

In the Matter of the Compensation of
ROCIO C. CASASOLA, Claimant

WCB Case No. 15-05665

ORDER ON REVIEW

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Reviewing Panel: Members Lanning and Curey.

Claimant requests review of Administrative Law Judge (ALJ) McWilliams's order that upheld the SAIF Corporation's denial of her injury claim for neck, back, and bilateral shoulder conditions. On review, the issue is compensability.

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

The ALJ concluded that the opinion of Dr. Weller, who became claimant's attending physician three months after the work injury, did not satisfy claimant's burden of proof because it was based on an inaccurate history that she lifted a trash bag weighing 35 to 50 pounds. The ALJ also did not find that claimant's symptoms were related to a work-related injury, rather than to her preexisting conditions. Accordingly, the ALJ upheld SAIF's denial.

Claimant challenges the ALJ's conclusion that Dr. Weller based her opinion on an inaccurate history. She reasons that Dr. Weller ultimately agreed that the mechanism of injury recorded by Dr. Smith (a SAIF-arranged medical examiner who recorded that claimant sustained an injury lifting a 15 pound trash bag) was sufficient to have been a material contributing cause of the need for treatment/disability for the claim. Based on the following reasoning, we affirm the ALJ's order.¹

¹ Claimant also requests remand for "development" of questions she raises regarding an alleged need for, and lack of, a Spanish language interpreter during Dr. Smith's January 30, 2016 insurer-requested medical examination. (Ex. 61A). Our review is limited to the record developed before the ALJ. ORS 656.295(5). If the case has been improperly, incompletely, or insufficiently developed or heard, we may remand for further development of the record. *Id.* However, there must be a compelling reason for remand to the ALJ for the taking of additional evidence. *See SAIF v. Avery*, 167 Or App 327, 333-34 (2000). A compelling reason to remand exists if evidence: (1) concerns disability; (2) was not obtainable with due diligence at the time of the hearing; and (3) is reasonably likely to affect the outcome of the case. *Compton v. Weyerhaeuser Co.*, 301 Or 641, 646 (1986); *Avery*, 167 Or App at 333-34.

Here, claimant provides no explanation of why such questions about Dr. Smith's examination could not have been raised at the hearing level. Moreover, there is no indication that the further "development" she requests is reasonably likely to effect the outcome of this case. *See Tara L. Riedel*,

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

Because of claimant's history of symptoms and medical treatment for the back, neck, and shoulders, prior to the injury, whether a work injury was a material contributing cause of disability or need for treatment of the alleged injury is a complex medical question that must be established by expert medical opinion. See *Uris v. Comp. Dep't*, 247 Or 420 (1967). More weight is given to those medical opinions that are well reasoned and based on complete and accurate information. See *Somers v. SAIF*, 77 Or App 259, 263 (1986).

Claimant alleges an injury resulting from either her work duties on October 8, 2015 or from the specific activity of lifting and throwing a bag of garbage into a dumpster. For the following reasons, we are not persuaded that an October 8, 2015 work injury was a material contributing cause of claimant's need for treatment/disability.

First, because of the inconsistencies in the record, we are not persuaded that claimant experienced symptoms of a new injury while lifting and throwing garbage into a dumpster on October 8, 2015. Four days after the alleged work incident, she sought treatment from Dr. Reforma, who had previously treated her for chronic pain for approximately two years. (Ex. 54). In that evaluation, claimant reported back pain that started "weeks ago" as achiness in her shoulders and the base of her neck and later involved the upper back. (Ex. 54-2). Claimant did not describe a work-related event. (*Id.*)

On October 21, 2015, claimant signed an "801" claim form. (Ex. 55). In the "description" portion of the form concerning an injury, claimant wrote "[n]ot sure but that day I had back and neck pain while working," and indicated that she had previously injured the same body part. (*Id.*) Claimant gave the same description on the employer's incident report form. (Ex. 56-2).

58 Van Natta 1669, 1670 (2006) (remand denied where further evidence would have been unlikely to effect the outcome of the case). Accordingly, remand is not warranted. In any event, the record does not establish whether an interpreter was present at the examination. (Ex. 61A) In addition, while Dr. Smith's report was written in English, there is no indication that Dr. Smith required the assistance of a Spanish language interpreter to interview claimant. (*Id.*) Finally, the record does not support a conclusion that claimant experienced any communication difficulties with Dr. Smith. Accordingly, we decline claimant's request to discount Dr. Smith's opinion on this alleged "lack of interpreter" basis.

On October 23, 2015, in a recorded interview with SAIF, claimant was asked how her injury occurred. She responded, “So I will tell you the same thing that I told my supervisor that I don’t know how I got hurt.” (Ex. 56A-3). Claimant described her work activities as a custodial worker and stated, “I don’t know if it was, I hurt myself when I was hauling the trash bags, when I was mopping, when I was sweeping or when I was cleaning * * * I don’t know that.” (*Id.*)²

On January 30, 2016, Dr. Smith noted that claimant was “adamant that all of her pain started on October 8th [2015],” when she lifted an approximately 15-pound trash bag into a dumpster. (Ex. 61A-1, -2). Dr. Smith concluded that the medical record did not support the occurrence of a work-related injury, and that claimant’s symptoms were a continuation of symptoms from her preexisting chronic pain syndrome. (Ex. 61A-9).

In February 2016, Dr. Weller considered a detailed description of claimant’s custodial duties and a description of her lifting a bag of trash, weighing 35-50 pounds, into a dumpster. (Ex. 62). Dr. Weller considered it probable that claimant had a new injury on October 8, 2015 that was the major contributing cause of her need for treatment. (Ex. 62-3).

In March 2016, Dr. Weller considered the history and mechanism of injury recorded by Dr. Smith. Dr. Weller opined that, assuming the accuracy of that history, claimant suffered a left shoulder girdle strain and left shoulder impingement due to October 8, 2015 work activities. (Ex. 64). She reasoned that claimant’s symptoms changed after October 8, 2015, and that objective shoulder testing was consistent with a “primary shoulder problem,” rather than fibromyalgia or myofascial pain syndrome. (*Id.*)

Claimant specifically denied awareness of increased pain associated with any specific activity on at least two occasions before she gave a contrary history to Dr. Smith. (Exs. 55, 56, 56A-3, 61A-1, -2). At the hearing, she described her work duties in detail, including lifting a trash bag into a dumpster. (I-Tr. 5-24). However, claimant’s testimony did not resolve any of the abovementioned discrepancies or attribute her injury to any specific activity or incident. Given the

² The ALJ questioned the accuracy of the interview transcript with SAIF, concluding that the recording quality was insufficient to determine what was recorded. Based on our review, the cited portions of claimant’s statements were audible, accurately recorded, and accurately transcribed. (Ex. 56A). While certain portions of the recording were inaudible, those inaudible portions were designated as such in the transcript. (*Id.*)

significant discrepancies among claimant's statements to Dr. Reforma, Dr. Smith, and the SAIF interviewer, claimant's 801 form, and the employer's incident report, we consider her representations regarding the onset of her symptoms to be unreliable. (Exs. 54, 55, 56, 56A-3). *George V. Jolley*, 56 Van Natta 2345, 2348 (2004), *aff'd without opinion*, 202 Or App 327 (2005) (inconsistencies may raise such doubt that a witness's material testimony may be deemed unreliable). Furthermore, because Dr. Weller's opinion was based on claimant's unreliable history, it is not persuasive. *See Miller v. Granite Construction Co.*, 28 Or App 473, 476 (a physician's conclusions are valid as to the matter of causation only to the extent that the underlying basis of those opinions, the reports of the claimant as to the circumstances of the accident and the extent of the resulting injury, are accurate and truthful); *Everett L. Davis*, 68 Van Natta 1972, 1976 (2016).

Additionally, Dr. Weller's opinion addressing claimant's work activities in general is not persuasive. Claimant had been working as a custodian for the employer for some 10 years at the time of the alleged October 2015 injury. (I-Tr. 6). While Dr. Weller considered a detailed description of claimant's work activities, she did not explain how or why claimant's work activities on October 8, 2015 would have been injurious. Therefore, Dr. Weller's opinion does not persuasively support the conclusion that claimant's need for treatment/disability was materially related to a work injury. *See Moe v. Ceiling Sys., Inc.*, 44 Or App 429, 433 (1980) (rejecting unexplained or conclusory opinion).

Because there are no other physician's opinions supporting the claim, the record does not persuasively support the compensability of the claimed conditions. ORS 656.266(1). Therefore, we affirm the ALJ's order that upheld SAIF's denial.

ORDER

The ALJ's order dated October 24, 2016 is affirmed.

Entered at Salem, Oregon on May 10, 2017