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

Reviewing Panel: Members Weddell and Lowell.

On November 10, 2010, we issued an Order on Reconsideration that supplemented and republished our October 25, 2010 that 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 medical evidence attributing his back condition to his July 6, 2009 work incident, claimant requests reconsideration.

As explained in our first Order on Reconsideration, we find, based on the opinions of Dr. Paetzhold, claimant's chiropractor, and Dr. Duncan, a SAIF-arranged medical examiner, that claimant's work incident was a material contributing cause of his disability and need for treatment. Therefore, we agree that claimant has carried his initial burden of proof under the "material contributing cause" standard. *See* ORS 656.005(7)(a); ORS 656.266(1); *Olson v. State Indus. Accident Comm'n*, 222 Or 407, 414-15 (1960).

However, an "otherwise compensable injury" is not compensable if it combined with a preexisting condition to cause or prolong disability or need for treatment and the "otherwise compensable injury" is not the major contributing cause of claimant's disability and need for treatment of the combined condition. ORS 656.005(7)(a)(B). The "major contributing cause" is a cause, or combination of causes, that contributed more than all other causes combined. *Smothers v. Gresham Transfer, Inc.*, 332 Or 83, 133 (2001).

Because an "otherwise compensable injury" has been established, SAIF bears the burden to prove that the otherwise compensable injury was not the major contributing cause of claimant's disability and need for treatment of the combined condition. ORS 656.266(2)(a); *Jack G. Scoggins*, 56 Van Natta 2534, 2535 (2004). As explained in our first Order on Reconsideration, we considered the medical evidence and find that Dr. Duncan's opinion supports SAIF's burden under the "major contributing cause" standard.

Claimant contends that Dr. Duncan's opinion, which supported a combined condition and assigned major causation to claimant's preexisting chronic low back pain, is unpersuasive because he did not review claimant's x-ray studies. Claimant notes that Dr. Paetzhold described the x-rays as showing "significant objective differences" between claimant's pre-injury and post-injury condition. (Ex. 44-51). Dr. Paetzhold explained that whereas in 2007, claimant's hip was higher on the left, there was a "reversal" and claimant's hip was higher on the right in 2009. (Ex. 44-48-50).

Nevertheless, the question before us is not whether claimant's post-injury condition was changed from his pre-injury condition. As noted, we agree that claimant sustained an "otherwise compensable injury" on July 6, 2009. Rather, the question before us is whether the "otherwise compensable injury" combined with a preexisting condition to cause or prolong claimant's disability or need for treatment and, if so, whether the "otherwise compensable injury" was not the major contributing cause of the disability or need for treatment for the combined condition.

As noted, Dr. Duncan opined that claimant's injury combined with his preexisting condition to cause and prolong his disability and need for treatment. (Ex. 39A-6, -8). Dr. Paetzhold did not dispute this conclusion. To the contrary, she acknowledged that claimant's preexisting condition "would have predisposed him to a more significant injury to that area." (Ex. 42-3). Under such circumstances, the preponderance of the evidence establishes a combined condition.

Further, as noted, Dr. Duncan opined that the major contributing cause of claimant's disability or need for treatment of the combined condition was the preexisting condition. (Ex. 39A-8). Again, Dr. Paetzhold did not dispute this conclusion. Although she opined that the work injury contributed to claimant's disability and need for treatment, she did not address which cause, or combination of causes, contributed more than all other causes combined. Therefore, whereas Dr. Duncan's opinion is relevant to whether SAIF has carried its burden under the "major contributing cause" standard, Dr. Paetzhold's opinion is not.

Claimant contends that Dr. Duncan's opinion is, nevertheless, not persuasive because he failed to address the specific differences showing the "reversal" between the 2007 and 2009 x-rays. However, no medical expert has indicated that those differences are material regarding the major contributing cause of claimant's disability or need for treatment of his combined condition. Absent such evidence,

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we are unable to infer such significance. *SAIF v. Calder*, 157 Or App 224, 228 (1998) (Board lacks specialized medical expertise and must base its findings on medical evidence in the record). Therefore, Dr. Duncan's opinion was based on sufficient information to form a persuasive opinion. *See Jackson County v. Wehren*, 186 Or App 555, 560-61 (2003) (a history is complete if it includes sufficient information on which to base an opinion and does not exclude information that would make the opinion less credible).

In conclusion, we continue to find Dr. Duncan's opinion persuasive. Based on Dr. Duncan's persuasive opinion, we continue to find that the preponderance of the evidence establishes that claimant's "otherwise compensable injury" was not the major contributing cause of his disability or need for treatment of the combined condition.

Consequently, we continue to conclude that the record does not establish the compensability of claimant's back injury claim. As such, we adhere to our prior orders that affirmed the ALJ's order.

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

Entered at Salem, Oregon on November 23, 2010