

In the Matter of the Compensation of  
**JOSEFINA GOMEZ-SOTO, Claimant**

WCB Case No. 13-06424

ORDER ON REVIEW

Hooton Wold & Okrent LLP, Claimant Attorneys  
Cummins Goodman et al, Defense Attorneys

Reviewing Panel: Members Curey and Lanning.

Claimant requests review of Administrative Law Judge (ALJ) Wren's order that upheld the self-insured employer's denial of claimant's occupational disease claim for left shoulder conditions. On review, the issue is compensability.

We adopt and affirm the ALJ's order with the following supplementation.<sup>1</sup>

The ALJ upheld the employer's denial, finding that claimant had not met her burden of proving the compensability of her left shoulder condition through the opinion of Dr. Puziss, who performed a worker-requested medical examination. The ALJ reasoned that Dr. Puziss's opinion was not persuasive because he relied on an inaccurate history, was conclusory, and did not consider all of the contributing factors.

On review, claimant contests the ALJ's evaluation of the medical evidence. Specifically, she argues that Dr. Puziss's opinion persuasively supports compensability of her claim. Claimant also makes several assertions regarding the lack of persuasiveness of the contrary medical opinions. For the following reasons, we agree with the ALJ's conclusion that Dr. Puziss's opinion does not persuasively establish that the claimed occupational disease is compensable.

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<sup>1</sup> We also replace the sixth full paragraph on page three of the ALJ's order with the following:

“On October 15, 2013, Dr. Thompson examined claimant on behalf of the employer. Claimant gave a history to Dr. Thompson of the onset of pain in both shoulders in the summer of 2012, which came on gradually. She reported that, at first, the pain was mostly in the left shoulder. She explained that the discomfort stayed about the same over the course of that year, up until August 24, 2013, when the pain suddenly got worse in the left shoulder. By the end of September 2013, claimant stated that the right shoulder was also worse. Dr. Thompson found that claimant demonstrated interference with range of motion testing on examination. He assessed left rotator cuff tendonosis and suggested that claimant might have frozen shoulders bilaterally, left worse than right, due to diabetes. Dr. Thompson explained that claimant's work activity might have caused a symptomatic flare of the left shoulder problem, but work did not cause a shoulder condition. (Ex. 12).”

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To establish a compensable occupational disease claim, claimant must prove that employment conditions were the major contributing cause of his low back condition. ORS 656.802(2)(a); ORS 656.266(1). The major contributing cause is the cause, or combination of causes, that contributed more than all other causes combined. *Smothers v. Gresham Transfer, Inc.*, 332 Or 83, 133-34 (2001). Although claimant need not prove a specific diagnosis, an occupational disease claim must be proved with the presence of a condition and not merely symptoms. *Tripp v. Ridge Runner Timber Servs.*, 89 Or App 355 (1988); *Daymen C. Kessler*, 60 Van Natta 2285 (2008).

Determination of the major contributing cause is a complex medical question that must be resolved on the basis of expert medical opinion. *See Uris v. Comp. Dep't*, 247 Or 420 (1967). In evaluating the medical evidence concerning causation, we rely on those opinions that are both well-reasoned and based on accurate and complete information. *Somers v. SAIF*, 77 Or App 259 (1986).

Claimant relies on Dr. Puziss's opinion to establish compensability of her occupational disease claim. However, we agree with the ALJ's reasoning regarding the persuasiveness of Dr. Puziss's opinion. Most notably, we agree that Dr. Puziss's opinion is based on an inaccurate history regarding the onset of symptoms (which Dr. Puziss explained was imperative to his causation opinion) and claimant's "post-surgery" symptom presentation. We also conclude that Dr. Puziss's opinion lacked a sufficient explanation regarding how claimant's supposedly repetitious and strenuous work activities could be the major contributing cause of his condition. Therefore, even assuming the presence of an occupational disease, and even in the absence of any contributing factors, Dr. Puziss's opinion is insufficient to establish compensability.<sup>2</sup> Accordingly, for the reasons expressed in the ALJ's order, as supplemented herein, we affirm.

### ORDER

The ALJ's order dated December 1 2015 is affirmed.

Entered at Salem, Oregon on September 30, 2016

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<sup>2</sup> Because claimant has not met his burden of proof through the opinion of Dr. Puziss, it is unnecessary to discuss her contentions regarding the persuasiveness of the contrary medical opinions. *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 fails, regardless of the persuasiveness of the countervailing opinions).