

In the Matter of the Compensation of  
**SANDRA M. GARRETT, Claimant**

WCB Case No. 14-05676

ORDER ON REVIEW

Philip F Schuster II, Claimant Attorneys  
Lyons Lederer LLP, Defense Attorneys

Reviewing Panel: Members Johnson and Weddell.

The self-insured employer requests review of Administrative Law Judge (ALJ) Lipton's order that set aside its denial of claimant's occupational disease claim for bilateral carpal tunnel syndrome (CTS). On review, the issue is compensability.

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

Since 1998, claimant has worked for the employer as an accounts receivable specialist involving significant keyboarding activities. In an eight-hour work day, her job requires keyboard typing continually from five and a half to eight hours per day. (Ex. 1A -5). Claimant testified that about seven hours of her work day involves typing. (Tr. 7).

In 2012, claimant was diagnosed with left-sided CTS. (Ex. 1B). In 2014, she was diagnosed with bilateral CTS. (Ex. 4-2). In July 2014, claimant filed an occupational disease claim for bilateral CTS, which the employer denied. Claimant requested a hearing.

The ALJ set aside the employer's denial, finding that the opinion of Dr. Layman, who performed a worker-requested medical examination, persuasively established the compensability of claimant's bilateral CTS.

On review, the employer argues that Dr. Layman had an inaccurate history of claimant's keyboarding activities and did not adequately consider other contributing factors identified by Dr. Denekas, who performed an employer-arranged medical examination. Based on the following reasoning, we affirm the ALJ's compensability decision.

To prove that her occupational disease is compensable, claimant must show that employment conditions were the major contributing cause of the disease. ORS 656.266(1); ORS 656.802(2)(a). If the occupational disease claim is based on

the worsening of a preexisting disease or condition pursuant to ORS 656.005(7), the worker must prove that employment conditions were the major contributing cause of the combined condition and pathological worsening of the disease. ORS 656.802(2)(b); *see also Betty J. Read*, 64 Van Natta 360, 362 n 3 (2012) (evidence addressing major contributing cause of worsening, but not major contributing cause of combined condition, insufficient to establish compensability under ORS 656.802(2)(b)); *Howard L. Allen*, 60 Van Natta 1423, 1425 (2008) (evidence addressing the cause of worsening and need for treatment was insufficient to establish compensability under ORS 656.802(2)(b)).

Determining the major contributing cause requires weighing the relative contribution of each cause and identifying the cause, or combination of causes, that contributed more than all other causes combined. *Smothers v. Gresham Transfer, Inc.*, 332 Or 83, 133 (2001); *Dietz v. Ramuda*, 130 Or App 397, 401-02 (1994), *rev dismissed*, 321 Or 416 (1995).

Considering the disagreement between medical experts regarding the cause of the claimed condition, the causation issue presents a complex medical question to be resolved by expert medical evidence. *See Uris v. State Comp. Dep't.*, 247 Or 420, 426 (1967); *Barnett v. SAIF*, 122 Or App 279, 283 (1993). When presented with disagreement between experts, we give more weight to those opinions that are both well reasoned and based on complete information. *Somers v. SAIF*, 77 Or App 259, 263 (1986).

The employer argues that Dr. Layman's opinion is based on a materially inaccurate history. Specifically, it contends that Dr. Layman incorrectly assumed that claimant's work involved "production typing" every day for 40 to 60 hours per week and that her symptoms lessened when she was not working. We disagree with the employer's assertion.

The record establishes that claimant's job as an account services specialist requires five and a half to eight hours of keyboard typing each work day. (Ex. 1A-5). Claimant's un rebutted testimony establishes that, since 1998, she has typed approximately seven hours each work day. (Tr. 7). She further testified, without contradiction, that her symptoms were "a little bit better" when she was not working, that they were more intermittent and not as constant. (Tr. 17).

Dr. Layman reviewed the employer's job description and acknowledged claimant's statement that she was basically typing eight hours per day. (Ex. 19-1). Dr. Layman also noted that claimant's symptoms were somewhat better when off

work. (Ex. 19-7). Based on claimant's testimony, we conclude that Dr. Layman had a sufficiently complete and accurate history. *Jackson County v. Wehren*, 186 Or App 555, 561 (2003) (a physician's history is complete if it includes sufficient information on which to base the opinion and does not exclude information that would make the opinion less credible).

The employer also argues that Dr. Layman gave insufficient consideration to other potential causative factors, such as claimant's obesity, diabetes, and gender. As such, it contends that Dr. Layman's opinion is unpersuasive. *See Brown v. Fred Meyer Stores*, 202 Or App 558, 563-64 (2005) ("In determining the major contributing cause of a condition in the context of an occupational disease claim, the relative contribution of *all contributing causes* must be considered, and persuasive medical opinion must explain why a particular work exposure or injury contributes more to the claimed condition than all other causes or exposures combined.")

However, our review confirms that Dr. Layman considered claimant's obesity, gender, and diabetes. (Exs. 19-6-7, 20-3). Furthermore, having considered those factors, Dr. Layman continued to conclude that claimant's work activities were the major contributing cause of her bilateral CTS. (*Id.*)

Dr. Layman's opinion is also supported by Dr. Stalling, claimant's treating physician, who reported a history of repetitive typing about 40 hours a week for 19 years, with symptoms improving off work. (Ex. 4). Specifically, Dr. Stallings agreed with Dr. Layman that the major contributing cause of claimant's bilateral CTS was her work activities. (Ex. 16-2).

Dr. Denekas reasoned that the type of work performed by claimant is not the type that has been found to lead to the development of CTS. (Ex. 11-5) According to Dr. Denekas, claimant has known causative factors for CTS, including obesity, gender, and age. (Ex. 11-6). Thus, Dr. Denekas was unable to state that claimant's "work plays a significant role" in her CTS. (Ex. 11-6). In an addendum report, Dr. Denekas relied on research studies, contending that they established that "there has been no specific cause and effect relationship between keyboarding and the development of [CTS]." (Ex. 20-5).

Dr. Layman responded, however, that "there is much debate in the literature regarding the role of typing and repetitive finger activity in the development of carpal tunnel syndrome." (Ex. 19-6). In addition, Dr. Layman provided medical literature supportive of a higher risk of developing CTS with frequent keyboarding

and also explained that the literature relied on by Dr. Denekas is “NOT concluding that keyboard activity does not cause carpal tunnel syndrome in certain individuals[.]” (Ex. 21-1) (Emphasis in original).

Dr. Layman further explained that “the repetitive activity of typing can result in swelling of the tissues around the flexor tendons within the carpal tunnel which takes up space within the carpal tunnel leading to an impairment in circulation to the median nerve and the resultant symptoms of carpal tunnel syndrome.” (Ex. 19-7). He stated that repetitive flexion and extension of the fingers stresses the lumbrical muscles, which swell with use, and as those muscles swell with use “this takes up space within the carpal tunnel leading to impairment of the circulation of the median nerve because of the fixed space within the carpal tunnel and the development of carpal tunnel syndrome.” (*Id.*) Thus, Dr. Layman provided an explanation for claimant’s CTS that is consistent with claimant’s history.

After analyzing the physicians’ opinions, we find that Dr. Layman had a more thorough knowledge of claimant’s work activities. In reaching this conclusion, we note that Dr. Denekas’s report refers to claimant’s job description, but does not mention that claimant has performed keyboarding activities continually from five and a half to eight hours a day for more than 19 years. (Ex. 11).

Under such circumstances, we do not consider Dr. Denekas to have adequately considered the nature and longevity of claimant’s specific work history.<sup>1</sup> See *Robert E. Charbonneau*, 53 Van Natta 149, 149 n 2 (2001) (physician’s opinion found unpersuasive for not considering the claimant’s years of repetitive traumatic work activities). In contrast, Dr. Layman’s opinion is predicated on claimant’s specific work activities for the past 19 years.

In summary, this record establishes that Dr. Layman accurately understood claimant’s specific work activities and adequately explained the basis for his conclusion that her work activities were the major contributing cause of her bilateral CTS. Moreover, Dr. Layman persuasively rebutted Dr. Denekas’s opinion.

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<sup>1</sup> In addition, we consider Dr. Denekas’s opinion to have been based more on generalizations from statistical studies showing a lack of a causative correlation between keyboarding activities and CTS, rather than on claimant’s specific work activities. See *Sherman v. Western Employer’s Ins.*, 87 Or App 602 (1987) (physician’s comments that were general in nature and not addressed to the claimant’s situation in particular were not persuasive); *Michael Roach*, 67 Van Natta 1493, 1496 (2015) (physician’s opinion found unpersuasive where it was grounded primarily on a statistical analysis, rather than on factors personal to the claimant).

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Consequently, based on Dr. Layman's persuasive opinion, we are persuaded that claimant's employment conditions were the major contributing cause of her bilateral CTS. Accordingly, we affirm.

Claimant's attorney is entitled to an assessed fee for services on review. ORS 656.382(2). 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 on review is \$4,500, payable by the employer. In reaching this conclusion, we have particularly considered the time devoted to the case (as represented by claimant's respondent's brief), the complexity of the issue, the value of the interest involved, and the risk that claimant's counsel might 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 denial, to be paid by the employer. See ORS 656.386(2); OAR 438-015-0019; *Gary E. Gettman*, 60 Van Natta 2862 (2008). The procedure for recovering this award, if any, is prescribed in OAR 438-015-0019(3).

#### ORDER

The ALJ's order dated December 17, 2015 is affirmed. For services on review, claimant's attorney is awarded an assessed fee of \$4,500, payable by the employer. Claimant is awarded reasonable expenses and costs for records, expert opinions, and witness fees, if any, incurred in finally prevailing over the denial, to be paid by the employer.

Entered at Salem, Oregon on June 8, 2016