

In the Matter of the Compensation of
VIKTORIYA A. PETRENKO, Claimant
WCB Case No. 15-04915
ORDER ON REVIEW
Dunn & Roy PC, Claimant Attorneys
SAIF Legal Salem, Defense Attorneys

Reviewing Panel: Members Curey and Lanning.

Claimant requests review of Administrative Law Judge (ALJ) Mills's order that upheld the SAIF Corporation's denial of claimant's new/omitted medical condition claim for a left rotator cuff tear condition. On review, the issue is compensability.

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

The ALJ upheld SAIF's denial of claimant's new/omitted medical condition claim. In doing so, the ALJ found the opinions of Dr. Staver, an orthopedic surgeon who examined claimant at SAIF's request, and Dr. Degen, claimant's attending physician, to be most persuasive.

On review, claimant contends that the opinions of Dr. Verzosa, her previous attending physician, and Dr. Graffeo, a chiropractor, are more persuasive than those of Drs. Staver and Degen. Specifically, she asserts that Drs. Staver and Degen did not respond to the opinions of Drs. Verzosa and Graffeo that her January 2015 work injury caused her tear to become symptomatic. For the following reasons, we affirm.

To prevail on her new/omitted medical condition claim, claimant must prove that the conditions exist and that the January 2015 work injury was a material contributing cause of her disability or need for treatment for her left rotator cuff tear condition. ORS 656.005(7)(a); ORS 656.266(1); *Betty J. King*, 58 Van Natta 977 (2006); *Maureen Y. Graves*, 57 Van Natta 2380, 2381 (2005). If claimant meets that burden and the medical evidence establishes that the "otherwise compensable injury" combined with a "preexisting condition" to cause or prolong disability or a need for treatment, the employer has the burden to prove that the "otherwise compensable injury" (*i.e.*, the "work-related injury incident") was not the major contributing cause of the disability or need for treatment of the combined condition. ORS 656.005(7)(a)(B); ORS 656.266(2)(a); *Brown v. SAIF*, 262 Or App 640, 652 (2014); *SAIF v. Kollias*, 233 Or App 499, 505 (2010); *Jean M. Janvier*, 66 Van Natta 1827, 1832-33 (2014), *aff'd without opinion*, 278 Or App 447 (2016).

Because of the disagreement between medical experts regarding causation, the claim presents a complex medical question that must be resolved by expert medical opinion. *Barnett v. SAIF*, 122 Or App 279, 282 (1993); *Matthew C. Aufmuth*, 62 Van Natta 1823, 1825 (2010). More weight is given to those medical opinions that are well reasoned and based on complete information. *See Somers v. SAIF*, 77 Or App 259, 263 (1986); *Linda E. Patton*, 60 Van Natta 579, 582 (2008).

As previously noted, claimant contends that the opinions of Drs. Staver and Degen did not address whether the work injury caused her claimed left shoulder condition to become symptomatic. We disagree.

Dr. Staver, as concurred with by Dr. Degen, specifically concluded that claimant's rotator cuff tear was "clinically insignificant," that her symptoms were more compatible with her accepted tendinitis condition, and that her January 2015 work injury was not a material contributing cause of the need for treatment/disability for her claimed left shoulder condition. (Exs. 28, 29-1-2, 30-1-2). Consequently, we conclude that Drs. Staver and Degen adequately responded to the causation opinions of Drs. Graffeo and Verzosa.

Ultimately, claimant bears the burden of proof to establish the compensability of her new/omitted medical condition on the basis of persuasive medical opinion. ORS 656.266(1). For the reasons expressed above, as well as those contained in the ALJ's order, we consider the opinions of Drs. Staver and Degen to be more persuasive than the opinions of Drs. Verzosa and Graffeo. Consequently, claimant has not established that January 2015 work injury was a material contributing cause of her need for treatment/disability for her claimed left shoulder condition. Accordingly, we affirm the ALJ's order.

ORDER

The ALJ's order dated April 5, 2016 is affirmed.

Entered at Salem, Oregon on September 27, 2016