In the Matter of the Compensation of
LIONEL F. TALBOT, Claimant
WCB Case No. 01-06597
ORDER ON REVIEW
Martin L Alvey, Claimant Attorneys
Michael G Bostwick LLC, Defense Attorneys

Reviewing Panel: Members Lowell, Bock, and Phillips Polich. Member Phillips Polich dissents.

Claimant requests review of that portion of Administrative Law Judge (ALJ) Davis' order that upheld the self-insured employer's denial insofar as it denied claimant's occupational disease claim for bilateral carpal tunnel syndrome (CTS). On review, the issue is compensability. We affirm.

FINDINGS OF FACT

We adopt the ALJ's "Findings of Fact" with the following supplementation.

At Dr. Nathan's direction, claimant was evaluated by hand therapist Meadows. Claimant demonstrated and described various work tasks to Meadows, who noted claimant's descriptions and detailed claimant's demonstrations. Dr. Nathan reviewed Meadows' notes prior to rendering his opinion. (Ex. 10-2, 3, 4).

CONCLUSIONS OF LAW AND OPINION

Claimant was employed for more than three years as a mechanic and repairman. His job duties, which involved metal fabrication, required him to weld, grind, fit and use a chipper tool. In May 2001, claimant was diagnosed with bilateral CTS. He filed a claim, which the employer denied. Claimant requested a hearing.

The ALJ upheld the employer's denial. In doing so, the ALJ found the opinion of hand specialist Dr. Nathan, an insurer-arranged medical examiner, persuasive as it was based on the most complete understanding of claimant's work activities and contained the most thorough explanation. We agree with the ALJ's evaluation of the medical evidence.

To establish the compensability of his occupational disease, claimant must prove that his employment conditions were the major contributing cause of his bilateral CTS condition. ORS 656.802(2)(a); *see Denise L. Dunlap*, 53 Van Natta 1631 (2001). To satisfy the major contributing cause standard, claimant must establish that his work activities contributed more to his condition than all other factors combined. *See McGarrah v. SAIF*, 296 Or 145, 146 (1983).

The determination of major contributing cause involves the evaluation of the relative contribution of the different causes of claimant's disease, and a decision as to which is the primary cause. *See Dietz v. Ramuda*, 130 Or App 397, 401 (1994) *rev dismissed* 321 Or 416 (1995). Because of the possible alternative causes for claimant's bilateral CTS condition, this matter involves a complex medical question that must be resolved by expert medical opinion. *Uris v. Compensation Department*, 247 Or 420 (1967). When, as here, there is a dispute between medical experts as to causation, 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).

All examining physicians agree that claimant suffers from severe bilateral CTS. Their opinions differ as to its causation.

After reviewing the record, we find Dr. Nathan's opinion well reasoned and based on the most complete information. Dr. Nathan relied on his own observations of claimant's work site, as well as hand therapist Meadows' detailed account of claimant's work activities, the tools claimant operated, and the manner in which the tools were used. Dr. Nathan also noted Meadows' description of claimant's demonstrations of his work tasks.

Citing *Karen K. Howard*, 52 Van Natta 266 (2000), claimant contends that because Dr. Nathan relied, in part, on work site observations that differed from claimant's testimony regarding his work activities, Dr. Nathan's opinion must be discounted as based on a materially inaccurate history. In *Howard*, we found a physician's opinion unpersuasive as based on an inaccurate history regarding the manner in which the claimant operated a coin changer. Based only on his personal experience, the physician understood the machine was operated solely by the user's thumb. However, the claimant testified to the contrary and demonstrated her operation of the coin changer with all four fingers. Here, although Dr. Nathan's description of observed work activities is somewhat at variance with claimant's testimony, it is generally consistent with claimant's supervisor's

testimony and is not so inconsistent with claimant's testimony as to cause us to conclude that Dr. Nathan's opinion is unpersuasive.[1]

Dr. Nathan explained that claimant's work tasks appeared to involve a pattern of wrist, hand and elbow postures and muscular resistance well within the range of normal physiologic function. He noted that claimant's work activities did not involve prehension patterns felt to be associated with compression of the median nerve, nor did they produce significant ballistic impact or sustained pressure to the volar aspect of the wrists. Based on the information gathered, Dr. Nathan was unable to identify an activity or pattern of activities in claimant's employment that would produce the biomechanical forces necessary to result in compression of the median nerves at the wrist. He concluded that claimant's work activities were not the major contributing cause of the bilateral CTS condition. Dr. Nathan indicated that claimant's age (59), sedentary lifestyle and use of tobacco, alcohol and caffeinated beverages are known to be associated with an increased risk for development of CTS.

Claimant argues that Dr. Nathan's opinion should be discounted because it fails to identify the major contributing cause of his bilateral CTS condition. Claimant asserts that failure to identify a primary cause shows that Dr. Nathan did not evaluate the relative contribution of different causes of the occupational disease and "has only half of what a well-reasoned medical opinion should have." We disagree. Although Dr. Nathan did not identify the major contributing cause of claimant's condition, his opinion that claimant's work activities were not the major contributing cause is probative on the causation issue. Moreover, we are persuaded that Dr. Nathan sufficiently evaluated the relative contribution of the different causes of claimant's disease.

Claimant asserts that the opinions of his treating physicians, Drs. George and Buehler, and of Dr. Layman, a hand surgeon to whom he was referred by counsel, are more compelling, and that they persuasively establish his work activities as the

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[1] Dr. Nathan did not observe that overhead work was "a regular component" of claimant's work and noted that lead length dragged when welding was three to five feet in length, with a portion supported by the work surface. Claimant told Meadows that at times he welded in an overhead position and that when welding he drags 30-40 feet of lead. Claimant testified that the amount of lead dragged when welding varied. (Tr. 15). His supervisor testified that welders held two to three feet of lead off the ground while the remainder rested on the ground. (Tr. 35-36). He further indicated that any welding claimant did was in a horizontal position, that he did no overhead welding and that claimant was not certified for overhead welding. (Tr. 41).

major contributing cause of the CTS condition. Based on the following reasoning, we disagree.

Dr. George examined claimant on two occasions. Following his subsequent review of the reports of Drs. Buehler and Nathan, Dr. George concluded that the idiopathic factors Dr. Nathan cited played no role in the onset of claimant's CTS, and that preexisting conditions were not a casual factor. Noting that claimant's work required "heavy use of his hands," Dr. George identified claimant's work activities for the employer as the major contributing cause of claimant's CTS condition, "in particular the repetitive hand/wrist activities." (Ex. 15-1).

Following an examination, Dr. Buehler signed a concurrence expressing agreement with Dr. Nathan's opinion. In mid August 2001, Dr. Buehler signed a second concurrence, expressly disagreeing with Dr. Nathan's report and commenting, "[W]ork is the cause of CTS. Since symptoms occur at [claimant's employment] they are responsible." (Ex. 13). Dr. Buehler did not explain his change of opinion.

Dr. Layman examined claimant and reviewed related medical reports. After describing claimant's work activities, Dr. Layman observed that claimant's symptoms were significantly worse on days that he worked and better when he was off work. According to Dr Layman, claimant had no contributory outside activities and no other causative factors were present. In addition, Dr. Layman explained that his causation opinion was supported by claimant's report that co-workers performing the same type of work activities had also developed CTS. Based on this information, Dr. Layman opined that claimant's work activities were the major contributing cause of his bilateral CTS condition. Drs. George and Buehler concurred with Dr. Layman's opinion.

We begin by evaluating the persuasive value of Dr. Buehler's opinion. Considering his unexplained change of opinion, as well as the conclusory nature of his comments concerning causation, which reflect a temporal analysis, Dr. Buehler's opinion is unpersuasive.[2] *See Kelso v. City of Salem*, 87 Or App 630 (1987); *Angeline Karel*, 54 Van Natta 473 (2002) (unexplained change of causation opinion renders physician's opinion unpersuasive); *Scott E. Taylor*,

[2] Claimant asserts that Dr. Buehler "mistakenly" checked the initial concurrence letter indicating agreement with Dr. Nathan's opinion. However, such an assertion is not supported by the record. Therefore, we reject this contention.

53 Van Natta 1432 (2001) (medical opinion based on temporal relationship between onset of symptoms and commencement of employment unpersuasive).

Next we turn to claimant's assertion that Dr. George's opinion is entitled to greater weight based on his status as a treating physician. *See Weiland v SAIF*, 64 Or App 810 (1983). Dr. George's contact with claimant was limited. Moreover, because evaluation of causation in this instance involves expert analysis rather than expert observation, we decline to assign Dr. George's opinion greater weight than the opinions of other examining physicians. *See Allie v. SAIF*, 79 Or App 284 (1986); *Carl E. Volner*, 52 Van Natta 114 (2000).

On balance, we find the opinions of Drs. George and Layman less persuasive than that of Dr. Nathan because they fail to explain how claimant's work activities produced bilateral CTS and fail to refute Dr. Nathan's analysis in this regard. Neither Dr. George nor Dr. Layman provides a description of the biomechanics involved in any work task performed by claimant. Neither discusses the manner in which claimant's entrapment neuropathy arose. *See Laurie D. Linn*, 53 Van Natta 1417 (2001) (opinion lacking biomechanical explanation of relationship of CTS to computer use and asserting repetitive use of hands including computer entry as a well recognized causative factor found conclusory and unpersuasive).

Dr. Layman's report presents an additional problem because it relied, in part, on claimant's representation that coworkers engaged in similar work activities had developed CTS. The record does not support such a representation. Furthermore, even if it did, a causal connection between another worker's condition and his or her work activities would have minimal, if any, probative weight in establishing the compensability of this particular claimant's occupational disease claim. *See Donna L. Bartruff*, 52 Van Natta 1489 (2000); *Jackie T. Ganer*, 50 Van Natta 2189, 2191 (1998) (opinion grounded in statistical type analysis of other workers and not sufficiently related to the claimant's individual circumstances found unpersuasive).

Finally, claimant argues that in determining the persuasiveness of Dr. Nathan's opinion, we should consider our prior rejection of the premiseunderlying Dr. Nathan's opinion. *See Gloria A. Sturtevant*, 51 Van Natta 386 (1999) *aff'd* 165 Or App 770 (2000). However, this record does not establish that Dr. Nathan relied on a premise rejected in *Sturtevant*. Moreover, *Sturtevant* is not a bar to independently evaluating Dr. Nathan's opinion in the present case. *See Giesbrecht v. SAIF*, 58 Or App 218 (1982) (the contribution of

one expert's opinion to the preponderance of evidence in one case has no bearing on the relative weight of the same expert's opinion in another case with a different mix of medical opinions); *Richard W. Nelson*, 48 Van Natta 588, 589 (1996).

Accordingly, we find that claimant's work activities were not the major contributing cause of his bilateral CTS condition. Consequently, we affirm the ALJ's order upholding the employer's denial.

ORDER

The ALJ's order dated December 17, 2001 is affirmed.

Entered at Salem, Oregon on October 16, 2002

Board Member Phillips Polich dissenting.

The majority affirms the ALJ's order upholding the employer's denial based on a finding that Dr. Nathan's is the most persuasive opinion in this record. Because I assess the medical evidence differently, I respectfully dissent.

Claimant worked for the employer as a mechanic and repairman for three years immediately preceding the diagnosis of his bilateral carpal tunnel condition. His work involved welding, as well as the use of hand tools including a grinder and chipper tool. Claimant's testimony established that he had not experienced carpal tunnel symptoms prior to his work for the employer.

Dr. Layman examined claimant and reviewed the medical reports of other physicians, including Dr. Nathan's July 16, 2001 report detailing claimant's work activities and use of his hands. Dr. Layman obtained a history of the onset and progression of claimant's carpal tunnel symptoms that was consistent with claimant's disclosure to other physicians and testimony at hearing. Further, Dr. Layman considered and rejected other potential causative factors. Most significantly, Dr. Layman noted that claimant's symptoms worsened on days when he worked and improved on days when he did not. Because claimant sought compensation for bilateral carpal tunnel syndrome, a condition defined by *Dorland's Illustrated Medical Dictionary*, Twenty-fifth Ed. (1974) as "a complex of *symptoms* resulting from compression of the median nerve in the carpal tunnel * * *" (emphasis supplied), Dr. Layman's consideration of this temporal correlation was entirely appropriate. *See SAIF v. Chipman*, 166 Or App 443,

448-49 (2000); *Georgia-Pacific Corp. v. Warren*, 103 Or App 275, 278 (1990), *rev den* 311 Or 60 (1991).

Dr. Layman's opinion that claimant's work activities are the major contributing cause of his bilateral carpal tunnel syndrome is well reasoned and is based on accurate and complete information. *See Somers v. SAIF*, 77 Or App 259, 263 (1986). I find it most persuasive because it offers a logical explanation that takes into account the appearance and worsening of claimant's syndrome, as well as the temporal correlation between claimant's work activity and exacerbation of the symptoms that define claimant's condition. Although the record did not support Dr. Layman's reference to claimant's statement regarding CTS conditions suffered by his co-workers, such information was only one factor among many considered, and was not the dispositive element. Therefore, I do not discount Dr. Layman's opinion based on its mention in his report.

Accordingly, on this record I would find that claimant has met his burden of proof regarding the clinical bilateral carpal tunnel condition, and that the employer's denial should be set aside.