

In the Matter of the Compensation of
GERALDINE F. REID, Claimant

WCB Case No. 03-04477

ORDER ON REVIEW

Ransom Gilbertson et al, Claimant Attorneys
Julie Masters, SAIF Legal, Defense Attorneys

Reviewing Panel: Members Lowell and Biehl.

The SAIF Corporation requests review of Administrative Law Judge (ALJ) Sencer's order that set aside its denials of claimant's claim for labyrinthine concussion. On review, the issue is compensability.

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

SAIF argues that "labyrinthine concussion" is not a condition, but is rather a "mechanism of injury." SAIF cites to Exhibit 43 for its argument in this regard. In Exhibit 43, Dr. Coale states that labyrinthine concussion is not used as a detailed diagnosis and that it was a diagnosis that was "based on mechanism of injury, namely concussion to [the] labyrinth." This statement does not establish that labyrinthine concussion is not a condition. The evidence cited by SAIF establishes that it is a diagnosis that is "based on [a] mechanism of injury." We do not find SAIF's argument persuasive.

SAIF next argues that the ALJ should not have relied on the opinion of Dr. Coale because he had an incorrect history that claimant suffered from dizziness from the date of injury. SAIF argues that the first report of dizziness was five months after the injury. We are not persuaded by this contention, however, because contemporaneous chart notes around the time of the injury state that claimant had dizziness. (Exs. 3; 5-3). On this record, we are unable to find that Dr. Coale's history was inaccurate.

SAIF also argues that Dr. Coale changed his diagnosis from labyrinthine concussion with probable benign paroxysmal positional vertigo to labyrinthine concussion with endolymphatic hydrops. However, Dr. Coale did not "change" his diagnosis because he continued to state that claimant had benign paroxysmal positional vertigo when he first saw claimant, but it had resolved. (Ex. 45-3).

SAIF argues that the ALJ did not address claimant's claim for "vertigo" and that the only evidence addressing the vertigo claim is from Dr. Brown (who

the ALJ found unpersuasive). SAIF contends that its denial of vertigo should be upheld and that it is a symptom not a condition.¹ However, the ALJ found that Dr. Coale attributed claimant's vertigo to the labyrinthine concussion. Even if vertigo is a symptom, Dr. Coale's opinion as a whole persuades us that this symptom is caused by the compensable condition. In this regard, Dr. Coale attributes claimant's benign paroxysmal positional *vertigo* to the injury. (Ex. 27). Under such circumstances, we are not persuaded that the denial of "vertigo" should be upheld.

Claimant's attorney is entitled to an assessed 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 fee for claimant's attorney's services on review is \$1,500, payable by SAIF. In reaching this conclusion, we have particularly considered the time devoted to the case (as represented by claimant's respondent's brief), the complexity of the issue, and the value of the interest involved.

ORDER

The ALJ's order dated February 26, 2004 is affirmed. For services on Board review, claimant's attorney is awarded \$1,500, payable by SAIF.

Entered at Salem, Oregon on October 5, 2004

¹ Dr. Brown said, "The most unifying diagnosis is that of a mild cervical vertigo" (Ex. 35-13), which was caused by the injury. (Ex. 41-2).