

In the Matter of the Compensation of
DILLON K. KOESTER, Claimant
WCB Case Nos. 15-03300, 15-01219
ORDER ON REVIEW
Guinn & Dalton, Claimant Attorneys
Reinisch Wilson Weier, Defense Attorneys

Reviewing Panel: Members Weddell and Curey.

Claimant requests review of Administrative Law Judge (ALJ) Fisher's order that upheld the self-insured employer's denial of claimant's new/omitted medical condition claim for a lumbar disc condition. 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 there was a "combined condition," and that, based on the opinions of Drs. Ware and Rosenbaum, the preexisting condition was the major contributing cause of the disability/need for treatment of the combined lumbar disc condition.

On review, claimant contends that the opinion of Dr. Ferriero is more persuasive than the contrary opinions of Drs. Ware and Rosenbaum. Based on the following reasons, we affirm the ALJ's decision.

Claimant must prove that his July 8, 2014 work injury was a material contributing cause of the disability/need for treatment related to his lumbar disc condition. ORS 656.005(7)(a); ORS 656.266(1); *Tricia A. Somers*, 55 Van Natta 462, 463 (2003). If he establishes an "otherwise compensable injury," and a "combined condition" is present, the employer must prove that the otherwise compensable injury was not the major contributing cause of claimant's disability or need for treatment of the combined lumbar disc condition. ORS 656.266(2)(a); *SAIF v. Kollias*, 233 Or APP 499, 505 (2010); *Jack G. Scoggins*, 56 Van Natta 2534, 2535 (2004). The "otherwise compensable injury" means the "work-related injury incident." *See Brown v. SAIF*, 262 Or App 640, 652 (2014); *see also Jean M. Janvier*, 66 Van Natta 1827, 1832-33 (2014) (applying the *Brown* definition of an "otherwise compensable injury" to initial and new/omitted medical condition claims under ORS 656.266(2)(a)).

Resolution of this dispute is based on whether the employer has met its burden of proof under ORS 656.266(2)(a).¹ After conducting our review, we conclude that the employer has persuasively done so.

Considering the disagreement between the experts regarding the compensability of the claimed lumbar disc condition, this issue presents complex medical questions that must be resolved by expert medical opinion. *Barnett v. SAIF*, 122 Or App 279, 283 (1993); *Mathew C. Aufmuth*, 62 Van Natta 1823, 1825 (2010). In evaluating the medical evidence, we rely on those opinions that are both well reasoned and based on accurate and complete information. *Somers v. SAIF*, 77 Or App 259, 263 (1986); *Linda Patton*, 60 Van Natta 579, 582 (2008).

Dr. Rosenbaum, a neurosurgeon, examined claimant at the employer's request. (Ex. 62). Dr. Rosenbaum diagnosed preexisting degenerative arthritis in the lumbar spine (lumbar spondylosis) most advanced at L5-S1, which he described as "an inflammatory arthritic condition within the facet joints." (Ex. 66-1). He believed that the "2014 work incident combined with [claimant's] preexisting degenerative arthritis to cause/prolong his subsequent disability and need for treatment." (*Id.*) However, Dr. Rosenbaum also opined that the "work injury did not contribute to cause or worsen the L5-S1 disc condition." (*Id.*)

Dr. Rosenbaum explained that, even assuming some direct causal link, "the contribution from the work injury would be extremely minor when weighed against the causal role [of] [claimant's] preexisting degenerative arthritis." (Ex. 66-2). Finally, Dr. Rosenbaum concluded that "[a]fter considering [claimant's] overall clinical history in conjunction with [his] personal examination findings and review of imaging study films, it is [his] expert medical opinion the major contributing cause of [claimant's] L5-S1 discogenic pathology (however diagnosed) and resultant disability/need for treatment is preexisting spondylosis/arthritis."² (*Id.*)

¹ The employer contends that the work injury was not a material contributing cause of the need for treatment/disability for claimant's lumbar disc condition. However, we adopt the ALJ's reasoning and conclusion that the work injury was a material contributing cause of the need for treatment/disability related to claimant's lumbar disc condition.

² Thus, contrary to claimant's contention, Dr. Rosenbaum addressed the question of whether the work injury was the major contributing cause of the need for treatment/disability related to the combined lumbar disc condition.

Dr. Ware, claimant's initial treating physician following the July 2014 work injury, concurred with Dr. Rosenbaum's medical report, and his opinion that the work injury was not the major contributing cause of disability/need for treatment of the combined L5-S1 disc condition.³ (Exs. 65, 70-12, -14).

Claimant relies on Dr. Ferreiro's opinion that the July 2014 work injury was "the major cause of [claimant's] L5-S1 disability and need for treatment." (Ex. 69-2). In support of her opinion, Dr. Ferreiro emphasized claimant's lack of symptoms before the injury (Ex. 69-2), and the severity of the mechanism of injury; *i.e.* falling more than 17 feet. (Ex. 71-5). Although Dr. Ferreiro agreed with the proposition that claimant's "L5-S1 annular tearing and disc bulging are secondary to a longstanding disease process known as spondylosis" (Ex. 69-1), she reasoned that the "work incident is best characterized as the 'straw that broke the camel's back,' insomuch as it precipitated symptoms in a previously asymptomatic degenerative condition." (Ex. 69-2).

In contrast to Dr. Rosenbaum's thorough explanation, we consider Dr. Ferreiro's opinion to be conclusory and not well explained. Consequently, we discount Dr. Ferreiro's opinion. *See Moe v. Ceiling Sys., Inc.*, 44 Or App 429, 433 (1980) (rejecting unexplained or conclusory opinion).

Moreover, Dr. Ferreiro acknowledged that Dr. Ware was in an advantageous position to determine the causal relationship between the work-related injury incident and the L5-S1 disc condition because Dr. Ware had treated claimant closer in time to the work injury and for four months following the injury. (Ex. 71-10). *See Weiland v. SAIF*, 64 Or App 810 (1983) (in some situations, a treating physician's opinion is entitled to greater weight because of a better opportunity to observe and evaluate a claimant's condition over an extended period). In this regard, Dr. Ferreiro reasoned that claimant's L5-S1 complaints may have been initially "masked" by the sacral fracture. (Ex. 71-10). However, Dr. Ware persuasively rebutted that theory, responding that such "masking" was unlikely because claimant's pain had rapidly decreased in the first month following his work injury and he was able to resume his normal activities. (Ex. 70-8).

³ Dr. Ware did not believe that there was even a "material causal connection between the July 8, 2014 work incident and any disability/need for treatment associated with the pathology at L5-S1 (however diagnosed)." (Ex. 67-1).

In conclusion, after considering these physicians' opinions, we find the well-reasoned opinion of Dr. Rosenbaum, as supported by Dr. Ware, to be more persuasive. *Somers*, 77 Or App at 263. Consequently, for the aforementioned reasons, and those expressed in the ALJ's order, we conclude that the employer satisfied its burden of proof under ORS 656.266(2)(a). Accordingly, we affirm.

ORDER

The ALJ's order dated October 22, 2015 is affirmed.

Entered at Salem, Oregon on May 20, 2016