for lumbar sciatica. *See* Because the majority reaches different conclusions, I respectfully dissent.