
In the Matter of the Compensation of
JAMES R. LAYCOCK, Claimant
WCB Case No. 01-05136
ORDER ON REVIEW
Kryger et al, Claimant Attorneys
Reinisch Mackenzie et al, Defense Attorneys

Reviewing Panel: Members Lowell, Biehl and Bock. Member Biehl chose not to sign the order.

Claimant requests review of that portion of Administrative Law Judge (ALJ) Spangler's order that upheld the self-insured employer's denial of claimant's current right knee condition. On review, the issue is compensability. We affirm.

FINDINGS OF FACT

We adopt the ALJ's "Findings of Fact."

CONCLUSIONS OF LAW AND OPINION

Claimant compensably injured his right knee on March 10, 2001. An emergency room doctor diagnosed a right knee sprain and referred claimant to Dr. Mohammed, an internal medicine specialist. After an MRI revealed torn ligaments and severe degenerative joint disease, Dr. Mohammed referred claimant to Dr. Cronk.

On April 10, 2001, Dr. Cronk performed arthroscopic surgery to repair claimant's torn right medial and lateral menisci and medial compartment arthrosis. Claimant's "acute tear" was medically stationary on May 7, 2001.

On June 25, 2001, the employer accepted claimant's claim for a sprain of the right knee and torn right medial and lateral menisci combined with preexisting noncompensable medial compartment arthrosis.

On June 28, 2001, the employer denied compensability of claimant's combined right knee condition, contending that the compensable injury was no longer the major contributing cause of the current need for treatment and disability of the combined condition.

The ALJ reasoned that Dr. Cronk's opinion regarding the cause of claimant's torn medial meniscus alone had little relevance or materiality to the claim, because the denial placed the entire combined condition (not merely the torn meniscus) at issue. Consequently, the ALJ concluded that claimant failed to prove compensability. We reach the same result, based on the following reasoning.

Claimant seeks to prove that his compensable injury remains the major contributing cause of his right knee disability, because his disability is due to the torn medial meniscus and the work injury caused the tear. This is neither a "new issue" raised during closing arguments nor is it beyond the scope of the employer's denial of claimant's current combined condition.¹ Nonetheless, claimant's condition remains a combined condition (based on the medical evidence, as explained below) and the issue is whether it is compensable under ORS 656.005(7)(a)(B).²

Claimant argues that his right knee condition has not changed and therefore it should remain compensable pursuant to the employer's acceptance of a combined condition.³ Claimant also argues that the accepted injury is the

¹ The employer denied claimant's current disability and need for treatment for his right knee. The scope of that denial is broad enough to include compensability of claimant's diagnosed and claimed torn right medial meniscus. *See Sound Elevator v. Zwingraf*, 181 Or App 150 (2002) (denial of current condition and need for treatment broad enough to include medial meniscus condition diagnosed in physician's note sent to employer); *compare Longview Inspection v. Snyder*, 182 Or App 530 (2002) (limited and specific denial did not encompass existing medical conditions when the employer did not know of them); *Constance Bruneau*, 54 Van Natta 1533, 1535 (2002) (same).

² ORS 656.005(7)(a)(B) provides:

"If an otherwise compensable injury combines at any time with a preexisting condition to cause or prolong disability or a need for treatment, the combined condition is compensable only if, so long as and to the extent that the otherwise compensable injury is the major contributing cause of the disability of the combined condition or the major contributing cause of the need for treatment of the combined condition."

³ In addition, claimant argues that the legislature intended to shift the burden of proof regarding disability due to combined conditions to the employer when it amended ORS 656.266. *See* ORS 656.266(2)(a). To begin, the outcome does not turn on which party has the burden of proof. Furthermore, the amended statute does not apply to this claim, because it applies only to claims with dates of injury on or after January 1, 2002. *See* Or Laws, Ch. 865 sec. 22. The date of injury for this claim is March 10, 2001.

major contributing cause of his current right knee disability, based on Dr. Cronk's opinion.

The employer responds that its denial is permissible under ORS 656.262(6)(c),⁴ because the medical evidence establishes that the compensable injury ceased to be the major cause of claimant's right knee condition and the statute permits a denial of the current combined condition under such changed circumstances. *See State Farm Ins. Co. v. Lyda*, 150 Or App 554 (1997); *John J. Aschmeller*, 54 Van Natta 743 (2002). Based on Dr. Cronk's opinion, the employer also argues that claimant's preexisting medial compartment arthrosis is the major contributing cause of his current disability and need for treatment for his right knee. We agree with the employer.

First, "[u]nder ORS 656.262(6)(c), a carrier may now deny an accepted combined condition at any point if the 'otherwise compensable injury ceases to be the major contributing cause of the combined * * * condition.'" *SAIF v. Belden*, 155 Or App 568, 574 (1998), *rev den* 328 Or 330 (1999).

Here, the employer accepted claimant's claim for a sprain of the right knee and torn right medial and lateral menisci combined with preexisting noncompensable medial compartment arthrosis. Until after claimant's surgery, his diagnoses were primarily "right knee sprain," (Ex. 3), "injury to knee," (Ex. 9), and "acute bucket-handle tear, right medial meniscus." (Ex. 10-2). In this regard, Dr. Cronk opined, based on operative findings of acute tearing in the meniscal tissue areas, that claimant's history of a March 10, 2001 injury was "supportable by those findings." (Ex. 20A-1). Dr. Cronk also explained during his deposition that the "injury on the job March 10 caused that tear." (Ex. 23-19).

Then, on May 7, 2001, Dr. Cronk found claimant medically stationary "with respect to his acute meniscal tear." (Ex. 15-2). At the same time, the doctor stated,

⁴ ORS 656.262(6)(c) provides:

"An insurer's or self-insured employer's acceptance of a combined or consequential condition under ORS 656.005 (7), whether voluntary or as a result of a judgment or order, shall not preclude the insurer or self-insured employer from later denying the combined or consequential condition if the otherwise compensable injury ceases to be the major contributing cause of the combined or consequential condition."

“Unfortunately, the patient has had longstanding medial compartment arthrosis as evidenced by the wide loss of articular cartilage in the medial compartment documented at the time of his surgery. This clearly precedes the alleged March 10, 2001, injury and remains, in my opinion, the major reason why he is unable to resume his work [for the employer.]” (Ex. 15-2).

Thus, Dr. Cronk explained that, although the work injury caused the acute tear, by the time claimant was medically stationary, his preexisting arthrosis was the major cause of his disability. In our view, Dr. Cronk’s opinion establishes the requisite change of circumstances required for a denial of a current combined condition under ORS 656.262(6)(c). *See e.g., David L. Hawkins*, 53 Van Natta 1238 (2001) (denial proper under ORS 656.262(6)(c), where injury-related condition ceased to be major contributing cause of combined condition).

Finally, on the merits, claimant contends that Dr. Cronk’s “deposition opinion” supports a conclusion that the major contributing cause of claimant’s disability is the work injury. Claimant relies on Dr. Cronk’s estimates that claimant has lost about 50 percent “function” of his meniscus and about one-third volume of his meniscus. (*See* Ex. 23-17). Claimant reasons, “One-third of the total volume loss divided by one-half the disability equals two-thirds disability due to the tear.” (Reply Brief, p.2).

The persuasive medical evidence does not support claimant’s contention. In other words, even if claimant’s one-third lost meniscus volume is 100 percent injury-related (which it is not, as explained below), Dr. Cronk’s reasoning does not support a conclusion that the lost volume causes at least 51 percent of claimant’s current lost right knee function.

Dr. Cronk did agree, at one point, that 51 percent or more of claimant’s lost *meniscus* function is due to his “acute tear, one-third of the meniscus.” (Ex. 23-20). However, a portion of the approximately one-third “lost” meniscus that was removed during surgery was degenerative. (Ex. 23-18). Moreover, there is no indication that the major cause of claimant’s current disability is lost meniscus or lost meniscus function. (*See* Exs. 15-2, 23-11). On the contrary, Dr. Cronk repeatedly explained that claimant’s “1/3 lost/half defunctionalized” meniscus is itself a “combined injury with both acute and chronic changes in the meniscal tissue.” (*Id.* At 13). He specifically opined that claimant had both acute and chronic changes in his right knee, “including some degenerative meniscal tearing in the joint.” (Ex. 10-2). And Dr. Cronk explained,

“Just in terms of the meniscal tear, I think you could say that approximately fifty percent of the functional loss of the meniscal tissue is due to the portion that had to be removed. As I said earlier, some of that loss was complicated by the fact that portions of the meniscus were clearly degenerated, so that the acute tearing of the meniscus—You have to go back to stable meniscal tissue and resect it, and some of the degenerative meniscal tissue had to be removed in addition to the acute fair [sic]. (Ex. 23-18).

Ultimately, Dr. Cronk opined that “the major residual damage that exists in the joint today [] is the result of pre-existing changes[,]” and as of May 7, 2001, claimant’s preexisting condition was the major contributing cause of his disability and need for treatment for his knee. (Exs. 20A-1, 23-21-22).

Considering Dr. Cronk’s well-reasoned opinion,⁵ we are not persuaded that claimant’s injury remains the major contributing cause of his need for treatment or disability for his current right knee condition. Consequently, we conclude that the claim is not compensable under ORS 656.005(7)(a)(B).

ORDER

The ALJ's order dated March 4, 2002 is affirmed.

Entered at Salem, Oregon on November 20, 2002

⁵ We acknowledge that Dr. Mohammed opined that claimant’s work injury caused his inability to perform his job. (Ex. 21). In light of claimant’s severe preexisting arthrosis and Dr. Cronk’s well-reasoned opinion, we give Dr. Mohammed’s inadequately explained conclusions little weight.