
In the Matter of the Compensation of
DAVID M. WILLIAMS, Claimant
WCB Case No. 12-00237
ORDER ON REMAND
Ronald A Fontana, Claimant Attorneys
SAIF Legal, Salem, Defense Attorneys

Reviewing Panel: Members Ousey, Johnson and Wold.¹ Member Johnson dissents.

This matter is before the Board on remand from the Court of Appeals. *SAIF v. Williams*, 492 Or App 542 (2016). The court has vacated the Board's order, *David M. Williams*, 65 Van Natta 2144 (2013), which affirmed an Administrative Law Judge's order that set aside the SAIF Corporation's denial of claimant's new/omitted medical condition claim for a thoracic spine Tarlov cyst. In reaching its decision, the Board previously found claimant's surgeon's opinion to be persuasive, reasoning, in part, that: (1) the surgeon personally examined claimant a month before the surgery to confirm the presence of symptoms in the T5 dermatome; and (2) claimant, within weeks of his injury, had exhibited the symptoms that an examining physician said he would have expected to see if claimant's T5 cyst had been symptomatic (*i.e.*, "pain located at [the T5 level] and radiating to the anterior chest").

The court determined that both findings were erroneous and that the errors were not harmless. Reasoning that the Board's decision was essentially reduced to a credibility contest between claimant's surgeon and SAIF's medical experts, the court considered it at least plausible that these misstatements affected the Board's decision to credit the surgeon's opinion over that of SAIF's experts. Because it was not possible for the court to determine to what extent these errors affected the Board's decision, the court remanded for reconsideration. Having received the parties' supplemental briefs, we proceed with our reconsideration.

FINDINGS OF FACT

We summarize and supplement the facts from the court's opinion as follows.

¹ Members Langer and Weddell and Board Chair Somers were previously members of the reviewing panel. Because they are no longer members of the Board, Members Johnson and Ousey and Board Chair Wold have participated in this review.

Claimant injured his thoracic spine at work on March 10, 2006. (Exs. 1, 10). On March 23, 2006, he was examined by Dr. Ha, who diagnosed a thoracic strain. (Ex. 11). At that time, claimant reported severe pain in his thoracic region and off to the left in the interscapular area. (*Id.*) In follow-up examinations in May and June 2006, Dr. Ha noted objective findings of pain in the midthoracic region that “radiates both proximally and distally from there,” and he found that claimant was neurologically intact without deficiency. (Exs. 14, 15).

On July 21, 2006, Dr. Ha found the thoracic strain medically stationary without permanent impairment, although claimant continued to complain of severe thoracic symptoms. (Ex. 17).

On July 27, 2006, SAIF accepted a claim for thoracic strain. (Ex. 18). That same date, SAIF issued a Notice of Closure that awarded no permanent impairment. (Ex. 19). The closure was affirmed on reconsideration. (Ex. 25).

On August 14, 2006, Dr. Ha again reported objective findings of pain the thoracic region that “radiates both proximally and distally, and neurologically he is intact.” (Ex. 20).

On November 29, 2006, claimant was examined by Dr. Denekas, a neurologist, at SAIF’s request. Dr. Denekas reported that claimant had pain in the midthoracic region and that “this does not radiate around his chest, however, he states it can expand to approximately a 6” diameter area of discomfort.” (Ex. 26-1-2). Claimant also reported diffuse jerking in his body. (Ex. 26-2). Dr. Denekas diagnosed “accepted condition thoracic strain, medically stationary with no obvious impairment,” and diffuse jerking of unclear etiology, and likely not related to any type of neurological disorder. (Ex. 26-9).

Over the next several years, claimant continued to seek medical treatment for thoracic pain and spasms. (Exs. 27 through 41).

An April 25, 2007 MRI revealed mild T7-8 and T8-9 disc protrusions, not displacing or flattening the cord, and a small nerve root sheath cyst on the left at T5-6. The radiologist stated that the cyst was “likely to represent an incidental finding despite the fact that it is at the level of the patient’s reported pain and muscle spasms.” (Ex. 29).

A May 19, 2008 MRI was similarly interpreted as showing small disc protrusions at T8-9 and T9-10, and small perineural cysts at T1-2, T2-3, T4-5, T5-6, T6-7, T8-9, and T9-10. (Ex. 37).

On January 9, 2009, Dr. Sabahi reviewed claimant's medical records on SAIF's behalf. (Ex. 42). Addressing the April 25, 2007 MRI, Dr. Sabahi explained that the cyst was small and would not cause his spasms, and that such cysts are relatively common incidental findings and usually asymptomatic, unless they are very large, causing mass effect and nerve compression. (Ex. 42-8). In an addendum report, Dr. Sahabi further explained that the Tarlov cysts were "focal dilatations of the portion of the dural sac, through which the spinal nerve roots pass so that they do not impinge on the exiting nerve root." (Ex. 43-3). He stated that the cysts were small and ranged in size from 4-6 mm. He explained that if the cysts were larger, over 1.5 cm, and located more centrally within the spinal canal, they might compress other nerve roots passing adjacent to them and cause symptoms, but this was not the case for claimant. (*Id.*)

On June 6, 2009, claimant treated with Dr. Gambee. (Ex. 46). Dr. Gambee reported that claimant had mid back pain and episodic muscle spasms, with no associated radicular pain. (Ex. 46). Dr. Gambee advised claimant that the perineural cysts were not the cause of his mid back pain. (Ex. 46). In a follow-up report, Dr. Gambee reassured claimant that the cysts were not related to his current pain syndrome and were probably present prior to his fall. Dr. Gambee believed that most of claimant's pain was musculoskeletal in nature, probably related to his fall despite this having been three years and ongoing. (Ex. 48-4).

Based in part on his own internet research, claimant wondered whether Tarlov cysts were the cause of his symptoms. In late 2009, he contacted Dr. Feigenbaum, an out-of-state physician specializing in the surgical treatment of Tarlov cysts, and sent him his medical records. (Tr. 71-73). Dr. Feigenbaum agreed to accept claimant as a patient and a candidate for surgery, provided that he first obtain an evaluation confirming the existence of symptoms that Dr. Feigenbaum "wanted to see" in the T5 dermatome.

In May 2010, claimant was treated at Oregon Health & Science University (OHSU). Claimant gave a history of experiencing sharp pain between his shoulder blades since the injury, which would start between the shoulders with "intermittent radiation around chest into xyphoid just below nipples." (Exs. 53, 54-1). He described the pain as lasting throughout the day with varying intensity. (*Id.*) "Trigger point injections" were recommended, which claimant received on

August 9, 2010. (Exs. 55-1, 57A). As a result of those injections, claimant experienced seven-and-a-half hours of relief, which he described as a “major breakthrough.” (Tr. 73).

On October 15, 2010, after considering claimant’s history (including his reported symptom of thoracic pain radiating around the left side of the chest in the approximate distribution of the T5 dermatome) and imaging studies, Dr. Feigenbaum diagnosed a large left T5 Tarlov cyst that appeared to be compressing the nerve root, and recommended surgery. (Ex. 61; *see also* Ex. 62A).

On November 30, 2010, Dr. Feigenbaum physically examined claimant and performed a left T5 laminectomy and treatment of a left T5 Tarlov cyst. (Exs. 62A, 62B). After the surgery, claimant’s symptoms almost completely resolved. (Ex. 63B). Dr. Feigenbaum opined that the March 2006 work injury caused the T5 Tarlov cyst to become symptomatic and require treatment. (Exs. 66, 77).

Claimant filed a new/omitted medical condition claim for the T5 Tarlov cyst condition.

On December 1, 2011, at SAIF’s request, claimant was examined by Dr. Rosenbaum. (Ex. 70). Dr. Rosenbaum could not state that the T5 Tarlov cyst was related to the industrial injury because he did not believe that Tarlov cysts ever become symptomatic. (Ex. 70-12-14). If the T5 Tarlov cyst had been symptomatic, Dr. Rosenbaum would have expected pain located at that level radiating to the anterior chest. (Exs. 70-15, 78-4). Dr. Rosenbaum concluded that the mechanism of injury was inconsistent with the development of claimant’s Tarlov cyst because of the multiple cystic abnormalities throughout the spine, which was consistent with a congenital pathologic abnormality and not a single traumatic event. (Ex. 78-5). Finally, Dr. Rosenbaum opined that the surgery had a placebo effect, as indicated by the fact that claimant had a recurrence of similar symptoms a few months after the surgery following an incident in which he stepped in a hole while walking across a field. (Exs. 70-11-12, 78-3).

On December 15, 2011, SAIF denied the T5 Tarlov cyst claim. (Ex. 71). Claimant requested a hearing.

On April 1, 2012, Dr. Sabahi opined that claimant’s T5 Tarlov cyst was preexisting and not caused by the industrial injury. (Ex. 80-7). He described claimant’s T5 Tarlov cyst as relatively small and explained that such a cyst would

not generally cause symptoms. (Ex. 80-9). While it was conceivable that the T5 cyst caused claimant's symptoms, Dr. Sabahi reasoned that this was a coincidental event and not causally related to the work injury. (Ex. 80-11). He agreed with Dr. Rosenbaum that the presence of multiple cysts weighed against a work-related cause, explaining that the mechanism of injury was not conducive to "blowing out" nerve root sheaths randomly at multiple levels on both sides of the spine. (Ex. 80-9). He also explained that the mechanism of injury was not consistent with development of a traumatic perineural cyst. (Ex. 80-10). Finally, he agreed with Dr. Rosenbaum regarding the possibility that the surgery caused a placebo effect based on claimant's recurrence of symptoms following the post-surgery off-work injury. (Ex. 80-9).

In a July 2012 concurrence opinion, Dr. Feigenbaum stated that the compressed nerve root found at surgery, the procedure he performed to separate the nerve from the cyst and to obliterate the cyst, and claimant's post-surgery relief of symptoms explained the causal relationship between the cyst and the symptoms. (Ex. 81-1). Dr. Feigenbaum disagreed with the findings and conclusions of Drs. Rosenbaum and Sabahi and specifically rejected their belief that the resolution of claimant's symptoms after surgery was nothing more than a placebo effect. (Ex. 81-2-3, -5-6). Dr. Feigenbaum noted that it was common for Tarlov cysts to become symptomatic after trauma due to worsened nerve compression or inflammation and there was a good clinical correlation between claimant's symptoms and the location of the T5 Tarlov cyst. (Ex. 81-4). Regarding what symptoms claimant had that correlated with the T5 cyst, Dr. Feigenbaum noted that the cyst was on the left at the T5 nerve root, and that claimant "had thoracic radicular symptoms in the left T5 dermatome." (Ex. 81-3-4).

CONCLUSIONS OF LAW AND OPINION

The ALJ set aside the denial, finding the claim compensable based in part on a determination that Dr. Feigenbaum's opinion was more persuasive than those of Drs. Rosenbaum and Sabahi.

On review, the Board affirmed the ALJ's order, with one member dissenting. *Williams*, 65 Van Natta at 2151. The Board agreed with the ALJ's conclusion that Dr. Feigenbaum's opinion was the most persuasive. In doing so, the Board reasoned that Dr. Feigenbaum had operated on claimant, and it refuted the argument that claimant's symptoms might have had a different cause by noting that his symptoms "did not abate until his November 2010 Tarlov cyst surgery." *Id.* at 2149-50. In discounting Dr. Rosenbaum's opinion, the Board observed:

“Moreover, Dr. Rosenbaum reasoned that if claimant's T5 cyst was symptomatic, he would have expected to find ‘pain located at that level and radiating to the anterior chest.’ Yet, claimant has exhibited such symptoms on numerous occasions since his March 2006 injury. For example, Dr. Ha, who first treated claimant less than two weeks after the March 2006 injury, noted severe pain in his thoracic region, and off to the left between his interscapular region, with accompanying muscle spasms. (Ex. 11-1). Dr. Ha continued to document thoracic muscle pain and spasms, reporting in August 200[6] ‘objective findings demonstrate pain in the thoracic region that radiates both proximally and distally.’ (Ex. 20-1).” *Id.* at 2147.

Consequently, based on Dr. Feigenbaum’s persuasive opinion, the Board concluded that claimant had established the compensability of the claimed condition. *Id.* at 2150. SAIF requested judicial review.

The court vacated the Board’s order, finding that the decision was predicated on two factual errors regarding the medical evidence and it could not determine to what extent the errors affected the Board’s decision. *Williams*, 281 Or App at 543. The two factual errors were described as: (1) a statement that Dr. Feigenbaum personally examined claimant a month before the surgery; and (2) a finding that Dr. Ha had noted symptoms in the T5 dermatome as early as March 2006, shortly after claimant’s injury. *Id.* at 547. The court observed that claimant had conceded that the Board’s factual finding regarding Dr. Feigenbaum examining him before the surgery was erroneous. *Id.* at 547. Regarding the second contested factual finding involving Dr. Ha, the court concluded that Dr. Ha’s reports did not support the Board’s interpretation. *Id.* at 549-50.

Reasoning that the Board’s decision was essentially reduced to a credibility contest between Dr. Feigenbaum and SAIF’s medical experts, the court considered it at least plausible that the Board’s misstatements affected its decision to credit Dr. Feigenbaum’s opinion over that of Drs. Rosenbaum and Sabahi. *Id.* at 550-51. Because it was not possible to determine what extent the aforementioned errors had on the Board’s decision, the court remanded for reconsideration. *Id.* at 551.

On remand, analyzing the record in accordance with the court's directive, we continue to find that claimant has established the compensability of his claimed T5 Tarlov cyst condition. We reason as follows.

To establish compensability of his claimed T5 Tarlov cyst, claimant must prove its existence, and that the work injury was a material contributing cause of the disability or need for treatment for the condition. ORS 656.266(1); ORS 656.005(7)(a); *Betty J. King*, 58 Van Natta 977 (2006); *Maureen Y. Graves*, 57 Van Natta 2380, 2381 (2005).

Because of possible alternative causes of claimant's condition, disability and need for treatment, we must rely on expert medical opinion to resolve the question of causation. *Barnett v. SAIF*, 122 Or App 279, 282 (1993); *Linda Patton*, 60 Van Natta 579, 582 (2008). In evaluating the medical evidence, we rely on those opinions that are both well reasoned and based on accurate and complete information. *Somers v. SAIF*, 77 Or App 259, 263 (1986).

Regarding Dr. Feigenbaum's opinion, we note that whether he personally examined claimant (including performing his own neurological evaluation) or only reviewed the record is not determinative regarding the persuasiveness of his opinion. See *Hammons v. Perini Corp.*, 43 Or App 299, 301 (1979) (where expert analysis, rather than expert observation, is the basis of an opinion, the opportunity to observe a claimant's condition is less relevant to the persuasiveness of the opinion); *Kenneth L. Culp*, 62 Van Natta 1146, 1147 (2010) (where the dispute focuses on the significance of the claimant's findings and symptoms, the outcome depends on expert analysis rather than expert observation). Rather, we find his opinion persuasive based on the completeness and thoroughness of its factual basis and the force of its reasoning. See *Somers v. SAIF*, 77 Or App 259, 263 (1986) (more weight given to those medical opinions that are well reasoned and based on complete information); *Richard S. Burns*, 61 Van Natta 1599 (2009) (finding the opinion of a physician who conducted a medical record review to be well reasoned and more persuasive than the opinion of an examining physician); *Barbara J. Brown*, 42 Van Natta 779 (1990).

Here, notwithstanding the fact that Dr. Feigenbaum only examined claimant during his pre-operative visit in November 2010, we find his opinion as a whole to be well reasoned and persuasive. Dr. Feigenbaum, who is an expert in the treatment of Tarlov cysts, was provided with all of the pertinent medical records, considered claimant's symptom presentation, imaging studies, and his treatment at OHSU, and observed claimant's condition during surgery. He explained that

the causal relationship between the cyst and the symptoms was evidenced by the compressed nerve root he found at surgery, the procedure he performed to separate the nerve from the cyst and to obliterate the cyst, and claimant's post-surgery relief of symptoms. (Ex. 81-1; *see* Ex. 77). He explained how claimant's thoracic radicular symptoms following the work injury correlated with a T5 cyst and that it was common for Tarlov cysts to become symptomatic after a traumatic event, "probably due to further or worsening nerve compression or inflammation."² (Exs. 77-2; 81-4); *see Allied Waste Indus., Inc. v. Crawford*, 203 Or App 512, 518 (2005), *rev den*, 341 Or 80 (2006) (temporal relationship between a work injury and the onset of symptoms is one factor that should be considered, and may be the most important factor); *Ryan J. Jones*, 67 Van Natta 161 (2015).

Given Dr. Feigenbaum's expertise in Tarlov cysts and his ability to observe claimant's condition at surgery, we grant more probative weight to his opinion. *See Argonaut Ins. Co. v. Mageske*, 93 Or App 698, 702 (1988) (more weight given to opinion of treating surgeon because of opportunity to observe the condition during surgery); *Abbott v. SAIF*, 45 Or App 657, 661 (1980) (more weight given to physician with greater specialized expertise).

We acknowledge that Dr. Ha's March and August 2006 chart notes did not demonstrate that claimant had experienced symptoms specifically at T5 and radiating to the anterior chest. (*See* Exs. 11, 20). However, the fact that T5 dermatome findings were not specifically made by Dr. Ha does not alter our conclusion regarding the persuasiveness of Dr. Feigenbaum's opinion. As discussed above, Dr. Feigenbaum's opinion that the cyst was the cause of claimant's symptoms was based on consideration of claimant's symptom presentation (including claimant's history of persistent mid-back pain from the time of injury through the date of surgery), his surgical findings, his training and expertise, the post-surgery resolution of symptoms, and claimant's imaging studies.³ (Exs. 77, 81).

² Claimant's thoracic pain, which was described on occasion as radiating or radicular in nature, persisted from the day of the injury until 2010. (*See* Exs. 14, 15, 20, 42, 53, 54).

³ We find support for Dr. Feigenbaum's opinion regarding the cause of claimant's symptoms in the fact that claimant had symptomatic relief for seven-and-a-half hours following the trigger point injections at OHSU. (Tr. 73). Also, although the radiologist who interpreted the April 25, 2007 MRI stated that the T5-6 cysts likely represented an incidental finding, he noted that the cyst was at the level of claimant's reported pain and muscle spasms. (Ex. 29-1).

In addition, Dr. Feigenbaum persuasively rebutted the opinions of Drs. Rosenbaum and Sabahi. In response to Dr. Sabahi's observation that the cyst was too small to be causing symptoms, Dr. Feigenbaum responded that because the cyst existed in a small space, it was "more about where the cyst is located and what it's pressing on." (Ex. 76-3). Regarding Dr. Rosenbaum's and Sabahi's opinion that claimant's recurrence of symptoms after a post-surgery off-work fall supported a conclusion that the surgery likely caused a placebo effect, Dr. Feigenbaum explained that the post-surgical fall likely irritated the sacral nerves causing a recurrence of symptoms, but this did not mean that the surgery was not successful. Rather, Dr. Feigenbaum reasoned that it meant that nerves were re-irritated. He reasoned that claimant had improved since, indicating that it was a temporary irritation and the benefits of the surgery were retained and real, not placebo.⁴ (Ex. 81-2).

Finally, we do not consider the opinions of Drs. Rosenbaum and Sabahi persuasive as they focused on whether the injury caused the Tarlov cyst, and did not adequately consider whether it caused a disability or need for treatment. (Exs. 78-5, 80-9, -10). Yet, claimant need not prove that the injury caused the cyst; rather, he must establish that the injury was a material cause of his disability/need for treatment for the claimed condition. Under such circumstances, we consider Drs. Sabahi's and Rosenbaum's opinions less persuasive in resolving the compensability issue. *See Lowell P. Hubbell*, 62 Van Natta 2446, 2449-50 (2010) (opinion unpersuasive where it did not address the requisite question concerning the cause of any disability/need for treatment of the claimed condition, as opposed to the cause of the condition itself).

In sum, we find that Dr. Feigenbaum's opinion persuasively establishes that claimant's March 2006 injury was a material contributing cause of his disability/need for treatment for the claimed T5 Tarlov cyst condition. Therefore, the claim is compensable. Consequently, we continue to affirm the ALJ's order.⁵

⁴ Dr. Feigenbaum's opinion is supported by the hearing testimony of claimant and several other witnesses who described claimant's post-surgical demeanor and physical functioning markedly improved from his pre-surgery state, including the ability to engage in physical activities he had been unable to perform pre-surgery. (Tr. 26-27, 50-51, 57, 82-83).

⁵ SAIF contends that *Brown v. SAIF*, 361 Or 241 (2017), supports the proposition that to establish the compensability of a new/omitted medical condition, a claimant must show that the work injury not only made a condition "symptomatic," but contributed to the condition itself. However, *Brown* analyzed a "ceases" denial/combined condition scenario, not an initial injury or new/omitted medical condition claim. In any event, we need not conclusively resolve this matter because Dr. Feigenbaum's opinion persuasively supports a conclusion that the claimed T5 Tarlov cyst was a "condition" (*i.e.*, the physical status of a body part), rather than just a symptom. (Exs. 77, 81).

Because claimant has prevailed on his denied claim after remand, he is now entitled to an attorney fee award for his counsel's services on appeal before the court and on remand.⁶ ORS 656.386(1); ORS 656.388(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 before the court and on remand is \$23,500, to be paid by SAIF. In reaching this conclusion, we have particularly considered the time devoted to the case (as demonstrated by claimant's appellate briefs, his counsel's attorney fee request, and SAIF's objections), the complexity of the issue, the value of the interest involved, the nature of the proceedings, the risk that claimant's counsel might go uncompensated, and the contingent nature of the practice of workers' compensation law.⁷

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; *Gary Gettman*, 60 Van Natta 2862 (2008). The procedure for recovering this award, if any, is prescribed in OAR 438-015-0019(3).

Accordingly, on remand, as modified and supplemented, the Board's November 8, 2013 order is republished. For services on appeal and on remand, claimant's counsel is awarded \$23,500, to be paid by SAIF. This award is in addition to the attorney fee awards previously granted by the ALJ's order and the Board's prior order. 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.

IT IS SO ORDERED.

Entered at Salem, Oregon on February 26, 2018

⁶ The Board's prior order affirmed the ALJ's \$22,500 attorney fee award, and also awarded \$5,500 for services on review under ORS 656.382(2). We adhere to those prior awards.

⁷ Claimant's counsel has represented that he spent 49.25 hours of service before the court. Under ORS 656.388(1), claimant's attorney is entitled to a fee for services before the court because he has finally prevailed after remand. However, claimant's counsel's unsuccessful argument before the court that the Board's order did not contain the factual errors alleged by SAIF, or if it did, that the errors were harmless and that remand was unnecessary (positions that the court rejected), has been considered in determining a reasonable fee for claimant's counsel's services.

Member Johnson dissenting.

The majority finds that claimant has proven the compensability of his claim for a T5 Tarlov cyst. Because I disagree with that decision, I respectfully dissent.

Dr. Rosenbaum opined that Tarlov cysts could not become symptomatic, and there was no relationship between the cyst and claimant's work injury. (Ex. 70-13, -14, -15). Alternatively, if claimant had symptoms from the T5 Tarlov cyst, Dr. Rosenbaum would have expected pain radiating to the anterior chest. (Exs. 70-15, 78-4). Dr. Rosenbaum further explained that the mechanism of injury was inconsistent with the development of claimant's Tarlov cyst because of the multiple cystic abnormalities throughout the spine, which was consistent with a congenital pathologic abnormality and not a single traumatic event. (Ex. 78-5). Finally, Dr. Rosenbaum opined that the surgery had a placebo effect, as indicated by a recurrence of similar symptoms a few months after claimant's surgery following an incident in which he stepped in a hole while walking across a field. (Exs. 70-11-12, 78-3).

Dr. Sabahi opined that claimant's T5 Tarlov cyst was preexisting and not caused by the industrial injury. (Ex. 80-7). He stated that the cyst was relatively small and would not generally cause symptoms. (Ex. 80-9). He acknowledged that while it was conceivable that the T5 cyst caused claimant's symptoms, this was a coincidental event and not causally related to the work injury. (Ex. 80-11). As with Dr. Rosenbaum, he explained that it was not medically probable that the mechanism of injury as described would cause a traumatic perineural cyst, especially given the presence of cysts at multiple levels on each side of the spine. (Ex. 80-9, -11). He also agreed with Dr. Rosenbaum regarding the possibility that the surgery caused a placebo effect based on claimant's recurrence of symptoms following the post-surgery off-work injury. (*Id.*)

In contrast, Dr. Feigenbaum evaluated claimant's imaging studies as showing a "large" left T5 Tarlov cyst that appeared to be compressing the T5 nerve root. (Ex. 61-1). In response to Dr. Sabahi's opinion that the cyst was too small to produce symptoms, Dr. Feigenbaum stated that because the cyst existed in a small space, it was "more about where the cyst is located and what it's pressing on." (Ex. 77-3).

Although the physicians disagree whether Tarlov cysts have a general potential of causing symptoms, I need not resolve this question. Even assuming that Tarlov cysts can cause symptoms and claimant's T5 cyst was large enough to cause such symptoms, I find Dr. Feigenbaum's causation opinion inadequate to

support compensability of claimant's claim because it is insufficiently explained.⁸ *See Moe v. Ceiling Sys., Inc.*, 44 Or App 429, 433 (1980) (rejecting unexplained or conclusory opinion). My conclusion is based on the following reasoning.

When asked to explain how the 2006 injury caused claimant's Tarlov cyst to become symptomatic, Dr. Feigenbaum stated that "the traumatic event causes irritation to already tenuous nerves/cyst that can't recover from the trauma," and that it was "common for Tarlov cysts to become symptomatic after a traumatic event, probably due to further or worsening nerve compression or inflammation." (Exs. 77-7, 81-4). These statements, however, are general in nature, and do not explain how the mechanics of claimant's particular fall caused, or contributed to, his disability/need for treatment of the Tarlov cyst. As such, I find it conclusory, and therefore, unpersuasive. *See Sherman v. Western Employers Ins.*, 87 Or App 602 (1987) (physician's comments that were general in nature and not addressed to the claimant's situation in particular were not persuasive); *Linda E. Patton*, 60 Van Natta 579, 584 (2008).

Dr. Feigenbaum also assumed a close temporal relationship between claimant's work injury and the onset of symptoms radiating into his chest that signified the T5 nerve root involvement. (Ex. 61). However, claimant did not report any symptoms radiating into his chest until May 2010, four years after his injury.⁹ (Ex. 53-1); *see Miller v. Granite Constr. Co.*, 28 Or App 473, 476 (1977) (medical opinion based on incomplete or inaccurate history is not persuasive). The fact that Dr. Feigenbaum does not specifically address this four-year gap undermines the persuasiveness of his opinion.

Additionally, Dr. Feigenbaum did not rebut or respond to Dr. Rosenbaum's opinion that claimant's post-injury symptoms were inconsistent with a symptomatic Tarlov cyst, or address the presence of multiple cysts, which Drs. Rosenbaum and

⁸ I acknowledge that a surgeon's opinion can be considered persuasive due to the advantage of observations made during the surgery. *See Argonaut Ins. Co. v. Mageske*, 93 Or App 698, 702 (1988) (more weight given to opinion of treating surgeon because of opportunity to observe the condition during surgery). Here, however, because the dispute concerns differing interpretations of claimant's findings, I find that this claim turns primarily on expert analysis, rather than on expert external observations. *See Margaret J. Steinkamp*, 67 Van Natta 1644, 1645 (2015).

⁹ The ALJ, and the Board's prior order, relied on an August 2006 report by Dr. Ha, stating that claimant had "pain in the thoracic region that radiates both proximally and distally," as evidence of symptoms radiating into claimant's chest. (Ex. 20-1); *Williams*, 65 Van Natta at 2147. However, Dr. Ha then stated, in the same sentence, that claimant was neurologically intact. (*Id.*) Furthermore, in his November 2006 chart note, Dr. Denekas expressly reported that claimant's pain did not radiate around his chest. (Ex. 26). Under such circumstances, I decline to infer that Dr. Ha's August 2006 report supports a finding of symptoms consistent with T5 nerve root compression.

Sabahi found determinative to their causation opinions. (Ex. 78-3, -5); *see Janet Benedict*, 59 Van Natta 2406, 2409 (2007) (physician's opinion discounted when it did not address contrary opinions); *Claudia J. Stacy*, 58 Van Natta 2998, 3000 (2006) (physician's opinion that did not rebut contrary opinion was discounted). Nor did Dr. Feigenbaum explain a relationship between the T5 Tarlov cyst and claimant's post-injury symptoms described as diffuse jerking/spasms involving his entire trunk. (Exs. 16, 22, 26-7, 28-1, 31, 34).

Finally, in his October 15, 2010 record review, Dr. Feigenbaum reported that claimant had undergone a diagnostic nerve root block on the left at T5 that temporarily relieved his symptoms, which implied that his T5 nerve root cyst was responsible, at least in part, for some of his symptoms. (Ex. 61-1). However, on May 26, 2010, Dr. Grose reported that claimant would not tolerate a medial branch block at that time, and the medical record does not support that a nerve root block was ever performed. (Ex. 54-6). On March 7, 2012, Dr. Feigenbaum agreed that his reference on October 15, 2010 to a diagnostic nerve root block referred to the trigger point injections performed on August 9, 2010. (Exs. 57A, 76-2). However, Dr. Feigenbaum did not explain how claimant's response to the trigger point injection (described as an "injection into the painful musculature") would support a finding of symptoms from a T5 Tarlov cyst. (Ex. 57A-1). This lack of explanation is especially detrimental given that the physician who performed the trigger point injection (Dr. Kaplan) diagnosed claimant as suffering from myofascial pain and explained that trigger point injections "can be successful for myofascial pain." (Ex. 57A-6).

Thus, even assuming that Dr. Feigenbaum's opinion establishes that at the time of his 2010 surgical treatment, claimant suffered from a Tarlov cyst that compressed a thoracic nerve and was accountable for his symptoms at that time, that opinion does not sufficiently address claimant's symptomatology documented in the previous four years and does not persuasively support a causal relationship between claimant's work injury and the surgically treated Tarlov cyst. *See Somers*, 77 Or App at 263 (inadequate reasoning not persuasive); *Miller v. Granite Constr. Co.*, 28 Or App 473, 478 (1977) (medical evidence based on inaccurate information insufficient to prove compensability).

Consequently, based on the aforementioned reasoning, I find that the record does not persuasively establish that claimant's March 2006 work injury was a material contributing cause of his disability/need for treatment for his claimed T5 Tarlov cyst. Therefore, I conclude that the claim is not compensable. Because the majority holds otherwise, I respectfully dissent.