
In the Matter of the Compensation of
DANIEL P. MOECK, Claimant
WCB Case No. 14-05928, 14-02959
ORDER ON REVIEW
Ransom Gilbertson Martin et al, Claimant Attorneys
Kent W Day, Defense Attorneys
SAIF Legal Salem, Defense Attorneys

Reviewing Panel: Members Lanning and Johnson.

Claimant requests review of Administrative Law Judge (ALJ) Fisher's order that upheld the denials of his injury/occupational disease claim for upper back and cervical conditions issued by Liberty Mutual Insurance Corporation and the SAIF Corporation. On review, the issue is compensability.

We adopt and affirm the ALJ's order with the following supplementation to address claimant's contention that his December 2013 claim is compensable as an accidental "injury."

Determining that claimant's claim should be analyzed as an "occupational disease," the ALJ found that the opinions of Drs. Kehr and Lim were insufficient to establish compensability, particularly considering the contrary opinions from Drs. Toal, Gillespie, and Rosenbaum, who attributed claimant's upper back conditions, and need for treatment thereof, to his preexisting cervical and thoracic arthritic conditions (*i.e.*, spondylosis).

Even assuming, without deciding, that claimant's 2013 claim was an accidental "injury," we do not find that claim to be compensable. In particular, we note that neither Dr. Kehr nor Dr. Lim addressed claimant's preexisting cervical and thoracic lumbar spondylosis conditions, which the contrary medical opinions identified as the major contributing cause of his upper back problems and need for treatment. *See Gary H. Grogan*, 54 Van Natta 897 (2002) (even if the standard of proof was "material contributing cause" and the "weighing requirement" of *Dietz v. Ramuda*, 130 Or App 397, 401 (1994), *rev dismissed*, 321 Or 416 (1995), did not apply, causation opinions supporting the claim were considered unpersuasive for not mentioning or discounting the claimant's preexisting degeneration where an examining physician had identified the degeneration as the major cause of the claimant's disputed condition).

Moreover, neither Dr. Kehr nor Dr. Lim addressed or rebutted the contrary medical opinions of Drs. Toal, Gillespie, and Rosenbaum that the alleged December 2013 injurious event did not result in a need for treatment because there was no objective evidence of injury, and because claimant did not seek treatment until April 2014, after he was working for SAIF's insured. (Exs. 24-8-9, 32, 33, 35-3-4, -10-11). In the absence of opinions from Dr. Kehr or Dr. Lim addressing or rebutting the contrary opinions, Dr. Kehr's and Dr. Lim's opinions are unpersuasive. *See Janet Benedict*, 59 Van Natta 2406, 2409 (2007), *aff'd without opinion*, 227 Or App 289 (2010) (medical opinion unpersuasive when it did not address contrary opinions); *Claudia J. Stacy*, 58 Van Natta 2998, 3000 (2006) (medical opinion that did not rebut contrary opinion was unpersuasive).

Based on the aforementioned reasons, in addition to those expressed in the ALJ's order, this record does not establish the compensability of claimant's disputed conditions under an "occupational disease" or accidental "injury" theory. ORS 656.005(7)(a); ORS 656.266(1); ORS 656.802(2). Consequently, we affirm.

ORDER

The ALJ's order dated March 15, 2016 is affirmed.

Entered at Salem, Oregon on September 20, 2016