
In the Matter of the Compensation of
ZACK Z. PAETZHOLD, Claimant
WCB Case No. 09-05310
ORDER ON RECONSIDERATION
Heiling Dwyer & Assoc, Claimant Attorneys
Julie Masters, SAIF Legal, Defense Attorneys

Reviewing Panel: Members Weddell and Lowell.

On October 25, 2010, we adopted and affirmed, without further comment, an Administrative Law Judge's (ALJ's) order that had upheld the SAIF Corporation's denial of claimant's back injury claim. Contending that our order did not address vital evidence and misapplied the appropriate compensability standard, claimant seeks reconsideration of our decision.

A Board order need not set forth its own findings of fact and conclusions if it affirms and adopts an ALJ's order that is itself sufficient for appellate review. *See George v. Richard's Food Center*, 90 Or App 639 (1998); *Jorge Pedraza*, 49 Van Natta 1019 (1997).

Claimant contends, however, that the ALJ's order and, consequently, our Order on Review are not supported by substantial evidence. *See Armstrong v. Asten-Hill Co.*, 90 Or App 200, 206 (1988) ("substantial evidence" exists to support a finding when the record, viewed as a whole, would permit a reasonable person to make that finding). As explained below, we disagree.

Claimant bears the initial burden to prove that the July 6, 2009 work injury was a "material contributing cause" of his disability or need for treatment. ORS 656.005(7)(a); ORS 656.266(1); *Olson v. State Indus. Accident Comm'n*, 222 Or 407, 414-15 (1960). The ALJ found that claimant carried his initial burden to prove that the July 6, 2009 work injury was a material contributing cause of disability or a need for treatment.

However, if an otherwise compensable injury combined with a "preexisting condition" to cause or prolong disability or need for treatment, SAIF must establish that the otherwise compensable injury is not, or is no longer, the major contributing cause of the disability or need for treatment of the combined condition. ORS 656.266(2)(a); *Jack G. Scoggins*, 56 Van Natta 2534, 2535 (2004). Determining the major contributing cause requires weighing the relative contribution of all causes and identifying which cause, or combination of causes, contributed more

than all other causes combined. *Smother v. Gresham Transfer, Inc.*, 332 Or 83, 133 (2001); *Dietz v. Ramuda*, 130 Or App 397, 401-02 (1994), *rev dismissed*, 321 Or 416 (1995).

The ALJ found, and we agree, that SAIF carried this burden. We reason as follows.

Claimant was injured in a car accident in 2007. (Ex. 1-1). He had back symptoms through 2009. (Ex. 3B-1). On May 21, 2009, Dr. Kellogg noted that an MRI showed mild findings, but that claimant's weight and deconditioning were more significant to claimant's ongoing low back pain. (Ex. 3B-2).

Dr. Duncan, a SAIF-arranged medical examiner, noted claimant's prior chronic back pain, attributing it to degenerative changes, obesity, and deconditioning. (Ex. 39A-5). He opined that the July 6, 2009 work injury combined with the preexisting chronic back pain. (Ex. 39A-6, -8). He acknowledged that the work injury was a material contributing cause of claimant's need for treatment. (Ex. 39A-7). However, he opined that the work injury was not the major contributing cause of the disability or need for treatment of the combined condition. (Ex. 39A-8).

Dr. Duncan's opinion supports the existence of a combined condition.¹ His opinion also supports SAIF's burden to prove that the otherwise compensable injury was not the major contributing cause of claimant's disability or need for treatment of the combined condition. His opinion was based on a thorough review of the medical records and persuasively explained the relationship between the preexisting condition, the work injury, and the combined condition. We find it persuasive.

Claimant cites Dr. Paetzhold's opinion. Dr. Paetzhold acknowledged that claimant's preexisting low back condition "would have predisposed him to a more significant injury to that area." (Ex. 42-3). Nevertheless, she did not discuss whether there was a "combined condition" as defined by ORS 656.005(7)(a)(B). Likewise, she did not persuasively weigh the relative contribution of the preexisting condition against that of the otherwise compensable injury and address which was the major contributing cause of claimant's disability or need for treatment. Therefore, we give Dr. Paetzhold's opinion less weight than Dr. Duncan's.

¹ Under ORS 656.005(24)(a), to be a "preexisting condition" for an initial injury claim, a condition must be arthritis or an arthritic condition or have been diagnosed or treated before the initial injury. As noted, claimant's chronic low back pain, as well as its causes, had been diagnosed before the work injury.

Based on Dr. Duncan's persuasive opinion, we conclude that claimant's otherwise compensable injury was not the major contributing cause of the disability or need for treatment of the combined condition. Therefore, we adhere to our prior order that affirmed the ALJ's order.

Accordingly, we withdraw our October 25, 2010 order. On reconsideration, as supplemented herein, we adhere to and republish our October 25, 2010 order. The parties' rights of appeal shall begin to run from the date of this order.

Entered at Salem, Oregon on November 10, 2010