
In the Matter of the Compensation of
SEAN PRUITT, Claimant
WCB Case No. 14-05105
ORDER ON REVIEW
Welch Bruun & Green, Claimant Attorneys
Radler Bohy et al, Defense Attorneys

Reviewing Panel: Members Johnson and Lanning.

Claimant requests review of Administrative Law Judge (ALJ) Fulsher's order that upheld the self-insured employer's denials of his new/omitted medical claim for a right shoulder SLAP lesion/tear. On review, the issue is compensability.

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

In upholding the employer's denial, the ALJ found that claimant did not establish the existence of his claimed right shoulder SLAP lesion/tear, or that his May 29, 2014 work injury was a material contributing cause of the disability/need for treatment of the condition. ORS 656.005(7)(a); ORS 656.266(1); *Maureen Y. Graves*, 57 Van Natta 2380, 2381 (2005). The ALJ reasoned that the opinion of Dr. McWeeney, his treating physician, was less persuasive than the contrary opinions of Drs. Groman and Tesar, who examined claimant at the employer's request.

On review, claimant argues that Dr. McWeeney's opinion persuasively establishes the compensability of his right shoulder SLAP lesion/tear. For the following reasons, we disagree with claimant's arguments.

Drs. Groman and Tesar opined that claimant did not have a right shoulder SLAP tear, and that the mechanism of his injury was not of the type to cause such a tear. (Exs. 40A1, 61, 66, 68). They explained that a SLAP lesion/tear is a tear or avulsion of the labrum at the biceps tendon anchor attachment site, and requires sufficient traction placed on the biceps tendon. (Exs. 40A1-15, -22, 61-14-17, 66-2, 68-2-3). According to Drs. Groman and Tesar, an October 2014 MRI indicated a posterior labral tear, but an intact biceps tendon attachment that was well-located within the bicipital groove. (Exs. 34, 40A1-8, 61-8, 66-2, 68-2-3). Dr. Tesar further explained that, if claimant's work injury contributed to his labral pathology, a SLAP tear would necessarily be more prominent and dramatic than the posterior labral tear. (Exs. 61-16, 68-2-3). Instead, Drs. Groman and Tesar

stated that claimant's symptoms and mechanism of injury were consistent with the accepted right shoulder strain and impingement, as well as acromioclavicular (AC) joint arthritis. (Exs. 40A1-16-24, 61-11-13, -16-18, 66-2-3).

In contrast, Dr. McWeeney opined that the October 2014 MRI, his clinical examination findings, and the temporal relationship of claimant's right shoulder symptoms confirmed the existence of a right shoulder SLAP tear. (Ex. 74). He explained that claimant had a positive Speeds test (which causes stress upon the insertion site of the biceps tendon) and positive "manual distraction testing" that indicated the presence of a right shoulder SLAP tear. (Ex. 74-3). Additionally, Dr. McWeeney opined that the mechanism of claimant's injury that involved lifting, pulling, pushing, and twisting, was sufficient to cause a SLAP tear. (Ex. 74-2-4).

Dr. McWeeney "identified a right shoulder SLAP tear" based on his personal review of the MRI. (Ex. 74-2). Yet, Dr. McWeeney did not dispute Drs. Groman's and Tesar's opinions that the MRI did not show a SLAP lesion, which involves a tear or avulsion of the labrum at the biceps tendon anchor attachment site, or that claimant's injury did not involve sufficient strain of the biceps tendon. In the absence of a counter explanation to the reasoning expressed by Drs. Groman and Tesar, we do not consider Dr. McWeeney's opinion to be well reasoned. *See Moe v. Ceiling Sys., Inc.*, 44 Or App 429, 433 (1980) (rejecting unexplained or conclusory opinion); *see also Janet Benedict*, 59 Van Natta 2406, 2409 (2007), *aff'd without opinion*, 227 Or App 289 (2010) (medical opinion unpersuasive when it did not address contrary opinions).

In addition, Dr. McWeeney opined that claimant's positive Speeds tests and "manual traction testing" correlated well with the MRI findings, which supported a diagnosis of a SLAP tear. (Ex. 74-3). For the following reasons, we do not consider that opinion persuasive.

Dr. McWeeney examined claimant on several occasions from August 2014 to June 2015. (Exs. 24, 27, 28, 37, 45, 63B, 71). Before his February 24, 2015 examination, Dr. McWeeney's chart notes specifically indicated that claimant had *negative* Speeds tests and no tenderness or weakness involving the biceps tendon. (Exs. 24, 27, 28, 37, 45). Dr. McWeeney first documented biceps involvement and a positive Speeds test on February 24, 2015 (almost nine months after claimant's May 29, 2014 injury), and again on June 10, 2015. (Exs. 63B, 71). Furthermore, he did not address Drs. Groman's and Tesar's opinions that claimant's symptoms were consistent with the accepted right shoulder strain and impingement, as well

as AC joint conditions. Under these particular circumstances, we do not consider Dr. McWeeney's opinion to be well reasoned or persuasive. *See Somers v. SAIF*, 77 Or App 259, 263 (1986); *Benedict*, 59 Van Natta at 2409.

In sum, based on the aforementioned reasoning, the record does not persuasively establish the compensability of claimant's right shoulder SLAP lesion/tear. ORS 656.005(7)(a); ORS 656.266(1); *Graves*, 57 Van Natta at 2381. Consequently, we affirm.

ORDER

The ALJ's order dated July 28, 2015 is affirmed.

Entered at Salem, Oregon on February 8, 2016