
In the Matter of the Compensation of
JAY K. TEBO, Claimant
WCB Case No. 15-02123
ORDER ON REVIEW
Preston Bunnell LLP, Claimant Attorneys
SAIF Legal Salem, Defense Attorneys

Reviewing Panel: Members Johnson and Weddell.

Claimant requests review of Administrative Law Judge (ALJ) Otto's order that upheld the SAIF Corporation's denial of claimant's injury claim for a C5-6 disc condition. On review, the issue is compensability.

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

Claimant, who was 51 years old at the time of hearing, has a long history of intermittent neck pain. (Exs. 1, 2, 4 through 6). He contends that he injured his neck at work in late December 2014 or early January 2015, when he backed his truck into a loading dock and jolted his head backward. (Tr. 10).

On March 10, 2015, claimant was examined by Dr. Oji, who reported a chief complaint of left upper extremity symptoms in the C6 dermatome for about two months and a history of neck pain for about a year at the base of the neck posteriorly, without traumatic event. (Ex. 11-1). Dr. Oji diagnosed cervical radiculopathy and cervical disc degeneration, and reported that a March 2015 MRI showed a broad based disc bulge with osteophytes at C5-6 and C6-7. (Ex. 11-3).

On March 11, 2015, claimant filed an injury claim for his complaints, which SAIF denied. (Exs. 12, 16). Claimant requested a hearing.

In upholding SAIF's denial, the ALJ determined that the record did not establish a compensable injury. In reaching this conclusion, the ALJ was not persuaded by the opinion of claimant's attending physician, Dr. Oji.

On review, claimant contests that determination, relying on Dr. Oji's initial opinion that the loading-dock injury incident was a material contributing cause of his disability/need for treatment of his C5-6 disc condition. For the following reasons, we do not find Dr. Oji's opinion persuasive.

Claimant bears the burden of proving that the loading-dock injury incident was a material contributing cause of disability/need for treatment related to his C5-6 disc condition. ORS 656.005(7)(a); ORS 656.266(1); *Tricia A. Somers*, 55 Van Natta 462, 463 (2003). In light of the medical evidence, the causation issue presents a complex medical question that must be resolved with expert medical opinion. *Uris v. Comp. Dep't.*, 247 Or 420 (1967); *Barnett v. SAIF*, 122 Or App 279, 283 (1993); *Matthew C. Aufmuth*, 62 Van Natta 1823, 1825 (2010).

More weight is given to those medical opinions that are well reasoned and based on complete information. *Somers v. SAIF*, 77 Or App 259, 263 (1986); *Linda E. Patton*, 60 Van Natta 579, 581 (2008). We properly may or may not give greater weight to the opinion of the treating physician, depending on the record in each case. See *Dillon v. Whirlpool Corp.*, 172 Or App 484, 489 (2001); *Darwin B. Lederer*, 53 Van Natta 974 n 2 (2001).

Dr. Oji provided at least two opinions regarding the cause of claimant's C5-6 disc condition. On June 3, 2015, Dr. Oji agreed that: "Backing into the dock caused a tear in the C5-6 annulus, which caused some neck soreness. As the disc material extruded through the torn annulus, [claimant] began to experience radicular symptoms, which became very evident upon his return to physical activity in the warehouse." (Ex. 19-2).

On August 19, 2015, however, Dr. Oji agreed that claimant had a chronic, preexisting degenerative cervical condition and that his "cervical degenerative problems were not caused in any way by work." (Ex. 23-1).

Claimant contends that, contrary to the ALJ's determination, Dr. Oji's opinions are not inconsistent and do not represent a change of opinion. Nevertheless, even assuming that Dr. Oji's opinions were not inconsistent, we do not find that Dr. Oji's opinion persuasively establishes that the loading-dock injury incident was a material contributing cause of claimant's disability/need for treatment of the C5-6 disc condition.

During his deposition, Dr. Oji stated several times that the loading-dock incident was only a "possible" material contributing cause or "could" have contributed to claimant's disability/need for treatment of his C5-6 disc condition. (Ex. 23a-14-16). Dr. Oji was unable to determine what caused claimant's disability/need for treatment of his C5-6 disc condition. (Ex. 23a-12-18, 21). Because Dr. Oji's statements are couched in terms of medical possibility, rather

than probability, we do not find his opinion sufficient to establish that the loading-dock incident or any other work activity was a material contributing cause of claimant's disability/need for treatment of his C5-6 disc condition. *See Gormley v. SAIF*, 55 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); *Kenneth L. Edwards*, 58 Van Natta 761 n 1 (2001) (the words "could have" and "may have" indicate only possibility, not medical probability).

Moreover, Dr. Oji did not rebut the opinion of Dr. Smith, an orthopedic surgeon who examined claimant at SAIF's request. Dr. Smith diagnosed "[d]egenerative cervical facet disease; progressive with right C5-6 radiculopathy; unrelated to job incident of January 12, 2015." (Ex. 22-8). Dr. Smith opined that the degenerative cervical spine disease was related to age, possible genetic predisposing factors, and "the vicissitudes of life." (Ex. 22-9). He explained that the circumstances of the described mechanism of injury "do not constitute a material contributing cause either to etiology, aggravation or exacerbation of the underlying conditions, which thus reflects primarily a gradual progression of the condition according to the disease's natural history." (*Id.*)

Thus, we further discount Dr. Oji's opinion for not addressing Dr. Smith's opinion that claimant's disability/need for treatment of his C5-6 disc condition was due to preexisting degenerative conditions and unrelated to the loading-dock incident. *See, e.g., Gary H. Grogan*, 54 Van Natta 897 (2002) (medical opinion insufficient to establish material causation because it did not adequately address the claimant's preexisting degeneration, where an examining physician had identified the degeneration as the major contributing cause, even though *weighing* of competing causes not required).

In sum, we agree with the ALJ's conclusion that a preponderance of the medical evidence does not establish that claimant's loading-dock incident or any other work activity was a material contributing cause of the disability/need for treatment of his C5-6 disc condition. Accordingly, we affirm.

ORDER

The ALJ's order dated December 21, 2015 is affirmed.

Entered at Salem, Oregon on July 7, 2016