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In the Matter of the Compensation of  
**RANDY G. SIMI, Claimant**  
WCB Case No. 15-04870  
ORDER ON REVIEW  
Ronald A Fontana, Claimant Attorneys  
Sather Byerly & Holloway, Defense Attorneys

Reviewing Panel: Members Weddell, Johnson, and Somers. Member Weddell dissents.

Claimant requests review of Administrative Law Judge (ALJ) Poland's order that upheld the self-insured employer's denial of claimant's occupational disease claim for right shoulder conditions.<sup>1</sup> On review, the issue is compensability.

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

Claimant worked as a milk truck driver. (Tr. 12). That job required him to climb in and out of his truck multiple times per day, install and remove heavy tire chains, move heavy hoses, and climb up and down ladders. (Tr. 12-13, 19-22).

Claimant sustained work-related right shoulder injuries in 2001, 2004, and 2010. (Exs. 2, 8, 29). He underwent surgeries for those injuries. (Exs. 20, 37-1).

In December 2013, claimant was climbing a ladder at work when his feet slipped off the ladder rungs. (Ex. 45). He hung onto the ladder side rails by his arms until he was able to position his feet back on the rungs. (*Id.*) After that incident, claimant experienced right shoulder pain. (Tr. 25). He filed an injury claim for a bilateral shoulder condition, which the employer denied. (Ex. 49). Claimant did not request a hearing, and that denial became final.

In early February 2014, claimant experienced right shoulder pain after repeatedly installing and removing heavy chains on tires on his delivery truck during a three-day snow storm. (Ex. 73-11, -14). On March 24, 2014, he sought treatment for his shoulder pain. (Ex. 44-1). An MRI confirmed a full thickness tear of the right supraspinatus tendon, partial tear of the right subscapularis insertion site, and dislocation of the right biceps tendon. (Ex. 51-1). Claimant began treatment with Dr. Butters. (Ex. 60).

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<sup>1</sup> The employer's denial concerned claimant's occupational disease claim for bilateral shoulder conditions. (Ex. 71-1). On review, claimant contests that denial only insofar as it pertains to his right shoulder conditions.

Dr. Butters initially noted that claimant's right shoulder supraspinatus tendon tear was probably related to his prior injuries and "overuse" associated with his general work activities. (Ex. 60-4). Dr. Butters then concluded that claimant's occupational exposure with the employer, including but not limited to his multiple work injuries, was the major contributing cause of the right shoulder conditions. (Ex. 66-4). In his deposition, however, Dr. Butters clarified that to a medical probability, the December 2013 work event (which claimant had previously claimed and the employer had denied) was the major contributing cause of the right supraspinatus tendon tear. He also concluded that the 2004 and 2010 injuries and associated surgeries contributed to the tear. (Ex. 84-21). He further explained that the prior work-related injuries were the cause of the additional right shoulder conditions. (Ex. 84-7, -16). Dr. Butters opined that claimant's "hard work \* \* \* with the chains certainly could be a contributing cause" or "could have aggravated his pain, but probably [was] not the major cause of the tear." (Ex. 84-21).

Claimant then filed an occupational disease claim for his shoulder conditions. (Ex. 67-1). The employer denied that claim, and claimant requested a hearing. (Ex. 71-1).

The ALJ concluded that claimant's occupational disease claim was not compensable. In doing so, the ALJ reasoned that the record did not demonstrate that claimant's general work activities over time contributed to the right shoulder conditions.

On review, citing *Hunter v. SAIF*, 246 Or App 755 (2011), claimant contends that to establish compensability of his occupational disease claim, he is not required to prove that his "general work activities" contributed to the right shoulder conditions. Rather, he asserts that an occupational disease claim is compensable if the record demonstrates that a series of work related injuries were the major contributing cause of the conditions.

The employer responds that claimant's shoulder conditions should be analyzed as an injury because they did not arise gradually over time, but suddenly as a result of the denied December 2013 work event. The employer further asserts that the right shoulder conditions are not compensable as an occupational disease because the record does not demonstrate that claimant's "general work activities" contributed to the conditions.

For the following reasons, even assuming that claimant's right shoulder conditions should be analyzed as an occupational disease, we conclude that those conditions are not compensable because the record does not support a finding that claimant's general work activities contributed to the conditions.

To prove compensability of an occupational disease, claimant must establish that his employment conditions were the major contributing cause of his right shoulder conditions. ORS 656.266(1); ORS 656.802(2). An occupational disease claim may be based on the cumulative effect of all of a claimant's work-related exposure, and prior work injuries, including time-barred injuries, may be considered as part of the overall employment conditions. *Hunter*, 246 Or App at 760; *Kepford v. Weyerhaeuser Co.*, 77 Or App 363, 366, *rev den*, 300 Or 722 (1986) (cumulative effect of the claimant's job injuries and employment conditions considered in determining compensability under an occupational disease claim); *Stephen F. Kamin*, 64 Van Natta 2329, 2330 (2012) (time-barred injury considered in establishing the compensability of an occupational disease).

However, we have consistently concluded that to establish the compensability of an occupational disease, the record must demonstrate that employment conditions in general, or in combination with work-related injuries, were the major contributing cause of the condition. *See, e.g., Kamin*, 64 Van Natta at 2332 (occupational disease claim was compensable when medical evidence demonstrated that the claimant's work activities, including two work-related injuries, were the major contributing cause of right shoulder condition); *Justin B. Espinoza*, 61 Van Natta 2673, 2674-75 (2009) (occupational disease claim for a right shoulder condition is compensable only if the persuasive medical evidence establishes that the claimant's work-related injury and subsequent work activities were the major contributing cause of his condition); *Anthony Castro*, 59 Van Natta 2008, 2013 (2007) (because no physician opined that the claimant's employment conditions in general, or in combination with work-related injuries, were the major contributing cause of the cervical degenerative changes, the occupational disease claim was not compensable).

Claimant contends that *Hunter* stands for the proposition that the compensability of an occupational disease may be established without medical evidence that general work activities contributed to the condition. We disagree.

*Hunter* involved an occupational disease claim for a degenerative left knee condition based on a series of work-related injuries. 246 Or App at 757. We initially concluded that the claimant had not proven the compensability of his

occupational disease claim because the medical evidence did not persuasively establish that his initial left knee injury was work-related. *Id.* at 762. On appeal, the court reversed and remanded, concluding that our finding with respect to the medical evidence was not supported by substantial evidence. *Id.* at 763. The court did not conclude that the claimant had established the compensability of his occupational disease claim.

On remand, we concluded that the claimant's knee condition was compensable as an occupational disease. *Kavin R. Hunter*, 64 Van Natta 1310, 1320 (2012). In doing so, we noted that the medical evidence supported "the conclusion that claimant's \* \* \* work injuries and work activities also contributed to the left knee condition." *Id.* at 1316. Accordingly, *Hunter* is consistent with our decisions concluding that to establish the compensability of an occupational disease, the record must demonstrate that general work activities contributed to the condition.

Turning to the case at hand, we agree with the ALJ's conclusion that Dr. Butters's opinion does not persuasively establish that claimant's "general work activities" contributed to his right shoulder conditions. In his deposition testimony, Dr. Butters clarified that a specific injury, the 2013 work injury, was the major contributing cause of the right supraspinatus tendon tear. He also explained that the additional shoulder pathology was caused by the prior work injuries. We find Dr. Butters's opinion that several discrete work-related injuries contributed to the right shoulder conditions to be insufficient to demonstrate that claimant's "general work activities" contributed to those conditions.

Although Dr. Butters stated that claimant's subsequent work activity involving the tire chains "may have aggravated his pain," that statement does not persuasively demonstrate that the work activity contributed to the condition rather than its symptoms. *See* ORS 656.802(2)(a); *Weller v. Union Carbide*, 288 Or 27, 35 (1979); *Brenda Y. Allen*, 68 Van Natta 2008, 2011 (2016) ("To prove compensability of her claim as an occupational disease, claimant must prove that her employment conditions were the major contributing cause of the disease itself, not just symptoms.").

In sum, based on the aforementioned reasoning, as well as that expressed in the ALJ's order, we conclude that the record does not establish the compensability of claimant's occupational disease claim for his right shoulder conditions. Accordingly, we affirm.

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ORDER

The ALJ's order dated June 13, 2016 is affirmed.

Entered at Salem, Oregon on March 1, 2017

Member Weddell dissenting

The majority adopts and affirms the ALJ's order, which concluded that claimant had not established a compensable occupational disease claim for his right shoulder conditions. Because I disagree with the majority's analysis, I respectfully dissent.

I conclude that claimant's right shoulder conditions are compensable as an occupational disease. Claimant suffered work-related injuries to his right shoulder in 2001, 2004, 2010, 2013, and 2014. (Exs. 2, 8, 29, 45). I consider those work injuries as a series of traumatic events or occurrences that eventually required medical services for the right shoulder conditions. *See* ORS 656.802(1)(a)(C). Accordingly, I conclude that the right shoulder conditions should be analyzed as an occupational disease.

Based on the opinion of Dr. Butters, I further conclude that claimant's employment conditions were the major contributing cause of his right shoulder conditions. Because each work incident occurred while claimant was performing work activities, they constitute the overall employment conditions to be considered in determining the compensability of his occupational disease claim. *See Kepford*, 77 Or App at 366 (cumulative effect of the claimant's job injuries and employment conditions could be considered in determining compensability); *Patricia Jenkins*, 57 Van Natta 1835 (2005) (rejecting the carrier's argument that the claimant's work-related injury, for which she was time-barred from making a claim, could not be considered when evaluating the major contributing cause of her occupational disease).

Dr. Butters concluded that the 2013 work injury was the major contributing cause of the right supraspinatus tendon tear and that the 2004 and 2010 injuries also contributed to the tear. (Ex. 84-7, -16, -21). He also explained that the additional right shoulder conditions were caused by the prior work injuries. (Ex. 84-21). Each of those injuries occurred while claimant was performing his regular work activities. (Exs. 8, 29, 84-5). Dr. Butters further stated that claimant's subsequent work activity with the tire chains "could be a contributing

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cause, could have aggravated his pain, but probably was not the major contributing cause” of the right supraspinatus tendon tear. (Ex. 84-21). I find that Dr. Butters’s opinion persuasively establishes that claimant’s “employment conditions” (the 2001, 2004, 2010, 2013, and 2014 injuries) were the major contributing cause of his right shoulder conditions.

Alternatively, if claimant’s overall “general work activities” must be considered, I still find Dr. Butters’s opinion sufficient to establish compensability. Dr. Butters initially concluded that claimant’s “occupational exposure with the employer, including but not limited to his multiple work injuries,” was the major contributing cause of the tear of the right subscapularis insertion site and the dislocation of the right biceps tendon. (Ex. 66-4). In his deposition, Dr. Butters identified the prior work injuries as the cause of the shoulder conditions, but did not contradict his initial opinion that the overall occupational exposure was the major contributing cause of the conditions. (Ex. 84-7, -16). Further, to the extent the tire chain activity represents a “general work activity” because it was part of claimant’s regular work duties, Dr. Butters’s opinion that the chain activity “certainly could be a contributing cause” of the right supraspinatus tendon tear persuasively establishes that claimant’s general work activities contributed to that condition.

In these circumstances, I conclude that, based on Dr. Butters’s opinion, claimant has established the compensability of his right shoulder conditions as an occupational disease. Because the majority concludes otherwise, I respectfully dissent.