

In the Matter of the Compensation of
KENNETH R. PARKINSON, Claimant
WCB Case No. 17-05163
ORDER ON REVIEW
Glen J Lasken, Claimant Attorneys
Sather Byerly & Holloway, Defense Attorneys

Reviewing Panel: Members Woodford and Lanning.

The self-insured employer requests review of Administrative Law Judge (ALJ) Kekauoha's order that set aside its denial of claimant's occupational disease claim for bilateral hand and wrist conditions. On review, the issue is compensability.

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

In setting aside the employer's denial, the ALJ determined that the opinion of Dr. Hoblet, claimant's treating orthopedic hand specialist, persuasively established that claimant's work activities as a "chamber" welder were the major contributing cause of his bilateral hand and wrist conditions. Accordingly, the ALJ concluded that the claimed conditions were compensable occupational diseases.

On review, the employer contends that Dr. Hoblet's opinion is unpersuasive because he did not adequately consider the relative contribution of claimant's Type II diabetes or a "potential" inflammatory arthritis condition. For the following reasons, we disagree.

To establish a compensable occupational disease claim, claimant must prove that employment conditions were the major contributing cause of his bilateral hand and wrist conditions. 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, or combination of causes, that contributed more than all other causes combined. *McGarrah v. SAIF*, 296 Or 145, 166 (1983); *Deitz v. Ramuda*, 130 Or App 397, 401 (1994), *rev dismissed*, 321 Or 416 (1995).

Determination of the major contributing cause is a complex medical question that must be resolved on the basis of expert medical opinion. *Jackson County v. Wehren*, 186 Or App 555, 559 (2013) (citing *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). We properly may or may not give greater weight to the opinion of a treating physician, depending on the record in each case. *Dillon v. Whirlpool Corp.*, 172 Or App 484, 489 (2001). If a physician's opinion is premised on an incomplete understanding of claimant's work activities, the opinion is generally unpersuasive. See *Miller v. Granite Constr. Co.*, 28 Or App 473, 476 (1977) (medical opinion that is based on an incomplete or inaccurate history is not persuasive).

Here, we find that Dr. Hoblet's opinion persuasively establishes that claimant's hand-intensive work activities as a "chamber" welder were the major contributing cause of his bilateral hand and wrist conditions. We reason as follows.

Dr. Hoblet had a sufficiently accurate understanding of the nature of claimant's work activities as a "chamber" welder. (Ex. 27). Moreover, Dr. Hoblet provided a biomechanical explanation relating claimant's work activities to his bilateral hand and wrist conditions. (Ex. 27-1-2). Dr. Hoblet understood that, for the last 11 years, the majority of claimant's work activities involved long periods of forceful gripping, grasping, pinching, and fine manipulation of tools and equipment. (*Id.*) He opined that such activities are of the type to lead to hand/finger arthritis and carpal tunnel syndrome. (*Id.*) He also understood that claimant did not have any rigorous off-work activities or intrinsic factors that would have significantly contributed to his bilateral hand and wrist conditions, and he had not experienced any hand/wrist problems before his employment as a "chamber" welder. (Ex. 27-2). Dr. Hoblet also considered other contributing factors, such as claimant's family history and body habitus. (Ex. 27-3). We find that Dr. Hoblet provided a cogent and well-reasoned opinion establishing that claimant's work activities were the major contributing cause of his bilateral hand and wrist conditions.¹

Moreover, we disagree with the employer's contention that Dr. Hoblet did not adequately consider the relative contributions of claimant's diabetes and a "potential" inflammatory arthritis process in determining the major contributing cause of his bilateral hand and wrist conditions. Dr. Hoblet opined that, even considering other possible contributory causes, claimant's hand-intensive work activities were at least 51 percent of the cause of his bilateral hand and wrist

¹ Dr. Buehler, who performed an examination at the employer's request, also opined that claimant's work activities (prolonged gripping) were the major contributing cause of his bilateral CTS. (Ex. 29-5).

conditions. (Ex. 28-28-29, -38, -39). Dr. Hoblet explained that the majority of claimant's work activities included forceful gripping, pinching, and grasping tools and equipment and that those activities were at least 51 percent causative of claimant's bilateral hand and wrist conditions. (Exs. 27-1-2, 28-38-39).

In contrast, we find that Dr. Wilson did not adequately consider the nature of claimant's specific work activities for the last 11 years in assessing causation. (Ex. 19). Instead, Dr. Wilson relied on generalized medical studies and his experience with other patients. (Ex. 30-3-4). *See Sherman v. Western Employer's 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).

Finally, Dr. Wilson surmised from claimant's "cervical, lumbar, wrist, thumb, and finger arthritis," that he has an inflammatory arthritis process, such as rheumatoid arthritis, that would be responsible for his bilateral hand and wrist conditions. (Ex. 19-11). Yet, Dr. Hoblet explained that does not mean that claimant has inflammatory arthritis in his hands and wrists. (Ex. 28-28-29). Furthermore, claimant was not tested for inflammatory arthritis. (Ex. 28-13). Under such circumstances, we conclude that Dr. Wilson's opinion regarding causation is unpersuasive because it is based on speculation and not well reasoned.

In sum, based on the aforementioned reasoning, as well as that expressed in the ALJ's order, we are most persuaded by Dr. Hoblet's well-reasoned and cogently explained opinion that claimant's hand-intensive work activities as a "chamber" welder for the last 11 years were the major contributing cause of his bilateral hand and wrist conditions. Accordingly, we affirm the ALJ's order.

Claimant's attorney is entitled to an assessed fee for services on review. ORS 656.382(2). 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 on review is \$5,000, payable by the employer. In reaching this conclusion, we have particularly considered the time devoted to the case (as represented by the claimant's respondent's brief), the complexity of the issue, the value of the interest involved, the risk that claimant's counsel may 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, incurred in finally prevailing over the denial, to be paid by the employer. *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).

ORDER

The ALJ's order dated August 14, 2018 is affirmed. For services on review, claimant's attorney is awarded an assessed fee of \$5,000, to be paid by the employer. 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 employer.

Entered at Salem, Oregon on April 11, 2019