

In the Matter of the Compensation of
VERNON B. KONRAD, Claimant
WCB Case No. 04-06274, 04-03321
ORDER ON REVIEW
Gloria D Yates, Claimant Attorneys
Gene L Platt, Defense Attorneys
Bruce A Bornholdt, SAIF Legal, Defense Attorneys

Reviewing Panel: Members Lowell and Biehl.

Claimant requests review of those portions of Administrative Law Judge (ALJ) Poland's order that: (1) upheld the SAIF Corporation's denial, on behalf of Harris Transportation Company, of claimant's "new injury" claim for a left knee condition; (2) upheld SAIF's denial, on behalf of Macauley Brothers Company, of the same condition; and (3) did not award penalties or attorney fees for SAIF's allegedly unreasonable denials. On review, the issues are compensability (potentially responsibility), penalties and attorney fees.

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

The words "disc pathology," are replaced with "knee pathology," in the last sentence of the last full paragraph on page 7.

Claimant argues that his current left knee arthritic condition is compensable under the "last injurious exposure rule" (LIER) because all of his injuries since 1973 have been work-related.

Claimant is correct that LIER is both a rule of proof and a rule of responsibility that applies in the *occupational disease* context. However, because this case involves successive injuries rather than an occupational disease, LIER does not apply. *See SAIF v. Webb*, 181 Or App 205, 209 n 1 (2002) (LIER "does not apply where * * * there has been a succession of discrete * * *injuries to the same body part."); *Industrial Indem. Co. v. Kearns*, 70 Or App 583, 586-87 (1984) (discussing difference between LIER and last injury rule).

The last injury rule, on the other hand, is a rule of *responsibility* that applies to injury claims. *See Dean R. Kirby*, 58 Van Natta 1153, 1155 (2006). Because the threshold question here is compensability rather than responsibility, the last injury rule does not apply. *Id.*

Finally, because we agree with the ALJ that claimant's left knee condition is not compensable, we uphold SAIF's denials on behalf of the Harris Transportation Company and Macauley Brothers Company.

ORDER

The ALJ's order dated September 6, 2006 is affirmed.

Entered at Salem, Oregon on March 9, 2007