
In the Matter of the Compensation of
LORRAINE S. MARKOVICH, Claimant
WCB Case No. 10-00156
ORDER ON REVIEW
Martin L Alvey, Claimant Attorneys
Reinisch Mackenzie PC, Defense Attorneys

Reviewing Panel: Members Biehl and Langer.

Claimant requests review of that portion of Administrative Law Judge (ALJ) Rissberger's order that upheld the self-insured employer's denial of her current low back condition to the extent that it denied a combined condition. On review, the issue is compensability.

We adopt and affirm the ALJ's order with the following supplementation.

Claimant suffered a compensable injury on December 6, 2007, which the employer ultimately accepted as a cervical strain, thoracolumbar strain and head contusion combined with preexisting, noncompensable degenerative disc disease/arthritis in the lumbar spine. (Exs. 1, 134-1). The employer then issued a "current condition" denial of claimant's low back condition on the ground that her accepted thoracolumbar strain and other accepted conditions were no longer the major contributing cause of her disability or need for treatment for the combined condition. (Ex. 134-2). Claimant requested a hearing.

In upholding the employer's "combined condition" denial, the ALJ found that Drs. Rosenbaum, Strum, Green, and Tesar¹ had persuasively determined that claimant's accepted thoracolumbar strain had fully resolved without permanent impairment, and that her ongoing need for treatment was solely due to her preexisting degenerative lumbar condition.

On review, claimant argues that because the employer did not establish a change in her low back condition, the denial of her current combined low back condition was improper. Based on the following reasoning, we agree with the ALJ's decision.

A carrier may deny an accepted combined condition if the "otherwise compensable injury" ceases to be the major contributing cause of the combined condition. ORS 656.262(6)(c). Thus, the employer bears the burden to show a

¹ These physicians examined claimant at the employer's request. (Exs. 107, 123, 135).

change in circumstances or a change in condition such that claimant's otherwise compensable thoracolumbar strain ceased to be the major contributing cause of the combined condition. *Wal-Mart Stores, Inc. v. Young*, 219 Or App 410, 414 (2008); *State Farm Ins. Co. v. Lyda*, 150 Or App 554, 559 (1997); *Aquilino Orozco*, 60 Van Natta 2716, 2718 (2008).

Claimant asserts that Drs. Rosenbaum, Strum, Green, and Tesar did not identify "what week, day or minute" the effects of her work injury ceased to be the major contributing cause of her combined low back injury. Instead, claimant contends, because these physicians relied on general statistics regarding the longevity of muscle strains, their opinions are unpersuasive. We disagree.

Persuasive medical opinions need only be expressed in terms of "medical probability," not "medical certainty." See *Robinson v. SAIF*, 147 Or App 157, 160 (1997) (medical certainty not required; a preponderance of evidence may be shown by medical probability); *Nicholas P. McCarthy*, 62 Van Natta 2421, 2426 (2010) (same). Here, Drs. Rosenbaum, Strum, Green, and Tesar uniformly agreed that a strain injury, particularly a mild strain such as that sustained by claimant, is a self-limited condition that will fully resolve in a matter of months. (Exs. 107-6, 123-20, 135-1).

Contrary to claimant's argument, the physicians' agreement regarding the recovery period for strains was not based on statistical analysis alone. Rather, their opinions were based on thorough examinations of claimant, their review of the medical records and diagnostic studies, the mechanism of injury, and their knowledge of the basic science of the healing of soft-tissue injuries. We, therefore, find their opinions persuasive.

In sum, because a preponderance of the medical evidence establishes that claimant's accepted conditions had resolved by the time of the employer's current condition denial, the employer has shown the required change in condition or circumstances pursuant to ORS 656.262(6)(c). Thus, we affirm.

ORDER

The ALJ's order dated August 17, 2010 is affirmed.

Entered at Salem, Oregon on May 23, 2011