
In the Matter of the Compensation of
SHERRIE LOVE, Claimant
WCB Case No. 09-01059
ORDER ON REVIEW
Jodie Phillips Polich, Claimant Attorneys
MacColl Busch Sato PC, Defense Attorneys

Reviewing Panel: Members Langer and Biehl.

Claimant requests review of that portion of Administrative Law Judge (ALJ) Rissberger's order that upheld the self-insured employer's denial of her new/omitted medical condition claim for a right shoulder condition. On review, the issue is compensability.

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

In upholding the employer's denial of claimant's right shoulder rotator cuff tear, the ALJ determined that the medical record supported the causation opinions of Dr. Grossenbacher, an employer-arranged medical examiner, and Dr. Gripekoven, who conducted a review of medical records for the employer, more than it did the medical opinion of Dr. Karty, claimant's attending physician.

On review, claimant argues that Dr. Grossenbacher changed his causation opinion without explanation, thus reducing its persuasiveness.¹ We disagree.

Dr. Grossenbacher initially opined that it could not be ascertained with any "certainty" what pathologies or conditions were related to claimant's compensable February 2001 injury. Although he believed that the mechanism of injury was consistent with internal derangement of claimant's right shoulder, Dr. Grossenbacher concluded that it was not consistent with claimant's right shoulder symptoms since 2001. (Ex. 53-8).

The employer's counsel subsequently provided Dr. Grossenbacher with a complete copy of medical records and participated in a conference in which Dr. Grossenbacher's medical opinion was further explained. Dr. Grossenbacher opined to a degree of medical probability that, based on Dr. Karty's examination findings in 2001, as well as on physical therapy reports indicating full ranges of motion, the 2001 injury did not result in a rotator cuff tear. (Ex. 69-2).

¹ There is no dispute regarding the existence of the claimed new or omitted medical condition. See *Maureen Y. Graves*, 57 Van Natta 2380, 2381 (2005).

Having reviewed Dr. Grossenbacher's reports, we do not find any material inconsistency. In both reports, Dr. Grossenbacher did not support compensability. His last report contained more explanation of his opinion and was expressed to the required degree of medical probability, rather than medical "certainty." Like the ALJ, we also find that Dr. Grossenbacher's opinion is more consistent with the medical record than Dr. Karty's.²

Claimant also contends that Dr. Karty's opinion as that of the attending physician is entitled to deference, especially considering that he treated claimant in 2001 for his original injury and in 2009, when the right rotator cuff tear was diagnosed. *See Kienow's Food Stores, Inc. v. Lyster*, 79 Or App 416, 421 (1985) (greater weight given to the opinion of a physician who examined the claimant at the critical times). However, having reviewed his opinion, we find that it does not sufficiently weigh the other potentially contributing factors identified by Drs. Grossenbacher and Gripekoven, such as claimant's preexisting arthritic conditions. (Exs. 53-8, 69A-12, 70-2). In addition, Dr. Karty's opinion relies to some extent on a temporal relationship between the 2001 injury and the subsequently diagnosed rotator cuff tear. (Ex. 70-2) However, the reliance on a temporal relationship is not persuasive, considering the well-reasoned, contrary opinions of Drs. Gripekoven and Grossenbacher.

In conclusion, we agree with the ALJ's analysis of the medical causation issue. Thus, we affirm.

ORDER

The ALJ's order dated February 23, 2010 is affirmed.

Entered at Salem, Oregon on September 30, 2010

² Dr. Gripekoven opined that the February 2001 injury was the major contributing cause of claimant's initial need for treatment in 2001 for a combined condition consisting of the compensable injury and preexisting conditions such as acromioclavicular (AC) arthritis. (Ex. 69A-12). However, he concluded that claimant's clinical presentation in 2001 did not correlate with a significant rotator cuff tear. (*Id.* at 11). Accordingly, Dr. Gripekoven's opinion does not support compensability of a rotator cuff tear condition occurring at the time of the original, compensable injury.