

In the Matter of the Compensation of
DENA L. MCGAGE, Claimant
WCB Case No. 00-04915
ORDER ON REVIEW
Dale C Johnson, Claimant Attorneys
Cummins Goodman Et Al, Defense Attorneys

Reviewing Panel: Members Haynes, Bock, and Phillips Polich. Member Phillips Polich chose not to sign the order.

The self-insured employer requests review of Administrative Law Judge (ALJ) Stephen Brown's order that set aside its denial of claimant's claim for a right wrist condition. On review, the issue is compensability. We reverse.

FINDINGS OF FACT

We adopt the ALJ's Findings of Fact.

CONCLUSIONS OF LAW AND OPINION

Claimant has worked as a 911 dispatcher and records clerk for the employer since August 15, 1988. (Tr. 4). In September 1999, claimant was given a special assignment which involved increased writing. (Tr. 6). On February 8, 2000, claimant sought treatment for right wrist symptoms with Dr. Holt and his nurse, Ms. Romney. (Ex. 1). Dr. Holt did not examine claimant. Ms. Romney's impression was that claimant had a right wrist ganglion cyst. (*Id.*) A February 8, 2000 x-ray of claimant's right wrist was "normal." (Ex. 2).

On February 11, 2000, claimant filed a form 801 stating that she had noticed a lump on the underside of her right wrist the prior Saturday and alleging that her condition was the result of repetitious writing. (Ex. 3). On April 27, 2000, the employer denied claimant's claim. (Ex. 5).

On September 19, 2000, Dr. Schilperoort examined claimant at the request of the employer. (Ex. 7). Dr. Schilperoort noted that claimant had no current mass on her right wrist. (Ex. 7-3). He diagnosed a right wrist bursitis condition, secondary to claimant's work exposure (*i.e.* writing), resolved. (Ex. 7-5). Dr. Schilperoort opined that claimant's condition was the result of a combination of a preexisting congenital "lack of full pronation" and her work activity. (*Id.*) Dr. Schilperoort reported that claimant's work activity was the major contributing

cause of the condition. (Ex. 7-6).

On September 29, 2000, Dr. Holt concurred with a letter from claimant's counsel indicating that claimant's cyst condition arose over a span of one week and that claimant's work activity was the major contributing cause of the condition. (Ex. 8). On February 15, 2001, Dr. Schilperoort concluded that claimant had no permanent impairment secondary to her bursitis condition. (Ex. 9).

Dr. Button examined claimant at the request of the employer on February 23, 2001. (Ex. 10). Dr. Button described claimant as having a "normal examination" of the upper extremities. (Ex. 10-4). On March 7, 2001, Dr. Button agreed with the proposition that because claimant did not experience any increased work activity, her work exposure was not "injurious." (Ex. 11). Dr. Button thought that claimant's work might have caused the symptoms of a minor "bruise-type" injury. (Ex. 11-3).

Also on March 7, 2001, Dr. Schilperoort agreed with a letter prepared by counsel for the employer that stated that claimant's work had caused merely a "symptomatic worsening" of her condition. (Ex. 12). Dr. Schilperoort also agreed that it was not likely that claimant's work activity had "suddenly become injurious" because it had not changed over time. (*Id.*)

The ALJ set aside the employer's denial based on the opinions of Drs. Holt and Schilperoort. On review, the employer contends that claimant did not meet her burden of proving a compensable right wrist condition. We agree.

The ALJ found that claimant had satisfied her burden of proof whether claimant's condition was treated as an injury or an occupational disease. Because claimant's condition came on gradually over time (approximately five months), claimant's condition is more likely an occupational disease. ORS 656.802; *Mathel v. Josephine County*, 319 Or 235, 240 (1994); see *Shirlee D. Marvin*, 53 Van Natta ___ (August 10, 2001). However, based on the following reasoning, claimant has not met her burden of proof under either an injury or occupational disease theory.¹ ORS 656.005(7)(a)(B), ORS 656.266, ORS 656.802(2)(a).

¹ If claimant's claim is treated as an injury, the medical evidence from Dr. Schilperoort proves that her injury "combined with" a preexisting right wrist condition. (Ex. 7-5). Accordingly, claimant would need to prove that her injury is the major contributing cause of her disability or need for treatment of the combined condition. ORS 656.005(7)(a)(B); *SAIF v. Nehl*, 147 Or App 101, *on recon* 149 Or App 309 (1997), *rev den* 326 Or 329 (1998). If claimant's claim is treated as an occupational disease, she must prove that her work activity is the major contributing cause of the right wrist condition, not merely of its symptoms. ORS 656.802(2)(a). In either case, claimant's burden of proof is one of "major

Due to the presence of a preexisting right wrist condition and the multiple diagnoses of claimant's condition, this case represents a complex medical question, resolution of which depends on expert medical opinion. *Barnett v. SAIF*, 122 Or App 279 (1993). Where the medical evidence is divided, we rely on those medical opinions that are well-reasoned and based on complete and accurate information. *Somers v. SAIF*, 77 Or App 259, 263 (1986). In addition, absent persuasive reasons not to do so, we generally rely on the opinion of the treating physician. *Weiland v. SAIF*, 63 Or App 810 (1983).

Here, we find persuasive reasons not to defer to claimant's treating physician, Dr. Holt. Dr. Holt never actually examined claimant. Instead, Ms. Romney, a nurse, examined claimant and prepared a chart note. (Ex. 1). Moreover, without providing reasoning for his conclusions, Dr. Holt simply answered "yes," to claimant's counsel's question as to whether claimant's work was the major contributing cause of her condition. (Ex. 8). We find Dr. Holt's opinion entirely conclusory and therefore unpersuasive. *See, e.g., Carol A. Bryant*, 53 Van Natta 795, 796 (2001).

Dr. Schilperoort initially offered a medical opinion supportive of claimant's claim after examining claimant at the request of the employer on September 19, 2000. (Ex. 7). Dr. Schilperoort diagnosed a bursitis at the point of insertion of the flexor carpi ulnaris tendon, secondary to work exposure. (Ex. 7-5). Dr. Schilperoort confirmed that claimant's condition had combined with a congenital lack of full pronation in her right wrist, but that the major contributing cause of the condition was claimant's work activity. (Ex. 7-6).

However, on March 7, 2001, Dr. Schilperoort responded to a letter from counsel for the employer by stating that claimant's work had merely caused a symptomatic worsening of claimant's right wrist condition and had caused no "pathologic damage" to the point of insertion of the flexor carpi ulnaris tendon. (Ex. 12-1). Dr. Schilperoort then concurred with the opinions of Dr. Button that do not support the compensability of claimant's condition. (*Id.*) An unexplained change in medical opinion is unpersuasive. *Kelso v. City of Salem*, 87 Or App 630 (1987); *Van G. Johnston*, 53 Van Natta 1042 (2001). In light of Dr. Schilperoort's later modification of his earlier opinion, we decline to rely on that earlier opinion as supportive of claimant's claim. Even assuming we were to find Dr. Schilperoort's later change of opinion sufficiently explained, the later opinion

contributing cause."

is not supportive of claimant's claim.

The opinions of either Dr. Holt or Dr. Schilperoort do not establish the compensability of claimant's condition. In light of this conclusion, we need not examine the relative persuasiveness of Dr. Button's opinion because that opinion did not support a compensable relationship between claimant's work and her wrist condition. Consequently, we reverse the ALJ's order setting aside the employer's denial, as well as the ALJ's assessed attorney fee award .

ORDER

The ALJ's order dated April 6, 2001 is reversed. The employer's denial is reinstated and upheld. The ALJ's assessed attorney fee award is also reversed.

Entered at Salem, Oregon on August 21, 2001