
In the Matter of the Compensation of
ETHAN N. KAE0, Claimant
WCB Case No. 18-03196
ORDER ON REVIEW
Dale C Johnson, Claimant Attorneys
Reinisch Wilson Weier, Defense Attorneys

Reviewing Panel: Members Lanning and Curey.

Claimant requests review of Administrative Law Judge (ALJ) Martha Brown's order that upheld the self-insured employer's denial of his injury claim for a right knee condition. On review, the issue is compensability.

We adopt and affirm the ALJ's order with the following supplementation.¹

The ALJ found that the opinions of claimant's treating physicians, Drs. Nguyen and Tedesco, were based on an inaccurate history of the mechanism of injury and were, therefore, unpersuasive. The ALJ also discounted these physician's opinions for not discussing the potential contribution of an earlier right knee injury. Instead, the ALJ relied on the opinion of Dr. Broock, who ultimately concluded that claimant's specific description of the injury as standing and "turning" at work did not represent a plausible mechanism of injury to cause claimant's disability/need for treatment for an ACL tear.

On review, claimant contends that Drs. Broock and Groman did not consider the correct mechanism of injury, and that the opinions of the treating physicians, Drs. Nguyen and Tedesco are more persuasive. Based on the following reasoning, in addition to that expressed in the ALJ's order, we disagree and find that claimant has not established that the work incident was a material contributing cause of the disability/need for treatment for a right knee condition.

¹ The record contains references to a report from another physician concerning the compensability of the claimed right knee injury, and those references establish that the parties were both in possession of, or at least aware of, the report. (Exs. 21-2, 22-17, -18). Yet, that report was not admitted into the record. No explanation for this report's absence from the record has been provided by either party. Under OAR 438-007-0018, the submission of all non-cumulative documents that are relevant and material to the issues is required. Nonetheless, because neither party has objected to this absence of apparently relevant evidence, we have not further explored this evidentiary matter.

Claimant must prove that his May 2018 work injury was a material contributing cause of his disability/need for treatment for the claimed right knee condition. ORS 656.005(7)(a); ORS 656.266(1); *Mario Carrillo*, 70 Van Natta 1815, 1818 (2018). Because of the disagreement between medical experts regarding claimant's injury, 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).

We disagree with claimant's contention that Drs. Broock and Groman did not consider claimant's right knee "twisting" mechanism of an injury. In addition to examinations, both physicians conducted record reviews in which a "twisting" mechanism of injury was thoroughly documented. (Exs. 17-9, -10, -16, 22-9, -10).

Furthermore, Dr. Broock specifically noted claimant's report that he twisted his right knee. (Ex. 17-3). After asking claimant to demonstrate his body position at the time of the injury, Dr. Broock also stated that claimant "was standing in trucking planning office talking to personnel" and "[w]ithout moving feet, turned to his left." (Ex. 17-4). Finally, in concluding that claimant's described May 9, 2018, event was not a material cause of [claimant's] disability or need for treatment associated with his right knee condition, Dr. Broock reported as follows:

"[Claimant] described no mechanism of right knee injury with standing and turning to the left- an activity producing pain and completely coincidental with [claimant] standing in trucking planning office rather than standing and turning anywhere else off work. [Claimant] reported nothing unusual about standing talking with people in planning office * * * than standing anywhere else off work." (Ex. 17-17).

Similarly, Dr. Groman described claimant's reported mechanism of injury as standing with both feet planted, turning to the left, and his right knee "[giving] out." (Ex. 22-2). He explained that there was minimal force involved in turning on one's planted leg, as well as turning while walking. (Ex. 22-22). Finally, Dr. Groman opined that an ACL injury occurs from forceful deceleration/hyperextension injuries, such as jumping from a height, from contact sports, or from significant forceful twisting events. (*Id.*) He concluded that claimant experienced symptoms from preexisting pathology at the time that he turned to his left side. (Ex. 22-22).

After considering these opinions, we are persuaded that both Drs. Broock and Groman understood that claimant's mechanism of injury included a twisting event. Nonetheless, for the reasons expressed in their opinions, they considered the forces involved in claimant's "twisting" motion to be minimal and non-injurious.

Moreover, we are not persuaded by the opinion of Dr. Tedesco, who described claimant's ACL injury as a "non-contact ACL injury," comparing it to instances commonly occurring in girls' basketball due to the anatomy of the female knee and the forces of landing after a jump or quickly changing direction. (Ex. 19-2). Although acknowledging that claimant's knee would not be subject to those forces in the same way as a female's knee, Dr. Tedesco considered claimant's "work-related knee movement" to be sufficient to cause an ACL injury.

In contrast, both Drs. Broock and Groman considered claimant's work incident (*i.e.*, changing direction in an office environment) to involve minimal force which was insufficient to injure claimant's ACL. (Exs. 17-17, 22-22). Other than considering the force to be sufficient, Dr. Tedesco did not further elaborate on his causation opinion (beyond the "female athlete" example). In the absence of further explanation supporting the sufficiency of claimant's mechanism of injury and in light of Drs. Broock's and Groman's contrary opinions, we consider Dr. Tedesco's opinion to be unpersuasive. *See Bruce H. Wooley*, 70 Van Natta 1283, 1286 (2018) (physician's opinion was unpersuasive because it was conclusory and inadequately explained in comparison to contrary opinion).

Finally, Dr. Nguyen, claimant's primary care physician, understood claimant's mechanism of injury to be "quickly" twisting the knee while walking, which he considered consistent with the force and activity that would result in an ACL tear. (Ex. 16A-5). However, the record does not describe claimant's activity as "quickly" twisting his knee, but instead reports a knee twist while he was turning to walk after speaking with coworkers. (Ex. 22-2). Consequently, Dr. Nguyen's understanding of the mechanism of injury is not consistent with claimant's description on which the opinions of Drs. Groman and Broock were based. *Miller v. Granite Constr. Co.*, 28 Or App 473, 478 (1977) (physician's opinion based on an incomplete or inaccurate history was not persuasive); *Daniel Newcomb*, 71 Van Natta 986, 990 (2019).

Further, Dr. Nguyen did not explain how claimant's knee twist would result in an ACL injury, despite Dr. Groman's explanation that an ACL injury occurs from a more forceful mechanism of injury and significant twisting events, and that claimant's mechanism involved minimal force. (Ex. 22-22). Without further explanation, and in the absence of a response to Dr. Groman's opinion, Dr. Nguyen's opinion regarding the mechanism of injury is not persuasive. *See Janet Benedict*, 59 Van Natta 2406, 2409 (2007), *aff'd without opinion*, 227 Or App 289 (2010) (physician's opinion found unpersuasive because, among other reasons, it did not address contrary opinions).

In sum, only the opinions from Drs. Nguyen and Tedesco support claimant's burden to establish that the work injury was a material contributing cause of his disability/need for medical treatment for his right knee condition. Because their opinions are not persuasive, claimant has not satisfied his initial burden of proof. ORS 656.005(7)(a); ORS 656.266(1). Consequently, the ALJ's order upholding the employer's denial is affirmed.

ORDER

The ALJ's order dated January 25, 2019 is affirmed.

Entered at Salem, Oregon on October 2, 2019