In the Matter of the Compensation of
BARBARA L. BOWMAN, Claimant
WCB Case No. 16-01479
ORDER ON REVIEW
James W Moller, Claimant Attorneys
SAIF Legal Salem, Defense Attorneys

Reviewing Panel: Members Curey and Lanning.

Claimant requests review of Administrative Law Judge (ALJ) Poland's order that upheld the SAIF Corporation's denial of her occupational disease claim for a left shoulder condition. On review, the issue is compensability.

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

In May 2010, claimant filed a claim regarding bilateral hand and shoulder symptoms that she attributed to her work as a hair stylist. (Ex. 3A).

In July 2010, SAIF denied claimant's occupational disease claim for left shoulder impingement. (Ex. 7). Claimant's attending physician, Dr. Weller, opined that claimant "may" have had left shoulder impingement, but she did not find objective evidence of the condition and did not consider it to be related to claimant's work activities. (Ex. 10).

In February 2011, claimant and SAIF entered into a Disputed Claim Settlement (DCS), which provided that claimant would have no further entitlement to compensation for the denied conditions (including the denied left shoulder impingement). (Ex. 15-5, -7). Claimant signed the DCS, which stated that she understood that, upon approval of the agreement, SAIF's denial, as supplemented by its contentions (including that claimant's left shoulder impingement was not related to a work injury or her work activities in general), would remain in "full force and effect." (Ex. 15-5, -7). A prior ALJ approved the DCS on February 11, 2011. (Ex. 15).

In February 2016, claimant experienced left shoulder pain that she again attributed to her work as a hair stylist for the same employer. (Ex. 32).

In March 2016, claimant was evaluated by Dr. Teed at SAIF's request. (Ex. 36). He diagnosed bilateral shoulder impingement, which he attributed to aging and degeneration, rather than claimant's work activities. (Ex. 36-4).

SAIF denied the claim on March 21, 2016. (Ex. 39).

On March 25, 2016, claimant was evaluated by Dr. Weller. (Ex. 41). Dr. Weller diagnosed a left shoulder sprain with impingement, and provided an injection. (Ex. 41-3).

In May 2016, Dr. Weller opined that claimant's work activities as a hair dresser were the major contributing cause of her left shoulder supraspinatus tendinosis leading to left shoulder impingement syndrome. (Ex. 46-2).

The ALJ was persuaded by the opinion of Dr. Teed, who concluded that claimant's left shoulder condition was not caused by her work activities, and upheld SAIF's denial. On review, claimant contends that the ALJ erred in discounting the contrary opinion of the attending physician, Dr. Weller. Furthermore, claimant asserts that the existence of the 2011 DCS is not relevant because it addressed a left shoulder condition that either did not exist or that resolved, such that it is distinct from the claimed left shoulder condition in 2016. Based on the following reasoning, we disagree with claimant's contentions.

We first address claimant's argument regarding the 2011 DCS. When a claimant enters a DCS and expressly agrees that his/her then-current condition was not related or attributable to employment exposure, the employment exposure that was the subject of the DCS cannot be considered for purposes of establishing a worsened condition. *See Gilkey v. SAIF*, 113 Or App 314, 317 (1992); *Lloyd R. Fleming*, 69 Van Natta 1238, 1240 (2017).

Here, claimant's assertion that her left shoulder impingement condition did not exist at the time of the 2011 DCS is directly contrary to her contentions contained within the settlement document. Therein, she specifically contended that she had a left shoulder impingement syndrome (among other conditions) attributable to a work injury or "work activities in general." (Ex. 15-5). SAIF contended that such conditions were not related to a work injury or claimant's work activities, and claimant, in turn, agreed that upon approval of the settlement, SAIF's contentions would "remain in full force and effect." (Ex. 15-5, -7).

Under such circumstances, we reject claimant's contention that she did not have left shoulder impingement at the time of the 2011 DCS. In addition, though claimant asserts that the left shoulder problem present at the time of the 2011 DCS was minor and has since resolved, that does not negate the fact that claimant made a claim for the same condition for which she now seeks compensation. Moreover, she agreed that her "pre-DCS" work exposure would be considered unrelated to the development of the claimed left shoulder condition. *See Fleming*, 69 Van Natta at 1240.

On the other hand, claimant can attempt to prove that her "post-DCS" work activities were the major contributing cause of a pathological worsening of her left shoulder combined condition and, if successful, can establish the compensability of her claimed condition as an occupational disease. ORS 656.266(1); ORS 656.802(2)(b); *Fleming*, 69 Van Natta at 1241. This is a complex medical question that must be resolved on the basis of expert medical opinion. *Uris v. Comp. Dep't*, 247 Or 420 (1967); *SAIF v. Barnett*, 122 Or App 279, 283 (1993). 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).

Claimant relies on Dr. Weller's opinion that her work activities were the major contributing cause of her left shoulder impingement condition. (Ex. 48-3). Dr. Weller considered claimant's shoulder problem in 2010 to have been acute and to have resolved with treatment. (*Id.*) However, Dr. Weller's opinion does not analyze the relative contributions of claimant's "pre-DCS" and "post-DCS" work activities. In reaching this conclusion, we do not consider Dr. Weller's comments to adequately address the effect of the 2011 DCS, which expressly provides that claimant's "pre-DCS" work activities were not related to the claimed left shoulder impingement. (Ex. 15-5).

Based on the aforementioned reasoning, Dr. Weller's opinion did not adequately address claimant's burden of proof to establish the compensability of her claimed left shoulder condition. ORS 656.266(1); ORS 656.802(2)(a); *see James M. Steele*, 51 Van Natta 1031 (1999) (physician's opinion that related the claimant's current condition to overall work activities, including work exposures that the parties agreed in a previous DCS were not related, found insufficient to establish a compensable occupational disease); *Fleming*, 69 Van Natta at 1241. In the absence of a persuasive medical opinion satisfying the aforementioned statutory requirement, we affirm the ALJ's order that upheld SAIF's denial.

ORDER

The ALJ's order dated February 17, 2017 is affirmed.

Entered at Salem, Oregon on September 8, 2017