

In the Matter of the Compensation of  
**JOSE A. ALVARENGA, Claimant**

WCB Case No. 10-02494

**ORDER ON REVIEW**

Bailey & Yarmo LLP, Claimant Attorneys  
Andersen & Nyburg, Defense Attorneys

Reviewing Panel: Members Lowell, Weddell, and Herman. Member Weddell dissents.

The insurer requests review of Administrative Law Judge (ALJ) Jacobson's order that set aside its denial of claimant's combined left knee condition. On review, the issue is compensability. We reverse.

FINDINGS OF FACT

Claimant sustained a work-related left knee injury in 2003. A prior insurer accepted a left knee sprain and left knee medial and lateral meniscus tear with anterior cruciate ligament (ACL) tears. Dr. Thomas performed partial medial and lateral meniscectomies twice, as well as a left ACL reconstruction. (*See Ex. 16*). Although claimant did well after surgery, he had persistent left knee pain in 2006 and 2007. Claimant sought treatment from Dr. Thomas again in September 2008. His diagnosis was left knee posttraumatic degenerative arthritis.

An October 2008 Disputed Claim Settlement (DCS) established that claimant's then-current left knee condition was not compensably related to the 2003 claim.

On August 22, 2009, while working as a dishwasher for the insured, claimant slipped on a wet floor and injured his left knee. The insurer accepted a left knee medial collateral ligament (MCL) sprain. Dr. Bollom provided conservative treatment until December 2009, when he referred claimant to Dr. Wagner, a pain management specialist.

Claimant asked the insurer to expand its acceptance to include a combined condition involving the MCL sprain and preexisting left knee conditions. On April 15, 2010, the insurer modified its acceptance to include the requested combined condition, effective August 22, 2009 (the date of the most recent injury).

On April 20, 2010, the insurer denied claimant's combined left knee condition, on the basis that the compensable left knee MCL strain was no longer the major contributing cause of his disability and need for treatment. Claimant requested a hearing.

### CONCLUSIONS OF LAW AND OPINION

The ALJ found the medical evidence insufficient to establish a "change in circumstances" such that the "otherwise compensable" 2009 left knee sprain injury was no longer the major contributing cause of claimant's need for treatment or disability. Consequently, the ALJ set aside the denial.

The insurer argues that its denial should be upheld, because the undisputed medical evidence persuasively establishes that the 2009 work injury ceased to be the major contributing cause of claimant's disability and need for treatment for his combined left knee condition. We agree, reasoning as follows.

Under ORS 656.262(6)(c), an insurer may deny an accepted combined condition if the "otherwise compensable injury" ceases to be the major contributing cause of the combined condition. *See Wal-Mart Stores, Inc. v. Young*, 219 Or App 410, 419 (2008) (because ORS 656.262(6)(c) requires that the otherwise compensable injury "ceases to be the major contributing cause" of a combined condition, a change in the claimant's condition is required to support the validity of a later denial).

The effective date of the combined condition acceptance establishes the baseline for determining whether a worker's condition has changed so that the otherwise compensable injury is no longer the major contributing cause of the disability or need for treatment of the combined condition. *Oregon Drywall Systems, Inc. v. Bacon*, 208 Or App 205, 210 (2006). Here, the insurer accepted the combined condition effective August 22, 2009, and denied the combined condition on April 20, 2010. Therefore, the relevant dates for determining whether there has been any "change" in claimant's condition or circumstances are August 22, 2009 through April 20, 2010. *See Lyle E. Sherburn*, 59 Van Natta 632 (2007) (because the combined condition acceptance did not refer to a specific date of acceptance, the effective date of the acceptance of the combined condition was the date of the compensable injury).

The insurer has the burden of proving that the accepted sprain component of the accepted combined condition is no longer the major contributing cause of claimant's disability or need for treatment for the combined condition. *See*

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*Jorge M. Chan-Kantun*, 62 Van Natta 2049, 2055 (2010); *Chris Seiger*, 59 Van Natta 334, 346, *recons*, 59 Van Natta 940 (2007). We find that the medical evidence persuasively meets the insurer's burden of proof.

From the outset of this claim, the medical experts regarded claimant's prior left knee surgeries and his preexisting posttraumatic degenerative arthritis as significant factors contributing to his disability and need for treatment. Dr. Bollom, who examined claimant within days of the injury initially suspected reinjury of the ACL and exacerbation of underlying degenerative disease. (Ex. 22-1). He explained that the injury was significant, "but we need to sort out here what exactly is new as a result of this rotational twisting [injury] \* \* \* and what is chronic." (*Id.* at 2). After reviewing the extensive MRI findings in September 2009 and examining claimant, Dr. Bollom assessed a mild MCL sprain and probable exacerbation of posttraumatic osteoarthritis. (Ex. 24). He also prescribed physical therapy focused on recovery from the August 2009 MCL sprain. (*Id.*) In November 2009, Dr. Bollom examined claimant again and opined that his pain was "out of proportion to exam findings, MRI findings, and injury." (Ex. 26-2). Dr. Bollom referred claimant to Dr. Wagner, a pain management specialist.

Dr. Wagner examined claimant on December 28, 2009 and related his history of "significant comorbidities of pre-existing left knee injury and repair." (Ex. 27-1).<sup>1</sup> Dr. Wagner also reported that claimant had chronic left knee pain that interfered with his dishwashing job *before* the August 2009 injury. (*Id.*) Noting that claimant was "4 months out from his injury," Dr. Wagner opined that he was "rapidly approaching medical stationary status with respect to the August 22, 2009 [work injury]." (*Id.* at 3).

On January 11, 2010, Dr. Wagner examined claimant again and described his symptoms as unchanged. (Ex. 28). Dr. Wagner also opined that claimant's "ongoing complaints are due to extensive pre-existing degenerative changes and postsurgical changes in the left knee." (*Id.* at 2; *see also id.* at 4; Exs. 31, 34 ).

Thus, as of January 11, 2010, Dr. Wagner had considered the extent of claimant's preexisting condition, the lack of new pathology, and the passage of time since the August 2009 strain injury in reaching his conclusion relating

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<sup>1</sup> Dr. Wagner described claimant's preexisting conditions as "Left Lateral and medial partial meniscectomies x2, left ACL reconstruction, left knee posttraumatic DJD, [and] chronic left knee pain." (Ex. 27-3).

claimant's ongoing complaints to the preexisting condition. We find Dr. Wagner's opinion persuasive because it is well-reasoned and based on an accurate and complete history. *SAIF v. Strubel*, 161 Or App 516, 521 (1999) (medical opinions are evaluated in context and based on record as a whole to determine sufficiency); *Somers v. SAIF*, 77 Or App 259, 263 (1986) (we rely on medical opinions that are both well reasoned and based on accurate and complete information).

We also find Dr. Wagner's opinion sufficient to establish that claimant's combined condition changed such that the compensable injury ceased to be the major contributing cause of his disability and need for treatment sometime before January 11, 2010.

In this regard, after claimant's February 19, 2010 appointment, Dr. Wagner explained:

"Patient is now 6 months out from his left knee strain. This is twice the amount of time usually required to the recovery of acute soft tissue strain \* \* \*Even allowing for a combined condition, I think the patient has had a reasonable amount of medical treatment and time for recovery." (Ex. 31-2).

Dr. Wagner also subsequently concurred with an examining physician's opinion indicating that the sprain should have resolved within six weeks. (See Exs. 32-5, 34). Thus, Dr. Wagner first opined that an MCL sprain should resolve within 3 months, then he concurred that it should resolve within six weeks. We do not discount Dr. Wagner's opinion based on this inconsistency, because his reasoning applies to claimant's particular circumstances in either event.

That is, according to Dr. Wagner, considering claimant's findings, his preexisting condition (and applying *either* posited recovery period), the compensable sprain component of claimant's combined condition resolved before the April 20, 2010 combined condition denial. See *Frank E. Prentice*, 59 Van Natta 2794, 2795-96 (2007) (persuasive opinion related the claimant's symptoms to underlying arthritis after a reasonable period for resolution of sprain injury) (citing *Multifoods Specialty Distribution v. McAfee*, 333 Or 629, 638 (2002) (citing ORS 656.262(6)(c) and (7)(b), the court upheld a denial because the accepted lumbar strain was no longer the major contributing cause of the claimant's physical complaints).

In sum, we find that Dr. Wagner's causation opinion was based on consideration of claimant's extensive preexisting condition, his lack of injury-related MRI findings, and his prolonged recovery period. Based on this accurate and complete history, claimant's findings, and the doctor's knowledge regarding recovery from sprains, Dr. Wagner concluded that claimant's ongoing complaints were due to his preexisting condition as of January 11, 2010. *See Robert C. Fredeen II*, 61 Van Natta 1931, 1934 (2009) (medical opinion based on extent of preexisting condition as well as the reasonable healing time for a strain found persuasive).

Thus, the persuasive (and uncontradicted) medical evidence establishes that the compensable sprain component of the accepted combined condition ceased to be the primary cause of claimant's disability and need for treatment before the insurer's April 20, 2010 denial of claimant's combined condition.<sup>2</sup> *See Jorge M. Chan-Kantun*, 62 Van Natta at 2056 (although the claimant continued to have low back symptoms, the medical evidence did not establish that he continued to receive treatment for the lumbar strain component of the accepted combined condition after the "ceases" denial under ORS 656.262(6)(c)).

Under these circumstances, we conclude that the insurer has carried its burden of proof under ORS 656.262(6)(c). Consequently, we reverse.

### ORDER

The ALJ's order dated August 27, 2010 is reversed. The insurer's denial is reinstated and upheld. The ALJ's \$5,000 attorney fee and costs awards are reversed.

Entered at Salem, Oregon on March 3, 2011

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<sup>2</sup> Under these circumstances, we disagree with the dissent's contention that Dr. Wagner failed to consider claimant's particular circumstances. *See Rodney C. Walters, Sr.*, 63 Van Natta 114, 118 (2011) (medical opinion considered the claimant's particular circumstances, including mechanics of the injury, examination findings, curative nature of therapy, and general resolution period for the conditions at issue). As noted, we reach the same conclusion, whether the sprain "should have" healed within six weeks or within three months.

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Member Weddell, dissenting.

The ALJ set aside the insurer's denial of claimant's combined left knee condition, finding the medical evidence insufficient to establish that the work injury ceased to be the major contributing cause of claimant's disability or need for treatment. The ALJ explained that the medical opinions are inadequately explained because they are based on generalities, rather than claimant's particular circumstances. *See Sherman v. Western Employers Ins.*, 87 Or App 602 (1987) (physician's comments that were general in nature and not addressed to the claimant's situation in particular were not persuasive).

In reaching these conclusions, the ALJ correctly noted that Dr. Wagner based his opinion on "the amount of time usually required to the recovery of acute soft tissue sprain." (*See Ex. 31-2*). The ALJ also observed Dr. Wagner did not discuss how claimant's *unchanged* symptoms demonstrated resolution of the accepted left knee strain condition. Under these circumstances, I agree with the ALJ that Dr. Wagner's opinion is inadequately explained, unpersuasive, and insufficient to carry the insurer's burden of proving a changed condition.<sup>3</sup>

Accordingly, absent persuasive medical evidence supporting the insurer's denial under ORS 656.262(6)(c), I would affirm the ALJ's decision setting the denial aside. Because the majority concludes otherwise, I respectfully dissent.

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<sup>3</sup> The ALJ also correctly noted that Dr. Courogen's causation opinion lacked any explanation other than a general comment as to the average amount of time that an "MCL strain" takes to heal. (*See Ex. 32-5*).