

In the Matter of the Compensation of  
**KIMBERLY STRADER, Claimant**

WCB Case No. 15-00747

ORDER ON REVIEW

Julene M Quinn LLC, Claimant Attorneys  
Reinisch Wilson Weier, Defense Attorneys

Reviewing Panel: Members Weddell, Curey and Somers.

Claimant requests review of that portion of Administrative Law Judge (ALJ) Fisher's order that upheld the self-insured employer's denial of claimant's injury claim for a low back condition. On review, the issue is compensability. We reverse.

FINDINGS OF FACT

We adopt the ALJ's "Findings of Fact."

CONCLUSIONS OF LAW AND OPINION

The ALJ concluded that claimant had established legal causation despite certain inconsistencies regarding the circumstances of her workplace fall from a stool while working in a dental office. We adopt the ALJ's reasoning concerning legal causation.<sup>1</sup>

Addressing the issue of medical causation, the ALJ concluded that claimant had a history of back pain that she did not disclose to any of the examining physicians. Accordingly, the ALJ found that the physicians' opinions were based on an inaccurate history, and were, therefore, unpersuasive. Based on the following reasoning, we disagree with the ALJ's conclusion.

To prove a compensable injury, claimant must establish that her work injury was at least a material cause of the disability or need for treatment for the left ankle condition. ORS 656.005(7)(a); *Albany Gen. Hosp. v. Gasperino*, 113 Or App 411, 415 (1992).

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<sup>1</sup> The employer challenges the credibility of claimant's testimony noting several discrepancies between her testimony and that of two of her supervisors. While claimant's testimony may be unreliable in certain respects, we agree with the ALJ's conclusion that the remainder of the record supports the occurrence of a work-related injury. See *Westmoreland v. Iowa Beef Processors*, 70 Or App 642 (1984), *rev den*, 298 Or 597 (1985). In particular, we adopt the ALJ's conclusion that the record supports the occurrence of the November 25, 2014 work-related fall as described by claimant.

Where a claimant's injuries are of such a nature as to require medical expertise to establish causation, expert medical evidence is necessary to meet the burden of proof. *Barnett v. SAIF*, 122 Or App 279, 282 (1993). The following factors are considered in determining whether expert medical evidence of causation is required: (1) whether the situation is complicated; (2) whether symptoms appear immediately; (3) whether the worker promptly reports the occurrence to a superior; (4) whether the worker was previously free from disability of the kind involved; and (5) whether there was any expert testimony that the alleged precipitating event could not have been the cause of the injury. *Uris v. Comp. Dep't*, 247 Or 420, 426 (1967); *Barnett*, 122 Or App at 283; *Wilhemienia Bolds*, 58 Van Natta 2215, 2216 (2006).

Based on the following reasoning, we conclude that expert medical evidence is not necessary, and that the record satisfies claimant's burden to establish medical causation.

First, the situation is not complicated. Claimant testified that, during the last hour of her work day on November 25, 2014, she fell from a chair and struck her low back and buttocks on a cabinet and part of the chair. (Tr. 46, 59). She testified that at the time she fell, she was in the middle of performing a dental examination, and she did not feel pain as she finished the examination. (Tr. 52-53). Claimant did not report her injury that day, but finished her shift before the office closed for Thanksgiving. (Tr. 53-54). Later that evening, she began to feel pain. (Tr. 53).

Within a few days of claimant's work injury, her mother took a photo of her back that showed bruising. (Ex. A; Tr. 26). By December 1, 2014, claimant was having difficulty moving and was experiencing more pain, so she sought treatment at the emergency department. (Ex. 2; Tr. 55). Dr. Klug diagnosed a likely sacral and pelvic contusion, and restricted claimant from work for five days. (Ex. 2-6). Claimant reported the work injury to her supervisor on December 1, 2014, after being evaluated by Dr. Klug. (Tr. 6-7).<sup>2</sup>

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<sup>2</sup> Claimant testified that her injury occurred late in the afternoon on the last working day before the Thanksgiving holiday, during which Dr. Burgin (the dentist that claimant assists) was leaving for vacation. (Tr. 41-42, 44, 55). She did not seek medical treatment until December 1, 2014 because she did not know that there was "anything seriously wrong." (Tr. 55). Before her shift on December 1, 2014, claimant contacted her supervisor to tell her that she could not come to work due to her injury, and that she was seeking medical treatment that day. (Ex. C). Given that the injury occurred at the end of the last working day before Thanksgiving, and claimant reported the injury to her supervisor before her next scheduled shift, we consider the report to have been reasonably prompt.

Based on the abovementioned facts, we conclude that the situation was not complicated, that claimant's symptoms appeared shortly after the work injury, and that her report of the work injury was prompt under the circumstances.

We also find that there is no evidence that claimant had disability of the kind involved before the work injury. While there is conflicting testimony regarding whether claimant had increasing complaints of low back pain over the course of the months leading up to the work injury, Dr. Burgin, the dentist whom claimant assists, was unaware of claimant ever missing work or being unable to complete her duties due to low back pain. (Tr. 88-89). Therefore, in the absence of contrary evidence, the record supports a conclusion that claimant was previously free from disability of the kind involved after the work injury.

Finally, there is no medical opinion concluding that the described mechanism of injury could not have been the cause of claimant's injury. To the contrary, "[g]iven the mechanism," Dr. Klug diagnosed a likely sacral and pelvic contusion. In a subsequent evaluation on December 10, 2014, Dr. Larsen diagnosed a lumbar strain. (Ex. 6). On April 2, 2015, Dr. Dromsky, an orthopedic surgeon who examined claimant at the employer's request, similarly diagnosed a lumbar strain related to the workplace injury. (Ex. 25-7).

Having found that a persuasive expert medical opinion is unnecessary for claimant to meet her burden of proof in this claim, we rely on claimant's testimony, the testimony her mother, the photograph of claimant's injury, and the emergency room chart note to conclude that claimant sustained a work-related injury that was a material cause of her need for treatment. *See* ORS 656.005(7)(a); ORS 656.266(1). This record, based on a preponderance of the evidence, supports, at a minimum, the proposition that claimant sustained a work-related low-back contusion as she alleges. *See Hau Luu*, 60 Van Natta 852, 855 (2008).

Accordingly, based on the aforementioned reasoning, we conclude that claimant's injury claim is compensable. Consequently, we reverse the ALJ's decision to uphold the employer's denial.

Claimant's attorney is entitled to an assessed fee for services at the hearing level and on review. ORS 656.386(1). After considering the factors set forth in OAR 438-015-0010(4) and applying them to this case, we find that a reasonable fee for claimant's attorney's services at the hearing level and on review is \$13,000, payable by the employer. In reaching this conclusion, we have particularly considered the time devoted to the case (as represented by the record, claimant's

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appellate briefs, and her counsel's submissions), the complexity of the issue, the value of the interest involved, the risk that claimant's attorney might go uncompensated, and the contingent nature of the practice of workers' compensation law.

Finally, claimant is awarded reasonable expenses and costs for records, expert opinions, and witness fees, if any, incurred in finally prevailing over the denial, to be paid by the employer. *See* ORS 656.386(2); OAR 438-015-0019; *Nina Schmidt*, 60 Van Natta 169 (2008); *Barbara Lee*, 60 Van Natta 1, *recons*, 60 Van Natta 139 (2008). The procedure for recovering this award, if any, is prescribed in OAR 438-015-0019(3).

### ORDER

The ALJ's order dated April 20, 2016 is reversed. The employer's denial is set aside and the claim is remanded to the employer for processing according to law. For services at the hearing level and on review, claimant's attorney is awarded an assessed fee of \$13,000, payable by the employer. Claimant is awarded reasonable expenses and costs for records, expert opinions, and witness fees, if any, incurred in finally prevailing over the denial, to be paid by the employer.

Entered at Salem, Oregon on March 10, 2017