
In the Matter of the Compensation of
KARISTA D. PEABODY, Claimant
WCB Case No. 16-02309
ORDER ON REVIEW
Colin Hackett Law PC, Claimant Attorneys
SAIF Legal Salem, Defense Attorneys

Reviewing Panel: Members Ousey and Curey.

Claimant requests review of Administrative Law Judge (ALJ) Fulsher's order that upheld the SAIF Corporation's denial of her injury/occupational disease claim for right cubital tunnel syndrome. On review, the issue is compensability. We reverse.

FINDINGS OF FACT

We adopt the ALJ's "Findings of Fact" with the following supplementation.

Claimant has worked as a patient care coordinator since 2012. (Tr. 8). Her job involved typing on a computer, talking to patients on the phone, filling out paperwork, and lifting a basket that contained patient charts/files using her right hand/arm. (Tr. 10-13). In early 2015, there was a significant increase in the number of patients treated, which resulted in claimant handling significantly more patient phone calls and paperwork. (Tr. 9, 31-33). As a part of her job activities, claimant lifted the basket (which weighed approximately five pounds) an average of 20 times per day with her right hand and with her elbow on the desk. (Tr. 12, 25, 29-32). That summer, claimant noticed tenderness and achiness in her right wrist/arm area primarily associated with lifting the basket, as well as with typing, which went away when she was off work and on vacation. (Tr. 10-15, 17-19, 31-33).

In December 2015, claimant lifted the basket at work and felt immediate "fiery" pain radiating into her right pinky and ring fingers and up into the middle aspect of her arm. (Tr. 18-19, 22). After that incident, claimant's symptoms persisted even when she was off work. (Tr. 19).

On January 29, 2016, claimant sought treatment from Dr. Mallowney for right wrist/forearm symptoms that she had "for at least a month." (Ex. 1-1). Dr. Mallowney diagnosed right ulnar nerve compression. (Ex. 1-2).

In March 2016, Dr. Carlson evaluated claimant and performed electrodiagnostic studies, which were consistent with right ulnar neuropathy at the elbow. (Ex. 3).

In April 2016, Dr. Nolan, who examined claimant at SAIF's request, stated that there was insufficient evidence in the medical literature to establish that repetitive work (*i.e.*, "generally defined as something repeated every 30 seconds"), forceful work (*i.e.*, "usually refers to something that requires more than 10 pounds of strength"), keyboard activities, or awkward postures were causative of cubital tunnel syndrome. (Ex. 4-5). According to Dr. Nolan, there is only "some evidence" that a combination of such factors are "possibly important" in the development of the condition. (*Id.*) He did not consider claimant's work of lifting the basket approximately 20 times per day sufficiently repetitious and forceful to cause cubital tunnel syndrome. (*Id.*) Dr. Nolan concluded that claimant's work activities did not contribute to her cubital tunnel syndrome, and that the cause of her condition was idiopathic (*i.e.*, unknown). (Ex. 4-5-8).

After SAIF denied her occupational disease claim for right cubital tunnel syndrome, claimant requested a hearing. (Ex. 5).

In August 2016, Dr. Solomon performed a right cubital tunnel release, and observed a "ligament of Struthers" at surgery. (Ex. 7-2). Dr. Solomon was "suspicious" that there was a temporal relationship between claimant's work activities and her ulnar nerve condition, but concluded that "the chances are not 50% or greater that the work caused this problem because of the high incidence of idiopathic cubital tunnel syndrome, and because there is no convincing data in the literature to say that any repetitive activity causes this problem." (Ex. 8-2).

On September 15, 2016, Dr. Puziss, who examined claimant at her attorney's request, diagnosed work-related right cubital tunnel syndrome as both an acute injury and as an occupational disease. (Ex. 5B-4). Dr. Puziss opined that the major contributing cause of claimant's need for treatment of the condition was "her work activity where she would lean on her elbow over the cubital tunnel and work with 400 charts per day," which caused increased elbow pain and eventually led to the December 2015 acute injury. (Ex. 5B-5). He explained that leaning on the nerve causes physiological compression, and that repeated flexion of the elbow, especially when leaning on the elbow, puts pressure on the ulnar nerve. (*Id.*) Noting that claimant had hundreds of minor contusions to the nerve every day for many months, as well as the reduction in her symptoms after her work changed to

electronic medical records,¹ Dr. Puziss concluded that “her work activities were a proximate and material cause, as well as major cause of her symptoms and conditions.” (*Id.*) In explaining his disagreement with Dr. Nolan’s opinion, Dr. Puziss emphasized that claimant’s work activities did not involve simple repetitive elbow flexion, but also leaning on the elbow. (Ex. 5B-5-7).

On September 19, 2016, Dr. Vetter, who examined claimant at SAIF’s request, noted claimant’s history of having aching in her right arm in the summer of 2015 associated with her work activities, and fiery pain involving her ring and little fingers and extending up her ulnar forearm. (Ex. 7A-4-5). He opined that claimant’s right cubital tunnel syndrome was “idiopathic as is seen in the general population.” (Ex. 7A-5). According to Dr. Vetter, claimant’s work activities contributed to her symptoms, but did not contribute to the pathology or development of ulnar compressive neuropathy because they did not rise to a level that would constitute potentially injurious forces or repetition. (Ex. 7A-5-7). He also stated that the Struthers’ ligament identified at her surgery was associated with an increased risk in the development of cubital tunnel syndrome. (Ex. 7A-6-7). Dr. Nolan agreed with Dr. Vetter’s opinion. (Ex. 10-2).

In an October 2016 summary letter, Dr. Mallowney opined that claimant’s repetitive work activities were the major contributing cause of her right elbow ulnar nerve compression condition, *i.e.*, right cubital tunnel syndrome. (Ex. 9). According to Dr. Mallowney, the “mechanism [claimant] was using when she pulled down the pack of files was engaging muscles in her proximal forearm that are right where the ulnar nerve dives through the elbow[,]” which can cause ulnar nerve impingement. (Ex. 9-5). She further stated that the strong temporal connection between claimant’s symptoms and her work activities (as well as her acute symptoms in December 2015 when she lifted the basket) supported the conclusion that claimant’s condition was caused by the repetitive activity that put pressure on the ulnar nerve. (Ex. 9-5-6). Disagreeing with Dr. Nolan’s “formalized definitions of what repetitive activity and force could cause ulnar neuropathy” as “arbitrary measures,” Dr. Mallowney explained that there did not need to be a specific weight repetitively lifted but, rather, “when the activity is isolating the part of the body in question, the biomechanical forces can cause entrapment.” (Ex. 9-6).

¹ After the December 2015 work incident, and a few months before Dr. Nolan’s April 2016 examination, claimant’s office changed to “paperless” electronic medical records. (Tr. 24, 31; Ex. 4-2).

In a December 2016 summary letter, Dr. Carlson agreed with the opinions of Drs. Mullowney and Puziss that claimant's work activities were the major contributing cause of her cubital tunnel syndrome. (Ex. 11). Dr. Carlson acknowledged that the cause of the condition is often idiopathic, but he opined that "the medical literature generally supports that compression and repetitive elbow flexion may cause cubital tunnel syndrome." (Ex. 11-4). He explained that claimant's work activities of lifting the basket with her elbow resting on her desk implicated both of those elements. (*Id.*) Additionally, considering the temporal connection between claimant's increased work activities and the onset of her symptoms, Dr. Carlson concluded that her work activities were the major contributing cause of her cubital tunnel syndrome. (*Id.*)

In January 2017, Dr. Puziss acknowledged that his previous opinion relying on a history that claimant "lifted the basket 400 times a day" was in error and noted that, rather, she lifted the basket 10 to 20 times per day. (Ex. 12-2). Dr. Puziss opined that the nature of the movement required to pick up the basket, especially while resting her elbow on her desk when she lifted the basket repetitively, was the cause of claimant's condition. (*Id.*) Further noting that the "fiery nerve pain" she felt while lifting the basket on one particular occasion precipitated her seeking treatment, Dr. Puziss concluded that claimant's work activities in general were the major contributing cause of her cubital tunnel syndrome. (*Id.*)

In disagreeing with Dr. Nolan's and Dr. Vetter's opinions that claimant's right cubital tunnel syndrome was idiopathic, Dr. Puziss explained that claimant's work activities were of the type to cause her condition, and that "there was a strong temporal connection between her work and the onset of the symptoms." (*Id.*) He further stated that a Struthers' ligament was not an active cause of ulnar nerve irritation unless there is a physical activity to cause the ligament to move and interfere with the nerve. (Ex. 12-3). According to Dr. Puziss, claimant did not have ulnar nerve irritation until her work activities changed in 2015, and the pressure on her elbow from lifting the basket and simultaneously leveraging her elbow on the desk caused her nerve irritation and cubital tunnel syndrome. (*Id.*)

CONCLUSIONS OF LAW AND OPINION

The ALJ determined that claimant's condition arose over time and, thus, was appropriately analyzed as an occupational disease. Finding the opinions of Drs. Nolan and Solomon, as supported by Dr. Vetter, to be more persuasive than

those of Drs. MULLOWNEY, CARLSON, and PUZISS, the ALJ concluded that claimant did not establish that her work activities were the major contributing cause of her right cubital tunnel syndrome. Accordingly, the ALJ upheld SAIF's denial.

On review, claimant contends that the opinions of Drs. MULLOWNEY, CARLSON, and PUZISS persuasively establish the compensability of her occupational disease claim for right cubital tunnel syndrome. Alternatively, she relies on Dr. PUZISS's unrebutted opinion to establish the compensability of her claim under an "injury" theory. For the following reasons, we find claimant's right cubital tunnel syndrome compensable as an occupational disease.

To determine whether claimant's claim involves an injury or an occupational disease, we look at whether the condition itself, not its symptoms, occurred gradually, rather than suddenly. See *Smirnoff v. SAIF*, 188 Or App 438, 443 (2003). Here, Dr. PUZISS, who provided the only opinion that directly addresses this question, expressly stated that claimant's condition "arose over several weeks or months." (Ex. 5B-6). Because claimant's condition occurred gradually over time, an occupational disease analysis applies. *Smirnoff*, 188 Or App at 449; *Carolyn Delapp*, 69 Van Natta 1151, 1155 (2017).

To establish a compensable occupational disease, claimant must prove that employment conditions, which may include the December 2015 work incident, were the major contributing cause of her right cubital tunnel syndrome.² ORS 656.266(1); ORS 656.802(2)(a); *Lori M. Lawrence*, 60 Van Natta 727, 728 (2008). The major contributing cause is the cause that contributed more than all other causes combined. *McGarrah v. SAIF*, 296 Or 145, 166 (1983). We give more weight to medical opinions that are well reasoned and based on complete information. *Somers v. SAIF*, 77 Or App 259, 263 (1986).

Here, Drs. MULLOWNEY, CARLSON, and PUZISS opined that claimant's work activities were the major contributing cause of her right cubital tunnel syndrome. In contrast, Drs. NOLAN and VETTER opined that her condition was idiopathic, without any contribution from her work activities. Dr. SOLOMON stated that the "chances are not 50% or greater" that claimant's work caused her condition. For the following reasons, we find that the opinions of Drs. MULLOWNEY, CARLSON, and PUZISS persuasively establish the compensability of claimant's occupational disease claim.

² Work-related injuries, even if not part of an accepted claim, may still be considered in establishing the compensability of an occupational disease claim. See ORS 656.802(1)(a)(C); *Joshua P. Canoy*, 69 Van Natta 481, 489 n 3 (2017).

According to Dr. MULLOWNEY, claimant was “engaging muscles in her proximal forearm that are right where the ulnar nerve dives through the elbow” when she repetitively lifted the basket (an activity that isolated that particular part of the body), which caused ulnar nerve impingement/entrapment. (Ex. 9-5-6). Dr. Carlson explained that claimant’s repetitive lifting of the basket with her elbow resting on her desk implicated both compression and repetitive elbow flexion that caused cubital tunnel syndrome. (Ex. 11-4). Similarly, Dr. Puziss, with a corrected history, stated that claimant’s repetitive lifting of the basket involved repeated elbow flexion which, especially when leaning on the elbow, caused physiological compression and excessive pressure on the ulnar nerve at the cubital tunnel that led to nerve irritation. (Exs. 5B-5-7, 12-2-3). We find the biomechanical explanations of how claimant’s work activities caused her right cubital tunnel condition from Drs. MULLOWNEY, Carlson, and Puziss to be well reasoned and persuasive. *Holly S. Hall*, 62 Van Natta 2216, 2218-19 (2010).

In addition, Drs. MULLOWNEY, Carlson, and Puziss relied on the temporal connection between claimant’s increased work activities and the onset of her initial symptoms of general achiness and soreness in right wrist/hand/elbow, and the fact that she had no symptoms when she was off work or before her work load increased. (*See* Exs. 5B, 9, 11, 12). Drs. MULLOWNEY and Puziss also considered the onset of “fiery” pain after the December 2015 work incident to be when claimant’s condition became acute. (Exs. 5B-6-7, 9-5-6, 12-2). We find that their opinions addressing the temporal relationship further support their conclusions that claimant’s work activities were the major contributing cause of her right cubital tunnel syndrome.

Drs. MULLOWNEY, Carlson, and Puziss also persuasively explained their disagreement with the contrary medical opinions of Drs. Nolan and Vetter that claimant’s right cubital tunnel syndrome was idiopathic and that her work activities did not contribute to the condition. Specifically, Dr. MULLOWNEY acknowledged that ulnar nerve pain is known to occur spontaneously in many cases, but stated that it can also be caused by repetitive activity that puts pressure on the ulnar nerve, as in claimant’s case. (Ex. 9-6). Dr. MULLOWNEY further considered Dr. Nolan’s “formalized definitions of what repetitive activity and force could cause ulnar neuropathy” to be “arbitrary measures,” and explained that there did not need to be a specific weight repetitively lifted because the biomechanical forces, when the activity is isolating the part of the body in question, can cause nerve entrapment/impingement. (*Id.*)

Similarly, while Dr. Carlson agreed that the cause of cubital tunnel syndrome is often idiopathic, he explained that the medical literature “supports that compression and repetitive elbow flexion may cause cubital tunnel syndrome,” which is consistent with claimant’s described work activities. (Ex. 11-4). Dr. Puziss likewise explained that claimant’s condition was not a case of idiopathic “spontaneous onset” because her work activities involving repetitive elbow flexion, especially when leaning on the elbow, put pressure on the elbow that causes ulnar nerve irritation. (Ex. 12-2-3).³ See *Pennie J. McAdams*, 47 Van Natta 258 (1995) (consideration and rebuttal of contrary medical opinions strengthened the persuasiveness of a physician’s opinion).

SAIF argues that Drs. Mallowney, Carlson, and Puziss relied on an inaccurate understanding that claimant had soreness in her right elbow in 2015, and that she leaned on her elbow when lifting the basket. (See Exs. 9, 11, 12). Yet, claimant testified that she initially had dull achiness in the lateral aspect of her right arm/wrist area that worsened in December 2015 to include radiating fiery pain, and that she “oftentimes” had her elbow on her desk when lifting the basket. (Tr. 10-18). Claimant’s description of her symptoms or work activities was not rebutted. Under such circumstances, we conclude that the opinions of Drs. Mallowney, Carlson, and Puziss were based on a sufficiently accurate history. See *Jackson County v. Wehren*, 186 Or App 555, 561 (2003) (a history is complete if it includes sufficient information on which to base the physician’s opinion and does not exclude information that would make the opinion less credible).

Furthermore, we do not find the opinions of Dr. Nolan, Dr. Vetter, and Dr. Solomon to be persuasive for the following reasons.

First, because Dr. Solomon did not provide any analysis of claimant’s work activities, we find his opinion to be conclusory and unpersuasive. (Ex. 8-2). See *Moe v. Ceiling Sys., Inc.*, 44 Or App 429, 433 (1980) (rejecting unexplained or conclusory opinion).

Next, referring to medical literature regarding the “idiopathic” nature of cubital tunnel syndrome, as well as general definitions of repetition and force, Drs. Nolan and Vetter concluded that claimant’s right cubital tunnel syndrome was idiopathic because her work activities were insufficient to cause her condition.

³ In doing so, Dr. Puziss stated that claimant’s Struthers’ ligament was not an active cause of nerve irritation without physical activity that would cause it to interfere with the ulnar nerve, and explained that claimant’s work activities caused irritation of the nerve. (Ex. 12-3).

(Exs. 4, 7A, 10). However, in light of the opinions from Drs. Mallowney, Carlson, and Puziss that persuasively addressed the biomechanics of claimant's work activities, we do not find that Dr. Nolan and Dr. Vetter sufficiently explained how this claimant's specific work activities (particularly involving repetitive elbow flexion while leaning on the elbow) did not contribute to her "idiopathic" right cubital tunnel syndrome. (Exs. 4, 7A, 10). Accordingly, we find the opinions of Drs. Nolan and Vetter to be unpersuasive. *See David J. Tikunoff*, 62 Van Natta 2359 (2010).

Moreover, Drs. Nolan, Vetter, and Solomon did not adequately address the temporal correlation between claimant's work activities and her symptoms, or the December 2015 work incident and the onset of her acute symptoms and condition. (Exs. 4, 7A, 8). In light of the persuasive explanations from Drs. Mallowney, Carlson, and Puziss emphasizing that temporal connection, this further undermines the persuasiveness of the opinions of Dr. Nolan, Dr. Vetter, and Dr. Solomon. *See Silvia R. Vasquez-Rojos*, 64 Van Natta 1371, 1372 n 1 (2012).

In sum, based on the foregoing reasons, we find that the opinions of Drs. Mallowney, Carlson, and Puziss persuasively establish that claimant's work activities were the major contributing cause of her right cubital tunnel syndrome. ORS 656.266(1); ORS 656.802(2)(a). Accordingly, her occupational disease claim is compensable. Consequently, we reverse.

Claimant's attorney is entitled to an assessed fee for services at hearing 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 \$12,500, payable by SAIF. In reaching this conclusion, we have particularly considered the time devoted to the case (as represented by the record, claimant's appellate briefs, her counsel's fee submission, and SAIF's objections), the complexity of the issue, the value of the interest involved, the risk that claimant's counsel 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 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 April 17, 2017 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 \$12,500, payable 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 October 31, 2017