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In the Matter of the Compensation of  
**SHAUN A. SCHLENKER, Claimant**  
WCB Case No. 18-01186, 17-05081, 15-04894  
ORDER ON REVIEW  
Unrepresented Claimant  
Maher & Tolleson LLC, Claimant Attorneys  
Sather Byerly & Holloway, Claimant Attorneys  
Reinisch Wilson Weier, Claimant Attorneys

Reviewing Panel: Members Lanning and Curey.

Claimant, *pro se*,<sup>1</sup> requests review of Administrative Law Judge (ALJ) Mills's order that upheld denials of claimant's occupational disease claim for a respiratory disease issued by Gallagher Bassett Services, Inc., Matrix Absence Management, Inc., and Sedgwick Claims Management Services. On review, the issues are compensability and, potentially, responsibility.

We adopt and affirm the ALJ's order with the following supplementation regarding the ALJ's evidentiary ruling concerning witness testimony.

We review the ALJ's evidentiary ruling for an abuse of discretion. *SAIF v. Kurcin*, 334 Or 399, 406 (2002). An ALJ is not bound by common law or statutory rules of evidence and may conduct a hearing in any manner that will achieve substantial justice. ORS 656.283(6). If the record would support the ALJ's decision regarding admission of evidence, then the ALJ's ruling is not an abuse of discretion. *See Kurcin*, 334 Or at 409; *Michelle D. Johnson*, 69 Van Natta 1607, 1608 (2017).

At the hearing, the parties agreed (off the record) that claimant's mother would be called as a witness on behalf of claimant to answer one question, subject to cross-examination. (Tr. 5). Once that question was asked and answered, claimant asked another question, which his mother began answering. (Tr. 11). However, the ALJ interjected and stopped further testimony, thereby limiting the mother's testimony to the response to the first question. (*Id.*)

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<sup>1</sup> Inasmuch as claimant is unrepresented, he may wish to consult the Ombudsman for Injured Workers. He may contact the Ombudsman, free of charge, at 1-800-927-1271, or write to:

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

After conducting our review of the record, we find no abuse of discretion in the ALJ's ruling. In reaching this conclusion, we note that claimant did not object to the ALJ's decision to limit claimant's mother's testimony to one question. (Tr. 5). In fact, he agreed to proceed in that manner. (*Id.*) Moreover, the testimonial evidence of claimant's mother was directed at claimant's childhood history of respiratory conditions and, as such, has no probative effect on the merits of the disputed claim, which involves a causation dispute that must be resolved by expert medical opinion. *See Uris v. State Comp. Dep't*, 247 Or 420 (1967) (while lay testimony is probative the resolution of a complex causation dispute largely turns on analysis of the medical evidence).<sup>2</sup> Under these particular circumstances, we find no abuse of discretion in the ALJ's evidentiary ruling.<sup>3</sup>

### ORDER

The ALJ's order dated June 22, 2018 is affirmed.

Entered at Salem, Oregon on November 5, 2018

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<sup>2</sup> In order to establish the compensability of his occupational disease claim, claimant must prove, by persuasive medical evidence supported by objective findings, that his work activities were the major contributing cause of his disease or its worsening. ORS 656.266(1); ORS 656.802(1), (2). "Major cause" means an activity or exposure, or combination of activities or exposures, which contributes more to causation than all other causative agents combined. *See Dethlefs v. Hyster Co.*, 295 Or 298, 310 (1983); *David K. Boyer*, 43 Van Natta 561 (1991), *aff'd without opinion*, 111 Or App 666 (1992). Because the determination of the major contributing cause of claimant's respiratory disease is a complex medical question, expert medical evidence is necessary to prove his case. *See Uris*, 247 Or at 424.

Thus, given the medical complexity of the issue, claimant's lay testimony or personal beliefs are not determinative. Moreover, simply receiving medical treatment or incurring disability as a result of a condition/disease is not sufficient to prove compensability of his occupational disease. *Trisha L. Smith*, 66 Van Natta 218, 220 (2014); *Tammy L. Foster*, 52 Van Natta 178 (2000) (the claimant's work activities must be the major contributing cause of the disease itself, not just the disability or need for treatment). Rather, based on the aforementioned points and authorities, claimant must establish the compensability of his claim through a preponderance of persuasive expert medical opinion based on objective findings.

We further acknowledge claimant's arguments concerning the missing pages of Exhibit 71 and the lack of information in the record concerning an explosion at work. However, even if such evidence was considered, we would still reach the same result regarding the compensability of this disputed claim because, for the reasons expressed in the ALJ's order, none of the physicians who treated or evaluated claimant provided medical opinions that are sufficient to establish the compensability of his claim (*i.e.*, there is no persuasive medical opinion establishing that claimant's work exposure was the major contributing cause of his claimed condition). In addition, we note that the opinion of Dr. Juarez (who stated that claimant had some type of chemical exposure, but that it was unclear what exposure could have caused his condition), is insufficient to establish that claimant's *work exposure* in general was the major cause of his condition as required by ORS 656.802. (Ex. 60).

<sup>3</sup> Claimant states that he is also seeking compensation for his daughters in the future. However, claimant's daughters do not have an independent claim for benefits under the workers' compensation system, but instead would only be entitled to survivor benefits if claimant either had a compensable death claim or died while receiving permanent disability. ORS 656.204; ORS 656.208; ORS 656.218. In other words, any claim for benefits by his daughters would be derivative of claimant establishing a compensable claim.