
In the Matter of the Compensation of
WILLIE L. FRISON, Claimant
WCB Case No. 10-01496
ORDER ON RECONSIDERATION
Hooton Wold & Okrent LLP, Claimant Attorneys
Julie Masters, SAIF Legal, Defense Attorneys

Reviewing Panel: Members Biehl, Langer, and Herman. Member Biehl dissents.

Claimant requests reconsideration of our September 13, 2011 order reversing an Administrative Law Judge's (ALJ's) order that set aside the SAIF Corporation's denial of claimant's combined low back condition. Claimant argues that we incorrectly determined that the medical opinion of the attending physician, Dr. Breen, was sufficient to satisfy SAIF's burden of proving that the otherwise compensable low back injury ceased to be the major contributing cause of the disability or need for treatment of the combined low back condition. For the following reasons, we disagree with claimant's argument.

Dr. Breen opined that, as of December 7, 2007, preexisting degenerative disc disease, rather than the accepted lumbar strain, was the major contributing cause of claimant's need for treatment. (Ex. 46). Dr. Breen was subsequently deposed.

Dr. Breen testified that he would expect a lumbar strain to resolve two to three months after an injury and that degenerative disc disease would become the major contributing factor in the need for treatment. (Ex. 51-7). In reaching this conclusion, Dr. Breen relied on his clinical experience, which included treatment of "thousands" of cases. (Ex. 51-18). Dr. Breen also considered factors such as claimant's history of treatment before the compensable injury, the mechanism of injury, the nature of the degenerative disc disease, the results of diagnostic testing and claimant's symptom presentation. (Ex. 51-13, -14, -15, -16, -18, -20, -21).

Based on this testimony, we were persuaded that Dr. Breen's opinion considered claimant's particular circumstances, rather than solely statistics or generalities. *Cf. Sherman v. Western Employers Ins.*, 87 Or App 602, 606 (1987) (physician's comments that were general in nature and not addressed to the worker's particular situation were not persuasive). Moreover, as the treating physician, we found that Dr. Breen was in a particularly advantageous position from which to evaluate the causation issue. Under these circumstances, we found Dr. Breen's opinion well reasoned and persuasive. Moreover, we observed that his opinion was supported by that of Dr. Young, to whom Dr. Breen had referred claimant for a consultation on November 29, 2007.

Claimant makes a number of arguments supporting his position that Dr. Breen's opinion was insufficient to satisfy SAIF's burden of proof. Having considered them, we adhere to the reasoning in our prior order.

However, claimant also argues that Dr. Breen did not rebut the opinion of Dr. Lee that claimant's problem in May 2008 was an ongoing musculoligamentous injury. Dr. Lee's statement does not cause us to discount Dr. Breen's opinion. Dr. Lee did not refer to the compensable injury in attributing claimant's low back symptoms to an ongoing musculoligamentous injury. (Ex. 43-1). Therefore, Dr. Lee did not provide an opinion contrary to Dr. Breen's. In light of this, we do not discount Dr. Breen's opinion for an alleged failure to rebut Dr. Lee's opinion.

Claimant further contends that Dr. Breen's opinion is unpersuasive because he declined to discuss a compensable right achilles tendon condition during his deposition. (Ex. 51-4). However, the issue is the compensability of a combined low back condition. Thus, the question is whether the otherwise compensable lumbar strain, not the right ankle condition, ceased to be the major contributing cause of the disability or need for treatment of the combined low back condition. We find that Dr. Breen sufficiently explained his opinion regarding this issue. Therefore, we decline to discount the probative value of Dr. Breen's opinion for the reason posited by claimant.¹

Accordingly, we withdraw our September 13, 2011 order. On reconsideration, as supplemented herein, we republish our September 13, 2011 order. The parties' appeal rights run from the date of this order.

IT IS SO ORDERED.

Entered at Salem, Oregon on October 5, 2011

Member Biehl dissenting.

For the reasons expressed in my previous dissent, I continue to disagree with the majority's decision to reverse the ALJ's order.

¹ Claimant also faults Dr. Breen for not discussing an October 2007 chart note that mentioned an at-work aggravation of his low back condition. This reported aggravation occurred before December 7, 2007, when Dr. Breen opined that degenerative disc disease became the major contributing cause of claimant's disability or need for treatment. Moreover, the October 2007 "aggravation" was noted in Dr. Breen's chart note. (Ex. 33). Thus, Dr. Breen was aware of its occurrence when he opined that claimant's otherwise compensable lumbar strain had ceased to be the major contributing cause of the disability or need for treatment of the combined condition. Accordingly, we do not give less weight to Dr. Breen's opinion for not specifically discussing this "aggravation."