
In the Matter of the Compensation of
WAIMING M. TANG, Claimant
WCB Case No. 15-03197
ORDER ON REVIEW
Unrepresented Claimant
SAIF Legal Salem, Defense Attorneys

Reviewing Panel: Members Curey and Weddell.

Claimant, *pro se*,¹ requests review of Administrative Law Judge (ALJ) Wren's order that upheld the SAIF Corporation's denial of claimant's occupational disease claim for a mental disorder. On review, the issue is compensability.

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

The ALJ concluded that the stressful circumstances described by claimant constituted reasonable disciplinary, corrective, or job performance evaluation actions that were excluded from supporting the compensability of the claimed condition. *See* ORS 656.802(3)(b). In addition, the ALJ concluded that the medical evidence was insufficient to support claimant's burden of proof. *See* ORS 656.266(1); ORS 656.802(2)(a).

On review, claimant contends that work events were the major contributing cause of his claimed mental disorder. As discussed below, we conclude that the record has not satisfied the statutory requirements for compensability of his claim.

The record must establish that there is a diagnosis of a mental or emotional disorder generally recognized in the medical or psychological community, and that the employment conditions producing the mental disorder exist in a real and objective sense. ORS 656.266(1); ORS 656.802(3)(a). The record must also support a conclusion, by clear and convincing evidence, that the mental disorder arose out of and in the course of employment. ORS 656.802(3)(d). To be "clear

¹ Because claimant is unrepresented, he may wish to consult the Ombudsman for Injured Workers. He may contact the Ombudsman, free of charge, at 1-800-927-1271, or write to:

DEPT OF CONSUMER & BUSINESS SERVICES
OMBUDSMAN FOR INJURED WORKERS
PO BOX 14480
SALEM OR 97309-0405

and convincing,” the truth of the facts asserted must be highly probable. *Riley Hill Contractor Inc. v. Tandy Corp.*, 303 Or 390, 402 (1987); *David M. Sinclair*, 67 Van Natta 63, 64 (2015).

Employment conditions must be the major contributing cause of the disorder. ORS 656.802(2)(a). ORS 656.802(3)(b) requires that the employment conditions producing the mental disorder be conditions other than: conditions generally inherent in every working situation; 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. The phrase “generally inherent in every working situation” means those conditions that are usually present in all jobs and not merely in the specific occupation involved. *Whitlock v. Klamath County Sch. Dist.*, 158 Or App 464 (1999); *Heather D. Whitaker*, 65 Van Natta 1793, 1794 (2013).

In the context of a mental disorder claim, both those factors excluded by ORS 656.802(3)(b) and non-work-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.*

Whether claimant’s condition is either caused in major part by the work exposures or otherwise meets the “mental disorder” criteria presents a complex medical question that must be resolved on the basis of expert medical evidence. *Uris v. Compensation Dept.*, 247 Or 420, 426 (1967); *Barnett v. SAIF*, 122 Or App 281, 283 (1993). When medical experts disagree, we place more emphasis on opinions that are well reasoned and based on the most complete relevant information. *Jackson County v. Wehren*, 186 Or App 555, 559 (2003).

Here, three physicians addressed claimant’s condition and its relationship to his employment. Based on the following reasoning, we are not persuaded that the record establishes a compensable mental disorder.

Dr. McDaniel, claimant’s attending physician, originally opined that claimant had insomnia “due in part to anxiety over his job and a sense of indignation for the perceived unfair treatment that he [had] received from his boss.” (Ex. 1-3). In addition, Dr. McDaniel diagnosed depression, determining that it was partly situational, but the depression also had an “intrinsic component” as well.² (Exs. 1-3, 7-2).

² Although Dr. McDaniel stated that claimant’s frequency and intensity of his migraines were probably related in large part to the employment-related stresses, he did not weigh non-work, excludable, and nonexcludable work factors. (Ex. 9-2). Consequently, this opinion is insufficient to establish compensability. *Shothafer*, 169 Or App at 565-66.

Subsequently, Dr. McDaniel reviewed claimant's statement to SAIF, in which he described various work exposures. (Exs. 18, 22-1). After completing that review, Dr. McDaniel opined that, when weighed against workplace conflict generally inherent in every working environment, the instances described did not rise above the generally inherent factors to cause a mental disorder. (Ex. 22-1).

Ultimately, Dr. McDaniel concluded that, while claimant's workplace "may" have contributed to his condition, it was unclear whether his work exposure was the major contributing cause of a mental disorder condition. (Ex. 22-2). Because it was phrased in terms of possibility rather than probability, we consider Dr. McDaniel's opinion insufficient to support the compensability of the claimed mental disorder condition. *See Gormley v. SAIF*, 52 Or App 1055 (1981) (persuasive medical opinions must be based on medical probability, rather than possibility); *Kyle G. Anderson*, 61 Van Natta 2117, 2117-18 (2009) (the words "can be" and "may be" indicate only possibility, not medical probability).

Dr. Goranson, a psychiatrist, examined claimant at SAIF's request. (Ex. 20). After reviewing the record and performing an examination, he diagnosed possible dysthymic disorder and personality disorder, which he considered to be non-work related. (Ex. 20-20-21). He further determined that, while claimant's job loss may be considered a stressor, it was a consequence of his own choice. (Ex. 20-21). Dr. Goranson concluded that non-work factors constituted approximately 70 to 80 percent of "contributing causes." (Ex. 20-22). Consequently, his opinion does not support a conclusion that claimant's work exposures were the major contributing cause of his mental disorder condition.

Ms. Wong, a mental health therapist, evaluated claimant (under the supervision of Dr. Leung) and diagnosed major depressive disorder, single episode. (Ex. 10-6-7). She determined that claimant was "very concentrated and obsessed with the idea of being wrongfully accused, and [lacked] insight into his share of the problem." (*Id.*) Although she noted several work-related and non-work-related factors, she did not provide a causation analysis weighing nonexcluded work-related factors against excluded work-related factors and non-work-related factors in determining the cause of claimant's mental disorder claim. Under these circumstances, her opinion is insufficient to establish the compensability of the claimed mental disorder condition. ORS 656.266(1); ORS 656.802(2), (3); *Shotthafer*, 169 Or App at 565-66 (2000); *Danny Bundy*, 64 Van Natta 510 (2012) (mental disorder claim not compensable where medical opinion did not weigh excluded work-related factors combined with non-work-related factors against nonexcluded work-related factors in determining major contributing cause).

Based on the aforementioned reasoning, as well as those expressed in the ALJ's order, we conclude that the record does not support the compensability of claimant's mental disorder claim. Accordingly, we affirm.

ORDER

The ALJ's order dated March 8, 2016 is affirmed.

Entered at Salem, Oregon on August 18, 2016