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In the Matter of the Compensation of  
**JERAMY L. HALLFORD, Claimant**  
WCB Case No. 09-04361  
ORDER ON RECONSIDERATION  
Dale C Johnson, Claimant Attorneys  
Judy L Johnson, Defense Attorneys

Reviewing Panel: Members Biehl and Lowell.

Claimant requests reconsideration of our April 29, 2010 Order on Review that affirmed an Administrative Law Judge's (ALJ's) order that upheld the insurer's partial denial of claimant's new/omitted medical condition claim for an L5-S1 disc protrusion, bulge, or herniation. Claimant contends that we did not explain why we declined to rely on Dr. Tatsumi's report.

In our prior order, we declined to address the parties' arguments about the admissibility of Dr. Tatsumi's report, explaining that we would reach the same result concerning the compensability issue *without* considering that report. On reconsideration, having considered Dr. Tatsumi's report, we explain why we continue to reach the same result on the compensability issue. We reason as follows.

Dr. Tatsumi examined claimant on August 21, 2009 and opined that his accepted lumbar strain had resolved. However, Dr. Tatsumi also reported that claimant had worsened symptoms, including "motor weakness with right ankle dorsiflexion along with numbness in the right L4-S1 dermatome." (*Id.* at 4). Dr. Tatsumi opined that claimant's findings were due to a worsened lumbar disc herniation.<sup>1</sup> (*Id.*)

We acknowledge that Dr. Tatsumi's report provides some support for Dr. Kitchel's opinion that claimant has an injury-related L5-S1 disc condition. We also acknowledge that only Dr. Kitchel had an opportunity to review Dr. Tatsumi's report.

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<sup>1</sup> Dr. Tatsumi also referenced claimant's January 2009 MRI finding of an L5-S1 disc protrusion, Dr. Kitchel's diagnosis of an L5-S1 disc herniation, and the fact that the L5-S1 condition was denied. (Ex. 37A-1-2). Under these circumstances, we understand that Dr. Tatsumi's opinion addressed the L5-S1 disc condition presently at issue.

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Nonetheless, as we explained in our prior order, the remainder of the record (particularly Dr. Rosenbaum's persuasive opinion and claimant's clinical records for eight months after the December 2008 injury) establishes that claimant's findings were not consistent with an L5-S1 disc condition. Consequently, after considering Dr. Tatsumi's August 2009 examination report (in light of the remainder of the record), we remain unable to conclude that Dr. Kitchel's opinion was based on an accurate history or that claimant has established an injury-related L5-S1 disc condition.<sup>2</sup>

Accordingly, we withdraw our April 29, 2010 order. On reconsideration, as supplemented herein, we adhere to and republish our April 29, 2010 order. The parties' rights of appeal shall begin to run from the date of this order.

**IT IS SO ORDERED.**

Entered at Salem, Oregon on May 21, 2010

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<sup>2</sup> The first sentence of the last paragraph of our prior order is corrected as follows: "Under these circumstances, we do *not* find Dr. Kitchel's causation opinion persuasive."