
In the Matter of the Compensation of
KRISTIE F. RITCHEY, Claimant
WCB Case No. 14-02409
ORDER ON REVIEW
Welch Bruun & Green, Claimant Attorneys
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Reviewing Panel: Members Curey and Lanning.

Claimant requests review of that portion of Administrative Law Judge (ALJ) Mills's order that upheld the self-insured employer's denial of claimant's new/omitted medical condition claims for a left knee medial meniscus tear and peroneal nerve irritation. On review, the issue is compensability.

We adopt and affirm the ALJ's order with the following supplementation concerning the meniscal tear condition.

In February 2013, while working, claimant slipped and fell. She initially treated with Dr. Nienaber, a chiropractor, who tested her left knee for meniscal pain, which was negative. (Ex. 3-3). He noted in March 2013 that claimant's left knee was "still pain free." (Ex. 12).

In March 2013, the employer accepted a lumbar strain.

On August 16, 2013, claimant treated with Dr. Black, an orthopedist. (Ex. 15). Claimant reported worsened left knee pain, and Dr. Black recommended an MRI. (*Id.*)

On August 18, 2013, claimant fell again. (Ex. 91a-2). She reported misjudging the depth of a step and landing hard, causing a pop in the left knee. (*Id.*)

The next day, claimant reported to Dr. Black that her left knee gave out when she stepped down and felt left knee pain. (Ex. 16-1). Dr. Black noted that there was not much change since her last evaluation. (*Id.*)

On August 21, 2013, claimant had an MRI. (Ex. 18). The radiologist suspected partial tears or strains of the posterior cruciate ligament (PCL) and anterior cruciate ligament (ACL) and presumed a post-traumatic horizontal change/tear in the medial meniscus. (*Id.*) The radiologist also noted prominent cystic change near the insertion of the PCL. (*Id.*)

Subsequently, Dr. Black reviewed the MRI and diagnosed a bony contusion and moderate underlying degenerative changes. (Ex. 19). He further noted moderate effusion and significant mid tibia edema with two small chronic cysts. (*Id.*)

In September 2013, claimant began treating with Dr. Pierce, and reported slipping in February 2013 with a “hard twist to the knee” and low back injury. (Ex. 27-1). Dr. Pierce also knew that subsequently claimant fell directly on her left knee. (Ex. 27-3). Claimant also reported episodes of her knee collapsing and locking, with a severe episode in August 2013, when her knee gave out and shifted laterally. (Ex. 27-1). Dr. Pierce reviewed the MRI and diagnosed a left knee sprain, possible degenerative medial meniscus tear, degenerative arthritis, and synovitis with effusion. (Ex. 27-3). He also reviewed an x-ray, which showed a small medial bone spur. (*Id.*)

In September 2013, the employer amended its acceptance to include a left knee strain. (Ex. 34).

In December 2013, Dr. Teed, an orthopedic surgeon, evaluated claimant at the employer’s request. (Ex. 64). Dr. Teed noted a slip injury, resulting in claimant twisting and then striking her left knee against the floor. (Ex. 64-2). He diagnosed a resolved left knee strain and preexisting degenerative joint disease. (Ex. 64-6). When asked whether claimant had a preexisting, arthritic condition involving her left knee, Dr. Teed responded that her degenerative joint disease, chondromalacia, osteophytic changes, and reactive changes in the adjacent subchondral bone were arthritic. (Ex. 64-8).

In March 2014, claimant explained that, when she slipped in February 2013, her upper torso turned sharply to the right, and her lower body twisted sharply left. (Ex. 91a-1). She then landed directly on to her left knee. (*Id.*) She also described a fall on August 17, 2013 in which she misjudged the depth of a step and landed hard on her left leg. (Ex. 91a-2).

In April 2014, claimant began treating with Dr. Edelson, an orthopedic surgeon. (Ex. 100). He noted a February 2013 injury in which claimant slipped, twisted her back, and landed directly on a flexed left knee with a possible twisting of the knee. (Ex. 100-1). Dr. Edelson documented a second injury in which claimant missed a step, and her knee shifted and became painful. (*Id.*) He also noted that claimant was “grazed” by a car in the interim. (*Id.*) Dr. Edelson concluded that claimant had a left knee medial meniscus tear as a direct result of her February 2013 work injury, and recommended a new MRI to further evaluate the medial meniscus. (Ex. 100-3).

Claimant signed a Form 827, designating Dr. Edelson as her attending physician. (Ex. 103). She described the accident as slipping on an oily floor with her upper back twisting one direction, her lower back twisting the opposite direction, and hearing a “pop” during the course of motion and landing on her left knee.¹ (*Id.*)

In April 2014, an MRI showed a predominantly vertical tear involving the lateral aspect of the posterior horn of the medial meniscus, which had developed since the previous exam. (Ex. 106-1). Claimant also had degenerative subcortical cystic changes within the medial portion of the patella, which were not present on the previous MRI and resolved tibia edema. (*Id.*)

In June 2014, Dr. Swanson, an orthopedic surgeon, and Dr. Green, a neurologist, evaluated claimant at the employer’s request. (Ex. 116). They noted a February 2013 slipping injury in which claimant turned to the right as she fell and landed on her flexed left knee. (Ex. 116-3). They observed that claimant’s left knee became asymptomatic by March 2013, until she treated again in August 2013. (Ex. 116-32). They opined that she had preexisting chronic and degenerative osteoarthritis in her left knee, which involved inflammation. (Ex. 116-37, -40). After reviewing the August 2013 MRI, they concluded that claimant had intrameniscal degenerative changes, which did not constitute a “tear.” (*Id.*) They interpreted the subsequent April 2014 MRI to demonstrate a degenerative horizontal cleavage tear. (*Id.*) They considered this tear a progression of claimant’s preexisting osteoarthritis. (Ex. 116-41).

In July 2014, Dr. Nienaber noted that he was in a particularly good position to comment on the February 2013 work injury because he provided initial treatment through the end of March 2013. (Ex. 118-1). He had also performed several orthopedic tests to assess the extent of claimant’s left knee injury, which were all negative for meniscus involvement. (Ex. 118-2). He concluded that the February 2013 work injury was not a material contributing cause of the meniscus tear or of claimant’s disability or need for treatment. (*Id.*) He considered it significant that claimant’s left knee improved, and eventually resolved, while she continued to work. (Ex. 118-3). Dr. Nienaber explained that, if claimant had a meniscus tear at that time, her left knee would not have improved so quickly while continuing to work. (*Id.*)

¹ The description of injury on the 827 form appears to combine the symptoms of both the February and August 2013 falls.

Dr. Pierce could not say that claimant's initial injury caused the meniscus tear, given that her knee pain had resolved after a short period following the injury and the lapse of time before the August 2013 MRI. (Ex. 119-3). He reviewed that MRI and confirmed that claimant had preexisting left knee arthritic conditions. (*Id.*)

In August 2014, Dr. Black noted that claimant had preexisting left knee arthritis, involving inflammation of a joint due to infectious, metabolic, or constitutional causes, resulting in breakdown, degeneration or structural change. (Ex. 121-1). He opined that claimant's medial compartment arthritic changes were likely responsible for the changes in her medial meniscus, degenerative cysts, and patellar chondromalacia. (Ex. 121-2). He identified a horizontal partial meniscus tear in the August 2013 MRI, which did not extend to the surface, as compared with a new vertical meniscus tear extending to the surface on the April 2014 MRI. (*Id.*) He could not say whether the work injury was a material or major contributing cause of the need for treatment or disability for the meniscus tear. (Ex. 121-2-3).

In November 2014, the employer denied the left knee medial meniscus tear. (Ex. 123).

Subsequently, Dr. Edelson opined that claimant's February 2013 injury caused her meniscus tear. (Ex. 124-2). He appreciated no preexisting degenerative changes within the medial meniscus, and determined that claimant's work injury did not combine with any preexisting conditions, even if they were in existence prior to the injury. (*Id.*) He explained that there was a temporal relationship between the onset of claimant's left knee symptoms and her injury, and that the mechanism was consistent with a medial meniscus tear. (*Id.*) Finally, he concluded that claimant's medial meniscus tear caused give-way, which resulted in her August 2013 injury. (*Id.*)

In February 2015, Dr. Swanson opined that claimant's February 2013 injury was not a material or major contributing cause of claimant's left knee medial meniscus tear, disability, or need for medical treatment. (Ex. 126-1). He explained that the early medical records and the delay in medical treatment did not support a conclusion that the February 2013 injury resulted in a meniscal tear. (Ex. 126-2-3). Moreover, he determined that the mechanism of injury involving a direct blow to the knee (rather than a twisting mechanism) was inconsistent with causing a meniscus tear. (Ex. 126-3).

In March 2015, Dr. Edelson responded to Dr. Swanson's opinion, disagreeing that an absence of meniscus-specific findings on examination in the initial treatment records was significant. (Ex. 127-2). He determined that claimant's mechanism of twisting her knee in combination with the impact caused her meniscus tear. (*Id.*)

In upholding the denial, the ALJ found that Dr. Edelson's opinion did not persuasively establish that claimant's work injury was a material contributing cause of the need for treatment or disability for the claimed left knee medical meniscus tear. Thus, the ALJ concluded that claimant did not meet her statutory burden of proving the compensability of her claimed condition.

On review, claimant contends that Dr. Edelson's opinion persuasively establishes the compensability of her claim. Moreover, she argues that the remaining opinions are unpersuasive. For the following reasons, we affirm the ALJ's decision to uphold the employer's denial.

To prevail on her new/omitted medical condition claims, claimant must prove that her claimed conditions exist, and that the work injury was a material contributing cause of her disability/need for treatment for those conditions. ORS 656.005(7)(a); ORS 656.266(1); *Betty J. King*, 58 Van Natta 977 (2006), *Maureen Y. Graves*, 57 Van Natta 2380, 2381 (2005). If she meets that burden and the medical evidence establishes that the "otherwise compensable injury" combined at any time with a "preexisting condition" to cause or prolong disability or a need for treatment, the employer has the burden to prove that the "otherwise compensable injury" is not the major contributing cause of claimant's disability/need for treatment of the combined left knee condition.² ORS 656.005(7)(a)(B); ORS 656.266(2)(a); *SAIF v. Kollias*; 233 Or App 499, 505 (2010); *Jack G. Scogins*, 56 Van Natta 2534, 2535 (2004).

Because of the conflicting medical opinions regarding the compensability of the claimed new/omitted medical conditions, the causation issue presents a complex medical question that must be resolved by expert medical opinion.

² If claimant does not establish that the work injury was a material cause of her disability/need for treatment, it is unnecessary to address the employer's burden of proof. See *Hollis L. Strickland*, 62 Van Natta 2790, 2792 n 1 (2010) (a "combined condition" analysis is not appropriate in the absence of an "otherwise compensable injury"); *Bryon J. Schaezel*, 59 Van Natta 2628, 2630 n 3 (2007) (the Board need not decide whether there was a "preexisting condition" under ORS 656.005(24)(a) or whether the "preexisting condition" combined with the work injury, because the claimant did not establish an "otherwise compensable injury").

Barnett v. SAIF, 122 Or App 279, 282 (1993). In evaluating the medical evidence, we rely on those opinions that are well reasoned and based on accurate and complete information. *Somers v. SAIF*, 77 Or App 259, 263 (1986).

When presented with disagreement among experts, we tend to give more weight to the opinion of the treating physician based on the treating physician's greater opportunity to evaluate the injured worker over time. *Weiland v. SAIF*, 64 Or App 810, 814 (1983). However, whether we give greater weight to the opinion of the treating physician depends on the record in each case. *Dillon v. Whirlpool Corp.*, 172 Or App 484, 489 (2001); *see also Hammons v. Perini Corp.*, 43 Or App 299, 301 (1979) (no special credit given to treating physician opinion where the case involved expert analysis rather than expert external observation).

Claimant contends that we should defer to Dr. Edelson as her attending physician. However, Dr. Edelson did not begin treating claimant until approximately 14 months after her February 2013 work injury. Because Dr. Edelson did not examine claimant close in time to the work injury, his advantage as a treating physician is diminished. *See McIntyre v. Standard Utility Contractor's Inc.*, 135 Or App 298, 302 (1995) (a treating physician's opinion is less persuasive when the physician did not examine the claimant immediately after the injury); *Anthony A. Miner*, 62 Van Natta 2538, 2540 (2010) (physician who treated the claimant after the work injury was in a better position to evaluate his injury-related conditions than physician who examined him three months later).

Claimant further argues that Dr. Edelson had a correct history regarding the mechanism of her left knee injury. Yet, the contemporaneous medical records and claimant's testimony support a different mechanism of injury; *i.e.*, of landing on her left knee, rather than twisting her left knee. (Tr. 9-10). Claimant asserts that her testimony adequately described a twisting mechanism to support Dr. Edelson's history. However, claimant's testimony was in the context of twisting her upper and lower body, rather than her left knee. (*Id.*) Without testimony from claimant that she twisted (rather than landed) on her left knee, Dr. Edelson's opinion is based on an inaccurate body mechanics history. *See Miller v. Granite Constr. Co.*, 28 Or App 473, 478 (1977) (medical opinion unpersuasive where it was based on inaccurate information); *Martin Garcia*, 62 Van Natta 1972, 1974 (2010) (medical opinion unpersuasive where it was based on an incorrect understanding of the actual mechanics of the claimant's injury). Thus, we further discount his opinion.³

³ Claimant further asserts that Dr. Nienaber's examination of her left knee shortly after the work injury (which did not find evidence of a medical meniscus tear) should be discounted. Specifically, she notes that Dr. Nienaber primarily treated the low back and had not adequately examined her for meniscal

In conclusion, based on the aforementioned reasoning, as well as the reasons expressed in the ALJ's order, the record does not persuasively establish that claimant's work injury was a material contributing cause of her disability/need for treatment for her claimed new/omitted left knee conditions. Accordingly, we affirm.

ORDER

The ALJ's order dated May 18, 2015 is affirmed.

Entered at Salem, Oregon on January 12, 2016

pathology. However, Dr. Nienaber explained that he performed several orthopedic tests for meniscal pathology and determined that claimant's clinical findings were inconsistent with a meniscus tear. (Ex. 118-2).

In any event, regardless of whether Dr. Nienaber's opinion is deemed persuasive, claimant has the initial burden of proof and must present a persuasive medical opinion establishing the compensability of her claimed conditions. *See Lorraine W. Dahl*, 52 Van Natta 1576 (2000) (if medical opinions supporting compensability are insufficient to meet the claimant's burden of proof, the claim is not compensable, regardless of the persuasiveness of countervailing opinions).

Here, for the reasons expressed above, we do not consider Dr. Edelson's opinion sufficient to meet claimant's statutory burden of proof. In addition, because the other physicians' opinions do not support a conclusion that claimant's work injury was a material contributing cause of her need for treatment or disability for her claimed conditions, it is unnecessary to further analyze their opinions.