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In the Matter of the Compensation of  
**CRIS A. WILLIAMS, Claimant**  
WCB Case No. 16-01733  
ORDER ON REVIEW  
Unrepresented Claimant  
SAIF Legal, Salem, Defense Attorneys

Reviewing Panel: Members Lanning, Johnson, and Wold. Member Johnson dissents.

The SAIF Corporation requests review of Administrative Law Judge (ALJ) Ogawa's order that set aside its denial of claimant's new/omitted medical condition claim for gout and gouty arthritis. On review, the issue is compensability.<sup>1</sup>

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

The ALJ found that Dr. James's opinion persuasively established that the work injury was a material contributing cause of claimant's disability/need for treatment relating to the gout and gouty arthritis conditions.

On review, SAIF contends that Dr. James's opinion that the work injury precipitated the symptoms of claimant's gout and gouty arthritis was insufficient to establish that the work injury was a material contributing cause of the disability/need for treatment related to those conditions.<sup>2</sup> SAIF bases that argument on *Cody L. Lambert*, 48 Van Natta 115 (1996). Based on the following reasoning, we disagree with SAIF's contention.

In *Lambert*, we held that a physician's opinion that a work injury was a "precipitating/but-for" cause of the claimant's symptomatic spondylolisthesis was insufficient to establish that the work injury was the *major* contributing cause of the disability/need for treatment related to that condition. 48 Van Natta at 116.

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<sup>1</sup> Because claimant is unrepresented, he may wish to consult the Ombudsman for Injured Workers. He may contact the Ombudsman, free of charge, at 1-800-927-1217, or write to:

OMBUDSMAN FOR INJURED WORKERS  
DEPT OF CONSUMER & BUSINESS SERVICES  
PO BOX 14480  
SALEM, OR 97309-0405

<sup>2</sup> There is no contention, and the record does not support a conclusion, that there was a legally cognizable preexisting condition under ORS 656.005(24)(a)(A).

However, we have consistently held that a work injury is a *material* contributing cause of the claimant's disability/need for treatment where the record establishes that work activity was a precipitating factor in the claimant's treatment for that condition. See *Ralph E. Davis*, 61 Van Natta 1116, 1117 (2009) ("A material contributing cause need not be the sole or primary cause and may just be the precipitating cause, but must be more than a minimal cause."); see also *Summit v. Weyerhaeuser Co.*, 25 Or App 851, 856 (1976) (work injury was a material contributing cause of the claimant's need for treatment related to his progressive heart condition where work activity was a precipitating cause in his hospitalization); *Edward K. Merriweather*, 65 Van Natta 2219, 2220-21 (2013) (a work injury that renders a preexisting condition symptomatic may be considered a material contributing cause of a claimant's disability/need for treatment for that condition).

Here, claimant need only establish that the work injury was a material contributing cause of his disability or need for treatment relating to the claimed conditions. Accordingly, Dr. James's opinion (which we find persuasive for the reasons expressed in the ALJ's order) that the work injury precipitated the symptoms of claimant's gout/gouty arthritis is sufficient to meet claimant's requisite burden of proof. Consequently, we affirm.

### ORDER

The ALJ's order dated August 8, 2016, as reconsidered on October 25, 2016, is affirmed.

Entered at Salem, Oregon on January 19, 2018

Member Johnson dissenting.

The majority affirms the ALJ's conclusion that the record establishes the compensability of claimant's new/omitted medical condition claims for gout and gouty arthritis. Because I disagree with that conclusion, I respectfully dissent.

To demonstrate the compensability of the gout and gouty arthritis conditions, Dr. James's opinion must establish that the work injury was a material contributing cause of the disability/need for treatment of those conditions. ORS 656.005(7)(a); ORS 656.266(1); see *Edward K. Merriweather*, 65 Van Natta 2219, 2220-21 (2013). Dr. James's opinion need not establish that the work injury caused those conditions. See *Merriweather*, 65 Van Natta at 2220 (the claimant

need not prove that his work injury caused the claimed new/omitted medical condition itself; rather, the relevant inquiry is whether it caused the disability/need for treatment for the condition); *Jason C. Griffin*, 64 Van Natta 1954, 1955 (2012) (physician's opinion that a work injury cause a symptomatic flare of the claimant's preexisting condition was sufficient to establish that the work injury was a material contributing cause of the disability/need for treatment for the claimed condition). Nonetheless, based on the following reasoning, I find Dr. James's opinion to be insufficient to establish the compensability of the claimed conditions.

In his initial report, Dr. James noted that trauma can precipitate an exacerbation of gout. (Ex. 36-7). When asked whether claimant's preexisting conditions combined with the work injury to cause or prolong the disability/need for treatment, Dr. James stated that the likely cause of the acute pain was probably claimant's preexisting gouty arthritis. (Ex. 36-6, -7).

In his deposition, however, Dr. James couched his opinion in terms of possibility, testifying that "trauma *may* have precipitated a gouty attack." (Ex. 48-6). In doing so, he explained that other triggers, such as ingestion of alcohol, certain foods, or surgery, can precipitate a gouty attack. (Ex. 48-5). Moreover, he explained that sometimes there is no trigger for a gouty attack. (Ex. 48-7). He noted that it was difficult to tie claimant's work injury to the gout symptoms because the work injury and those symptoms occurred several months apart. (Ex. 48-7). Finally, in the concurrence report, he opined that none of the claimed conditions were related to the September 25, 2011 work injury. (Ex. 60-2).

In light of Dr. James's later statements and in the absence of further clarification of his opinion concerning the combining of the preexisting gout/gouty arthritis conditions with the work injury, I would conclude that Dr. James's opinion that trauma can precipitate the symptoms of gout/gouty arthritis was based on possibility rather than probability. *See Gormley v. SAIF*, 52 Or App 1055 (1981) (persuasive medical opinions must be based on medical probability, rather than possibility); *Kyle G. Anderson*, 61 Van Natta 2117, 2117-18 (2009) (the words can be and may be indicate only possibility, not medical probability).

Moreover, even assuming that Dr. James initially opined that the work injury precipitated a symptomatic flare of the gout/gouty arthritis conditions, that opinion is inconsistent with his later deposition testimony that "it is a little difficult to tie the two together when the time frame from injury to the onset and diagnosis of gout is several months" and that "[s]ometimes there is no trigger [for a gouty

flare]. It just happened.” Further, such an opinion is inconsistent with Dr. James’s later assertion that none of the claimed conditions were related to the work injury. *See Marsha U. Sanderson*, 59 Van Natta 1203, *recons*, 59 Van Natta 1397 (2007) (unexplained inconsistencies rendered medical opinion unpersuasive); *Mark A. Mason*, 58 Van Natta 2403, 2405 (2006) (internally inconsistent opinion found unpersuasive).

The majority does not address these internal inconsistencies or explain why Dr. James’s opinion remains persuasive despite them.

Accordingly, I would find Dr. James’s opinion to be insufficient to prove that claimant’s work injury was a material contributing cause of his disability/need for treatment concerning the claimed conditions.<sup>3</sup> Consequently, I am not persuaded that claimant has established the compensability of his claimed new/omitted gout/gouty arthritis conditions. Because the majority concludes otherwise, I dissent.

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<sup>3</sup> The ALJ’s order relies on the opinion of Dr. Hobson, in addition to that of Dr. James. For the following reasons, I find Dr. Hobson’s opinion to be unpersuasive. Dr. Hobson initially opined that the “gout was not caused by [the] work related injury, but certainly was precipitated by it.” However, Dr. Hobson later stated: “The question that I have had has always been can his work related injury, as well as need for treatment, precipitate his gouty flare. That question remains unanswered for me and the patient.” Dr. Hobson did not explain the inconsistency between the two statements. *See Elicia Ortiz-Lopez*, 69 Van Natta 210, 215 (2017) (inconsistent medical opinion, without explanation for the inconsistencies, was unpersuasive); *Howard L. Allen*, 60 Van Natta 1423, 1425-26 (2008). Moreover, Dr. Hobson did not explain his initial opinion that the gout was precipitated by the work injury. *See Lanora J. Rea*, 60 Van Natta 1058, 1064 (2008) (rejecting unexplained medical opinion as unpersuasive). Accordingly, I would find Dr. Hobson’s opinion to be insufficient to establish that claimant’s work injury was a material contributing cause of the disability/need for treatment related to the gout and gouty arthritis conditions.