
In the Matter of the Compensation of
ROSALVA MANRIQUEZ, Claimant
WCB Case No. 16-01009
ORDER ON REVIEW
Dodge and Associates, Claimant Attorneys
SAIF Legal Salem, Defense Attorneys

Reviewing Panel: Members Lanning and Johnson.

Claimant requests review of Administrative Law Judge (ALJ) Jacobson's order that upheld the SAIF Corporation's denial of her occupational disease claim for bilateral carpal tunnel syndrome (CTS). 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 determined that the opinion of Dr. Puziss, a consulting physician, did not persuasively establish the compensability of claimant's occupational disease claim for CTS because he did not review a "post-work injury" video depicting claimant performing her work activities. Instead, the ALJ found most persuasive the assessment of Dr. Almaraz, a SAIF-arranged medical examiner who viewed the video and did not consider claimant's work activities to be consistent with the development of CTS.

On review, claimant contends that her verbal descriptions, to both Drs. Puziss and Almaraz, were consistent with the video depicting those work activities. Accordingly, she asserts that Dr. Puziss's opinion should not be discounted. Under these particular circumstances, we agree for the following reasons.

In January 2016, claimant, an onion sorter, filed a claim for bilateral hand and wrist symptoms that she attributed to her work. (Ex. 2). She was evaluated by Dr. Karmy, who noted positive Tinel's and Phalen signs. (Ex. 3). Diagnosing bilateral CTS, he recommended median nerve conduction studies. (*Id.*)

In February 2016, Dr. Almaraz evaluated claimant. (Ex. 7). Claimant demonstrated the position of her hands when sorting, and how she would pick up onions while supinating and pronating her upper extremities to inspect the onions. (Ex. 7-6). Dr. Almaraz did not consider claimant's work activities to be of the type, frequency, or duration to cause or significantly contribute to her symptoms. (Ex. 7-7). He described claimant's symptoms and physical examination as "non-neuroanatomic" without objective findings correlating with her subjective complaints. (Ex. 7-5). Dr. Almaraz did not consider claimant to have any neurological condition, but advised that electrical diagnostic studies could be obtained to confirm that her peripheral nervous system was "probably working normally." (Ex. 7-7).

On February 18, 2016, SAIF denied the claim. (Ex. 8).

In May 2016, Dr. Almaraz watched a video of claimant performing her work activities. (Ex. 9). He described her work as fast-paced, but opined that, even if it were considered constant or repetitive, it did not involve forceful gripping, forceful vibration or excessive wrist flexion or any other factors that would cause a pathological condition. (Ex. 9-1). He believed that the video "further confirm[ed]" his understanding of claimant's work activities, based on her description. (*Id.*)

On May 10, 2016, Dr. Puziss examined claimant. (Ex. 11). Dr. Puziss considered the examination to be consistent with bilateral CTS, which he attributed to her work activities. (Ex. 11-6). He noted that, while her work was not heavy and did not expose her to vibration, the work required repetitive "circumduction" of her wrists. (Ex. 11-7). Dr. Puziss concluded that the work activities were the major contributing cause of bilateral wrist tenosynovitis, which caused claimant's CTS. (Ex. 11-6 -7).

On May 31, 2016, Dr. Erlemeier performed electrodiagnostic testing. (Ex. 12). He interpreted the studies as indicating mild to moderate bilateral CTS. (*Id.*)

To establish the compensability of her bilateral CTS condition, claimant must prove that employment conditions were the major contributing cause of the disease. ORS 656.266(1); ORS 656.802(2)(a). Determination of major causation requires evaluation of the relative contribution of all causes and identification of the cause, or combination of causes, contributed more than all other causes combined. *Bowen v. Fred Meyer Stores*, 202 Or App 558, 563-64 (2005).

In light of the disagreement between experts, the causation issue presents a complex medical question that must be resolved by expert medical opinion. *See Uris v. Comp. Dep't*, 247 Or 420, 426 (1967); *SAIF v. Barnett*, 122 Or App 279, 283 (1993). We give more weight to those opinions that are well reasoned and based on complete information. *Somers v. SAIF*, 77 Or App 259, 263 (1986).

After conducting our review, we are persuaded that Dr. Puziss's opinion was based on an accurate understanding of claimant's work activities. In doing so, we disagree with SAIF's contention that his opinion should be discounted for not viewing the video. Rather, the record establishes that claimant's description of her work activities to both Drs. Almaraz and Puziss was consistent with the video.

SAIF asserts that Dr. Puziss "incorrectly" understood claimant's work activities to involve repetitive circumduction of her wrists. "Circumduction" is defined as movement of a part (*e.g.*, an extremity) in a circular direction. *Stedman's Medical Dictionary v. 7.0* (2007). Dr. Almaraz's description of claimant picking up onions and supinating and pronating her upper extremities while sorting them is consistent with the term "circumduction." (Ex. 7-6). Later, Dr. Almaraz described the video as showing that claimant picked up the onions and "turned" them over for inspection. (Ex. 9).

Based on our review of the record, we find no distinction between Dr. Puziss's description of the "circumduction" of claimant's wrists and Dr. Almaraz's description of "supinating," "pronating," and turning the onions over to inspect them. Moreover, our review of the video reinforces our determination that both Dr. Puziss and Dr. Almaraz adequately understood claimant's work activities. Accordingly, we consider Dr. Puziss's opinion to be based on sufficient information. *See Jackson County v. Wehren*, 186 Or App 555, 561 (2003) (a physician's history is complete if it includes sufficient information on which to base the opinion and does not exclude information that would make the opinion less credible).

We also consider Dr. Puziss's opinion of bilateral CTS caused by claimant's work activities to be more persuasive than Dr. Almaraz's opinion of non-specific symptoms that did not correlate with a diagnosis of a neurological condition. (Exs. 7-5, 11-6). Dr. Puziss performed a thorough review of the medical record, in addition to his examination of claimant. (Ex. 11). His diagnosis was ultimately confirmed by electrodiagnostic testing performed by Dr. Erlemeier, who considered the results to be consistent with bilateral CTS. (Ex. 12). While neither Dr. Almaraz or Dr. Puziss commented regarding the results of that testing, the outcome supported Dr. Puziss's diagnosis.

Finally, Dr. Almaraz's opinion was based, at least in part, on a perceived absence of a diagnosable neurological condition. (Ex. 7-7). Yet, in making this observation, Dr. Almaraz agreed that obtaining electrodiagnostic studies could "confirm [his] clinical suspicion" that claimant's peripheral nervous system was "probably" working normally. (*Id.*) Because those studies were subsequently obtained and contradicted Dr. Almaraz's conclusion, we further discount his opinion, particularly when Dr. Puziss persuasively explained how claimant's work activities led to the development of her bilateral CTS. *See, e.g., Cornelio Garcia*, 67 Van Natta 893, 896 (2015).

Accordingly, we are persuaded that her claimant's work activities were the major contributing cause of her claimed occupational disease. Therefore, we reverse the ALJ's decision that claimant's bilateral CTS condition was not compensable.

Claimant's counsel 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 \$10,000, payable by SAIF. In reaching this conclusion, we have particularly considered the time devoted to the case (as represented by the hearing record and claimant's appellate briefs), the complexity of the issue, the value of the interest involved, the risk that counsel may 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 SAIF. *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 November 28, 2016 is reversed. SAIF's denial is set aside and the claim is remanded to SAIF for processing in accordance with law. For services at the hearing level and on review, claimant's attorney is awarded an assessed fee of \$10,000 to be paid by SAIF. 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 SAIF.

Entered at Salem, Oregon on May 31, 2017