

In the Matter of the Compensation of  
**GLENN A. SANCHO, Claimant**  
WCB Case No. 15-01441  
ORDER ON REVIEW  
Ernest M Jenks, Claimant Attorneys  
SAIF Legal, Defense Attorneys

Reviewing Panel: Members Weddell and Curey.

Claimant requests review of Administrative Law Judge (ALJ) Lipton's order that upheld the SAIF Corporation's denial of his injury claim for left shoulder, head, and neck conditions. On review, the issue is compensability. We affirm.

FINDINGS OF FACT

Claimant has a history of a concussive injury related to a 2007 motor vehicle accident. (Ex. 15B-1). He also had a head and neck injury related to a November 2013 assault, for which he complained of increased throbbing headaches. (Ex. 1).

On February 18, 2015, claimant, a lube technician/service advisor, was allegedly injured in the office when his manager opened the door behind him, which struck the back of his head and left shoulder. According to claimant, he went into the office to look for a phone number (located on a board on the wall opposite the door) to report the manager for harassment. At the time, a new employee was sitting at a desk in the office doing computer training.

On February 19, 2015, claimant sought treatment for back, left shoulder, and head pain. (Exs. 2, 3, 4). Nurse Practitioner Meeker noted claimant's history that he entered an office, leaned down and the door slammed behind him, and when he straightened up, the door struck the back of his head and left shoulder. (Ex. 2-1). She also noted that claimant reported no history of prior head trauma. (*Id.*) Ms. Meeker assessed a head injury and referred claimant to the emergency department for further evaluation. (Ex. 2-2).

That same day, Registered Nurse Miller documented claimant's history that he walked into an office at work and a door slammed behind him and struck the back of his head and shoulder. (Ex. 3). Also the same day, Nurse Practitioner Shultz noted that claimant and his manager got into a verbal altercation and claimant went into an office and had his back to the door when his manager opened the door and it hit him in the left shoulder and head. (Ex. 4-1). Her initial assessment was a left shoulder strain and concussion. (Ex. 4-3).

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In a videotaped interview, on or about February 20, 2015, claimant was interviewed about the alleged work incident. (Ex. 7A).

On February 25, 2015, Dr. Butler examined claimant for complaints of nausea and head and shoulder pain, documenting that claimant was injured at work when a door was opened, traumatizing his neck and right scapula. (Ex. 10-1). He noted that claimant's history and symptoms were consistent with a mild concussion and shoulder strain, but also stated that there were some inconsistencies in the history because the trauma apparently affected the left shoulder. (Ex. 10-2). In an "attestation" that same day, Dr. Douglas, who supervised Dr. Butler, indicated that claimant had pain in the left shoulder after he was hit with a door at work. (Ex. 10-3).

On March 3, 2015, Dr. Hill examined claimant for head and left shoulder complaints, noting claimant's history of no prior significant headaches or shoulder injuries. (Ex. 12A-1). Dr. Hill suspected a rotator cuff injury, but stated that the mechanism of injury of being hit by the door was not plausible for a cuff injury. (*Id.*) A left shoulder MRI was interpreted as showing, *inter alia*, findings suspicious for a rotator cuff tear. (Ex. 14).

On March 16, 2015, SAIF's claim investigator interviewed the manager and the new employee who was in the office sitting at the desk doing online training at the time the alleged injury occurred. (Exs. 16, 17). The next day, SAIF's claim investigator interviewed claimant. (Ex. 18).

On March 24, 2015, SAIF denied claimant's injury claim. (Ex. 20). Claimant requested a hearing.

In April 2015, claimant sought treatment from Dr. Rask for his left shoulder complaints, reporting that he was injured when the door slammed into the back of his left shoulder. (Ex. 21A). Dr. Rask noted that this was "a work related problem." (*Id.*) In a subsequent summary letter, Dr. Rask opined that claimant had a left shoulder contusion related to the work injury, noting that he did not evaluate claimant for a concussion. (Ex. 25).<sup>1</sup>

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<sup>1</sup> Dr. Rask did not attribute any other left shoulder conditions to the alleged work injury. (Ex. 25).

On May 6, 2015, Drs. Leadbetter and Denekas examined claimant at SAIF's request. (Ex. 23). They indicated, "At most, [claimant] had a scalp contusion. There is no indication that he has sustained a concussion." (Ex. 23-6). Drs. Leadbetter and Denekas diagnosed both a contusion of the posterior aspect of the skull and a left shoulder contusion related to the work event, which were consistent with the mechanism of injury of being struck by a door. (Ex. 23-6-7). They opined that claimant's ongoing severe left shoulder complaints and minimal MRI scan findings, which were consistent with age-related changes, could not be explained by the mechanism of the February 18, 2015 work injury. (*Id.*)

In a June 2015 summary letter, Dr. Denekas stated that there were no objective findings in claimant's medical records or during his examination with Dr. Leadbetter to support a conclusion that claimant was injured at all during the work incident. (Ex. 26-1). According to Dr. Denekas, if claimant had been hit by a door, he would at most have a scalp contusion, but there was no objective evidence of this. (*Id.*) He also referred to his previous report that claimant had a possible left shoulder contusion, but that there was no evidence of bruising on examination at the initial February 2015 evaluation. (*Id.*) Dr. Denekas stated that claimant's examination findings were completely non-physiologic, as evidenced by giveaway weakness during testing, and range of motion that was substantially less than someone would have with an actual rotator cuff injury. (Ex. 26-2).

### CONCLUSIONS OF LAW AND OPINION

In upholding SAIF's denial, the ALJ found that claimant's history of the alleged February 18, 2015 work injury was not reliable. Reasoning that the medical opinions supporting the compensability of his injury claim for a left shoulder contusion were based on an inaccurate history, the ALJ concluded that claimant did not establish that his alleged work injury was a material contributing cause of his disability/need for treatment of his left shoulder condition.<sup>2</sup>

On review, claimant challenges the ALJ's credibility/reliability finding, arguing that he consistently described his alleged work injury, and that the medical evidence supports his account that he sustained a left shoulder and head injury. For the following reasons, we do not find claimant's description of his work injury to be reliable.<sup>3</sup>

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<sup>2</sup> Because the medical opinions also did not support the compensability of a head or neck condition, the ALJ upheld SAIF's denial in its entirety.

<sup>3</sup> Claimant argues that the manager's testimony that the door did not strike claimant is not credible because of his multiple prior convictions for crimes involving dishonesty (*i.e.*, burglary and identity theft). (*See* Tr. 82, 83). We acknowledge that convictions of such crimes involving dishonesty

To prove a compensable injury, claimant must show that his alleged work injury was at least a material cause of the disability or need for treatment. ORS 656.005(7)(a); ORS 656.266(1); *Albany Gen. Hosp. v. Gasperino*, 113 Or App 411, 415 (1992). In doing so, he must prove both legal and medical causation by a preponderance of the evidence. *Harris v. Farmer's Co-op Creamery*, 53 Or App 618, *rev den*, 291 Or 893 (1981); *Carolyn F. Weigel*, 53 Van Natta 1200 (2001), *aff'd without opinion*, 184 Or App 761 (2002). Legal causation is established by showing that claimant engaged in potentially causative work activities; whether those work activities caused claimant's condition is a question of medical causation. *Darla Litten*, 55 Van Natta 925, 926 (2003).

Whether claimant established legal causation hinges principally on his credibility/reliability. In this particular case, and as argued by the parties, the compensability of this claim is dependent on the reliability of claimant's version of the alleged work injury. *Kenneth J. Sinor*, 68 Van Natta 113, 115 (2016); *George Jolley*, 56 Van Natta 2345, 2346 (2004).

Here, the ALJ did not make a demeanor-based credibility finding. *See Erck v. Brown Oldsmobile*, 311 Or 519, 526 (1991) (on *de novo* review, it is a good practice for an agency or court to give weight to the factfinder's credibility assessments). Because the credibility issue concerns the substance of claimant's testimony, we are equally qualified to make our own credibility determination. *Coastal Farm Supply v. Hultberg*, 84 Or App 282, 285 (1987); *Michael A. Ames*, 60 Van Natta 1324, 1326 (2008).

We acknowledge that claimant consistently reported that he was injured at work when he went into an office and was struck in the back of the head and left shoulder by the door. (Exs. 2, 3, 4, 7A, 9, 12A, 15A, 18, 23).<sup>4</sup> However, we find that other evidence in the record casts doubt on his credibility and accuracy as a historian, and that his testimony regarding the description of the alleged work incident is unreliable. We reason as follows.

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may undermine the credibility of a witness's testimony. *See Kliffon Ferguson*, 59 Van Natta 2672, 2675 (2007) (felony conviction of theft may be considered relevant in determining the credibility of a witness); *see also Debra A. Cannistraci*, 56 Van Natta 3486, 3488 (2004) (the claimant's credibility was undermined, in part, because of her conviction of a crime involving dishonesty (fraud)). However, we do not rely on the manager's testimony and statements in concluding that claimant's description of his alleged work injury is not credible/reliable.

<sup>4</sup> Although the precise details documented by the different nurses on February 19, 2015 are not identical, they consistently noted that claimant was struck by a door. (Exs. 2, 3, 4).

Claimant testified that he entered the office and asked the new employee, who was sitting in a chair at a desk (which was facing to the left) training on the computer, to move so he could look for a phone number on the board. (Tr. 14-16). The new employee had moved enough and claimant was able to walk forward and stand behind the chair and partially close the door, and leaned forward to look at the board. (Tr. 33-40). According to claimant, after closing the door, he backed up so that he was closer to the door when he was leaning forward to look at the board, and was struck by the door when he was straightening back up. (Tr. 32, 33, 36-42; *see* Ex. 27).

According to claimant's March 2015 statement to SAIF's claim investigator, the new employee moved for him so he had enough room to close (but not completely shut) the door behind him. (Ex. 18-1-2). He walked up to the board and was reading it when, the "next minute," he felt the door hit him in the back of the head and left shoulder. (Ex. 18-1). Claimant stated that he was standing almost side-by-side with the new employee and was unsure how the door hit him on the back of his head and shoulder at the same time. (Ex. 18-2).

Relying on that statement, SAIF's claim investigator photographed the office and attempted to recreate the alleged work injury incident with another investigator. (Tr. 49-57; *see* Ex. 22). The investigator testified that, with the other investigator standing behind the chair, to be side-by-side with the new employee as claimant had described, there was six inches between the open position of the door and his body. (Tr. 52). According to SAIF's investigator, with the other investigator standing closer to the board to be able to read it, there was 33 inches between the open door and his body. (Tr. 51-53). SAIF's claim investigator was unable to recreate a situation in which the door would hit claimant's left shoulder and head at the same time. (Tr. 53, 56).

Claimant contends that the testimony of SAIF's investigator is not persuasive because she is not a forensic expert and did not understand where claimant was standing when he was struck by the door (as alleged).<sup>5</sup> We acknowledge that the investigator testified that she did not attempt to recreate the incident with claimant himself. (Tr. 59). However, the investigator's testimony and analysis were based on claimant's own statement provided to her. (Tr. 49-57). Moreover, she explained that claimant's testimony, that he backed

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<sup>5</sup> Claimant also argues that the investigator's impartiality is in question because she is SAIF's investigator. However, the record does not raise concerns about the investigator's impartiality.

up after leaning forward to look at the board and was then struck by the door, was different than what he had described to her. (Tr. 58). The investigator testified that claimant never explained to her that he had stepped backwards but, rather, he described having gotten past the new employee and was reading the board. (*Id.*)

Additionally, claimant's testimony about the incident conflicts with the testimony of the witness present in the office at the time of the alleged event. In his videotaped interview, claimant stated that the new employee moved his seat forward a little bit so that he was able to go farther inside the office and partially shut the door, and leaned forward to look for the phone number on the board. According to claimant, he was facing the board when he was struck in the back of the head and left shoulder. Claimant stated that he was "looking at the wall. I got close." When asked if anyone witnessed the injury, claimant stated that the new employee was in the office and knew he was there, but that the new employee "never fully looked back." (Ex. 7A).

According to the new employee's statement, however, claimant was not near the door when the manager entered, and claimant was not struck by the door.<sup>6</sup> (Ex. 17). The new employee stated that there was no way that claimant could have been hit by the door without him seeing it. (*Id.*)

We find that claimant's varying descriptions of the alleged work injury/incident (particularly where he was standing when allegedly struck by the door), as well as the new employee's statement that claimant was not near the door and could not have been hit without him knowing, raise sufficient doubt regarding claimant's credibility such that his testimony is unreliable.<sup>7</sup> Additionally, claimant's failure to admit to prior head injuries and headaches further undermines his accuracy as a historian. (*See* Exs. 1, 2, 12A, 15B).

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<sup>6</sup> At the outset of the hearing, claimant did not object to SAIF's submission of the new employee's statement, which was prepared by SAIF's claim investigator. (Tr. 1). The investigator testified that she interviewed the new employee and prepared the report of his statement. (Tr. 47, 60, 61). Claimant moved to exclude the new employee's statement, but the ALJ admitted the statement into the record on the basis that it was prepared by the claim investigator, who testified at the hearing. (Tr. 92-93). Although, at hearing and on review, claimant argues that the new employee's statement is "double hearsay," he did not otherwise object to the admission of the statement prepared by the claim investigator.

<sup>7</sup> We also note that, unlike his hearing testimony, claimant's previous statements never described backing up after he looked for the phone number. (Tr. 16, 33, 36-40; Exs. 7A, 18).

Finally, we acknowledge claimant's argument that his symptoms and examination findings on February 19, 2015 (one day after the alleged February 18 work injury) were consistent with a head and left shoulder injury. (Exs. 2, 3, 4). However, those medical reports found no objective evidence of head or left shoulder trauma, deformity, swelling, bruising/ecchymosis, or contusion on examination. (Exs. 2-1, 4-2-3).

In summary, based on the foregoing reasons, we do not consider claimant's version/description of the alleged February 18, 2015 work injury incident to be credible/reliable. Therefore, the medical opinions supporting the compensability of claimant's injury claim based on his description of the alleged work injury (which we do not find reliable) are unpersuasive. Consequently, we affirm.

#### OPINION

The ALJ's order dated October 20, 2015 is affirmed.

Entered at Salem, Oregon on May 24, 2016