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In the Matter of the Compensation of  
**LEAH THOMPSON, Claimant**  
WCB Case No. 18-03321, 18-03108, 18-03053  
ORDER ON REVIEW  
Welch Bruun & Green, Claimant Attorneys  
Goehler & Associates, Defense Attorneys

Reviewing Panel: Members Woodford and Lanning.

The self-insured employer requests review of Administrative Law Judge (ALJ) Jacobson's order that: (1) set aside its denials of claimant's new/omitted medical condition claims for a right labral tear, a right biceps tear, and a right shoulder glenoid labrum tear; and (2) set aside its denial of claimant's current combined right shoulder condition. On review, the issue is compensability.

We adopt and affirm the ALJ's order with the following supplementation regarding the compensability of claimant's new/omitted medical conditions.

In setting aside the employer's denials, the ALJ relied on the opinion of claimant's treating orthopedic surgeon, Dr. Rask, which was based on his surgical observations. *Argonaut Ins. Co. v. Mageske*, 93 Or App 689, 702 (1988).

On review, the employer contends that Dr. Rask's opinion is unpersuasive because he relied on an inaccurate history and did not sufficiently respond to the opinion of Dr. Bowman, claimant's attending physician. For the following reasons, we disagree with the employer's contention.

To establish the compensability of her claimed new/omitted medical conditions, claimant must prove that the claimed conditions exist, and that the March 15, 2018, work injury was a material contributing cause of the disability or need for treatment of her conditions. ORS 656.005(7)(a); ORS 656.266(1); *Betty J. King*, 58 Van Natta 977 (2006); *Maureen Y. Graves*, 57 Van Natta 2380 (2005).

Because of the disagreement between medical experts regarding the compensability of the claimed conditions, the claim presents a complex medical question that must be resolved by expert medical opinion. *Barnett v. SAIF*, 122 Or App 279, 282 (1993); *Matthew C. Aufmuth*, 62 Van Natta 1823, 1825 (2010). More weight is given to those medical opinions that are well reasoned and based on complete information. *See Somers v. SAIF*, 77 Or App 259, 263 (1986); *Linda E. Patton*, 60 Van Natta 579, 582 (2008).

Here, the employer argues that Dr. Rask relied on an inaccurate history concerning the injury mechanism when he stated that claimant had a traction injury when “catching” a box. In doing so, the employer refers to claimant’s testimony that she was lifting a 70-pound box when it slipped and fell on her right shoulder. (Tr. 6, 7).

Dr. Rask stated that claimant had caught a falling 70-pound box, resulting in a traction injury. (Ex. 48). Yet, he also understood that claimant had lost control of the box, and that it fell on her right shoulder, jerking her arm downward. (Ex. 43). He explained that, catching a 70-pound box was not a trivial mechanism of injury and, when the box struck her shoulder, it likely jerked her right arm downward causing a “traction,” or distraction, injury to the superior labrum and biceps as the humerus pulled away from the socket. (Ex. 51-2). Dr. Rask’s history and explanation are consistent with the understanding of Dr. Sotta, an orthopedic surgeon, who reported that the box had slipped, causing a “distraction force” in the shoulder. (Ex. 28). Thus, under these particular circumstances, Dr. Rask relied on a sufficiently complete and accurate history.<sup>1</sup> *See Jackson County v. Wehren*, 186 Or App 555, 561 (2003) (a history is complete if it includes sufficient information on which to base the opinion and does not exclude information that would make the opinion less credible).

The employer also contends that Dr. Rask’s opinion is unpersuasive for not sufficiently responding to Dr. Bowman’s opinion. We disagree.

Dr. Bowman opined that, based on claimant’s negative right shoulder injection response, he did not consider her labral abnormality as seen on MRI to be the pain generator. (Ex. 31-2). However, Dr. Bowman further acknowledged that he did not know the cause of her pain, and concluded that the MRI findings “may

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<sup>1</sup> Moreover, the employer asserts that Dr. Rask’s opinion is unpersuasive because the box in question weighed 40 pounds, rather than 70 pounds. Specifically, the employer refers to the testimony of Mr. Birtcher, claimant’s supervisor, that he weighed similar boxes that were 40 pounds. (Tr. 18, 20). Nevertheless, Mr. Birtcher did not testify as to weighing the specific box involved in claimant’s work injury. Consequently, we do not discount Dr. Rask’s opinion on this basis.

The employer further contends that Dr. Rask’s opinion (that relied, in part, on an immediate onset of claimant’s symptoms to attribute the claimed conditions to the work injury) was based on an inaccurate understanding of the timing of those symptoms. (Exs. 55, 61-2). In doing so, the employer notes claimant’s delay in seeking medical treatment. Yet, claimant consistently reported that she had an immediate onset of symptoms, regardless of her delay in seeking medical treatment for those symptoms. (Tr. 7; Exs. 6, 8, 11, 15-3, 17, 22, 27-2, 28, 39-1, 43, 44). Thus, Dr. Rask relied on a sufficiently accurate history.

be simply preexisting.” (*Id.*) To the extent that such an opinion is interpreted to be phrased in terms of medical probability, we find it unexplained. *See Blakely v. SAIF*, 89 Or App 653, 656, *rev den*, 305 Or 973 (1988) (physician’s opinion lacked persuasive force because it was unexplained); *Moe v. Ceiling Sys.*, 40 Or App 429, 433 (1980) (rejecting conclusory medical opinion as unpersuasive); *see also Gormley v. SAIF*, 52 Or App 1055, 1060 (1981) (persuasive medical opinions must be based on medical probability, rather than possibility). Moreover, for the reasons expressed in the ALJ’s order, Dr. Rask persuasively explained why the claimed conditions were related to the March 2018 work injury. *See SAIF v. Strubel*, 161 Or App 516, 521-22 (1999) (medical opinions are evaluated in context and based on the record as a whole to determine sufficiency). Consequently, we decline to find Dr. Rask’s opinion unpersuasive.

In sum, for the aforementioned reasons, as well as those expressed in the ALJ’s order, claimant’s new/omitted medical conditions are compensable. Accordingly, we affirm the ALJ’s order.

Claimant’s counsel is entitled to an assessed attorney 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 attorney 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 claimant’s respondent’s brief and his counsel’s uncontested fee submission), the complexity of the issues, the values of the interest involved, the benefits secured, the risk that claimant’s counsel might 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, if any, 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 February 8, 2019 is affirmed. For services on review, claimant’s counsel is awarded a \$5,000 attorney fee, payable by the employer.

Entered at Salem, Oregon on July 9, 2019