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In the Matter of the Compensation of  
**ROBERT O. ANDERSON, Claimant**  
WCB Case No. 18-00923  
ORDER ON REVIEW  
Unrepresented Claimant  
SAIF Legal Salem, Defense Attorneys

Reviewing Panel: Members Curey and Ousey.

Claimant, *pro se*,<sup>1</sup> requests review of Administrative Law Judge (ALJ) Marshall's order that upheld the SAIF Corporation's denial of claimant's injury claim for left shoulder, inguinal hernia, and hiatal hernia conditions. On review, the issues are remand and compensability.

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

In upholding SAIF's denial, the ALJ was not persuaded that claimant's work injury was a material contributing cause of the left shoulder or hernia conditions or the need for treatment/disability for those conditions. The ALJ also found that the evidence did not support the proposition that claimant's work activities were the major contributing cause of the left shoulder condition. In doing so, the ALJ noted that the opinions of Dr. Rush and PA Garcia did not support the compensability of the left shoulder condition, and that Dr. Ballard's opinion was not phrased in terms of "medical probability." Moreover, the ALJ reasoned that the only opinion concerning the hernia conditions (provided by Dr. Dordevich) did not support the compensability of those conditions.

On review, claimant disagrees with the ALJ's decision. Based on the following reasoning, we affirm.

Claimant has submitted additional documents, some of which were not admitted into the record at the hearing. Our review is limited to the record developed by the ALJ. ORS 656.295(5). However, we may remand to the ALJ if

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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

we find that the case has been improperly, incompletely, or otherwise sufficiently developed. *Id.* There must be a compelling reason for remand to the ALJ for the taking of additional evidence. *SAIF v. Avery*, 167 Or App 327, 333 (2000). A compelling reason exists when the new evidence: (1) concerns disability; (2) was not obtainable with due diligence at the time of the hearing; and (3) is reasonably likely to affect the outcome of the case. *Id.*

Here, based on the dates of some of the submitted documents, it appears that they were unobtainable at the time of the hearing. However, some are undated or are dated before the hearing date.<sup>2</sup> In any event, consideration of those documents is not reasonably likely to affect the outcome of our decision regarding the compensability of his denied left shoulder and hernia conditions, as they do not include an opinion concerning the compensability of those conditions. Therefore, we conclude that there is no compelling reason to remand to the ALJ for the taking of additional evidence.

Turning to the compensability issue, claimant must prove that the July 2017 work injury was a material contributing cause of the disability/need for treatment of the left shoulder and hernia conditions. ORS 656.005(7)(a); ORS 656.266(1). Considering the potentially conflicting opinions regarding the cause of the claimed conditions and the delay in treatment, resolution of this matter involves a complex medical question that must be resolved on the basis of expert medical opinion. *Barnett v. SAIF*, 122 Or App 279, 282 (1993). We give more weight to those opinions that are both well reasoned and based on complete information. *Somers v. SAIF*, 77 Or App 259, 263 (1986); *Linda E. Patton*, 60 Van Natta 579, 582 (2008).

Although we may draw reasonable inferences from the medical evidence, we are not free to reach our own medical conclusions about causation in the absence of such evidence. *See Benz v. SAIF*, 170 Or App 22, 26 (2000); *SAIF v. Calder*, 157 Or App 224, 227-28 (1998) (“The Board is not an agency with specialized medical expertise entitled to take official notice of technical facts within its specialized knowledge.”).

Here, the physicians’ opinions do not causally relate, to a reasonable degree of medical probability, the claimed conditions, need for treatment, or disability to the claimed work injury. (Exs. 23, 24-9, 25, 26-2, 27). In reaching this conclusion, we acknowledge Dr. Ballard’s initial opinion that claimant’s left shoulder rotator cuff tear condition was consistent with the mechanism of injury. (Ex. 23). Yet, he

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<sup>2</sup> Moreover, some of the documents are already included in the record. (*See* Exs. 10, 16).

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ultimately concluded that, assuming the history concerning the mechanism of injury was correct, the mechanism “can” cause a shoulder tear. (Ex. 27-16). In context, such an opinion is phrased in terms of medical possibility, rather than probability. *See Gormley v. SAIF*, 55 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 a possibility, not medical probability). Consequently, Dr. Ballard’s opinion is insufficient to establish the compensability of the left shoulder condition.

Under such circumstances, and after considering claimant’s contentions, we find that the medical record does not support the compensability of the left shoulder or hernia conditions. Accordingly, for these reasons, as well as those expressed in the ALJ’s order, we conclude that the claim is not compensable. Therefore, we affirm.

#### ORDER

The ALJ’s order dated January 28, 2019 is affirmed.

Entered at Salem, Oregon on August 2, 2019