

In the Matter of the Compensation of  
**GARY D. SATHER, Claimant**

WCB Case No. 10-01494

ORDER ON REVIEW

Hooton Wold & Okrent LLP, Claimant Attorneys  
James B Northrop, SAIF Legal, Defense Attorneys

Reviewing Panel: Members Lowell and Weddell.

Claimant requests review of Administrative Law Judge (ALJ) Wren's order that upheld the SAIF Corporation's denial of his combined low back condition. On review, the issue is compensability.

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

Claimant was compensably injured in May 2009 when he picked up an oil pail while twisting his back. SAIF initially accepted a right-sided "lumbar strain." (Ex. 17).

Claimant then submitted an "Expansion Claim," in which he requested that SAIF "modify its Notice of Acceptance and reprocess his *accepted condition* as a combined condition." (Ex. 21) (emphasis added). SAIF subsequently accepted a combined condition as of May 1, 2009, identifying preexisting conditions at L3-4, L4-5, L5-S1. (Ex. 24-1). Simultaneously noting that the "accepted injury [was] no longer the major contributing cause of [claimant's] combined condition," SAIF denied (as of January 11, 2010) "right sided lumbar strain combined with pre-existing L3-4, L4-5, L5-S1 disc degeneration and facet arthropathy." (*Id.*) Claimant requested a hearing.

Claimant did not object to the deficiency of SAIF's modified acceptance under ORS 656.262(6)(d) or file a new/omitted medical condition claim under ORS 656.267. Rather, he requested a hearing challenging SAIF's denial of his newly accepted combined condition.

In upholding SAIF's denial, the ALJ found that the record persuasively established that claimant's accepted lumbar strain was no longer the major contributing cause of claimant's disability/need for treatment, as of January 11, 2010. Based on the following reasoning, we affirm.

A “combined condition” exists where an “otherwise compensable injury” combines with a “preexisting condition” to cause or prolong disability or need for treatment. ORS 656.005(7)(a)(B); *Emma R. Traner*, 62 Van Natta 669, 670-71 (2010) *Virginia L. Gould*, 61 Van Natta 2206, 2210 (2009); *Rodney A. Ledford*, 61 Van Natta 1191, 1193 (2009). Moreover, those two conditions (the “otherwise compensable injury” and the “preexisting condition”) must “merge or exist harmoniously” (*Luckhurst v. Bank of Am.*, 167 Or App 11, 17 (2000)) or constitute “either an integration of two conditions or the close relationship of those conditions, without integration” (*Multifoods Specialty Distrib. v. McAtee*, 164 Or App 654, 662 (1999)). *Accord Patty A. Stafford*, 62 Van Natta 2493, 2496-97 (2010).

A carrier may deny a combined condition if the otherwise compensable injury is not, or is no longer, the major contributing cause of the disability/need for treatment of the combined condition, or ceases to be the major contributing cause of the combined condition. ORS 656.005(7)(a)(B); ORS 656.262(6)(c); ORS 656.262(7)(b); ORS 656.266(2)(a).

On review, claimant contends that his “otherwise compensable injury” remains the major contributing cause of his disability/need for treatment, even though his “accepted” injury condition is not the major contributing cause of such disability/need for treatment. Claimant contends that the resolution of his accepted lumbar strain is irrelevant with respect to whether we should uphold SAIF’s “combined condition” denial.

Claimant acknowledges that his argument is at odds with existing Board precedent, which has focused on whether the carrier has established that the accepted “otherwise compensable” condition is not the major contributing cause of the disability/need for treatment of the accepted combined condition. *See, e.g., Catherine Reid*, 61 Van Natta 1280, 1284 (2009), *aff’d, Reid v. SAIF*, 241 Or App 496 (2011); *Peggy J. Harms*, 61 Van Natta 1475 (2009); *Aquilino Orozco*, 60 Van Natta 2716, 2720-21 (2008). In *Reid*, 241 Or App at 503, the court affirmed that approach, holding that in determining the propriety of a combined condition denial, “it is correct \* \* \* to focus on the compensable injury that was shown to have combined with the preexisting condition, and on the actual combined condition that was accepted and then denied.”

Here, the only “compensable injury” that “was shown to have combined with” claimant’s “preexisting conditions” is the accepted lumbar strain.<sup>1</sup> The actual combined condition that was accepted and denied is “right sided lumbar strain combined with pre-existing L3-4, L4-5, L5-S1 disc degeneration and facet arthropathy.” (Ex. 24-1). In issuing its denial, SAIF explained that claimant’s accepted lumbar strain injury was no longer the major contributing cause of the disability/need for treatment of the accepted combined condition. (*Id.*)

Claimant does not disagree that his accepted lumbar strain condition is no longer the major contributing cause of any disability/need for treatment for his accepted “right sided lumbar strain combined with pre-existing L3-4, L4-5, L5-S1 disc degeneration and facet arthropathy” condition. (*See* Ex. 24-1). In light of the aforementioned precedent, we affirm. *Reid*, 241 Or App at 503; *Orozco*, 60 Van Natta at 2720-21.<sup>2</sup>

Alternatively, claimant argues that because his accepted strain had resolved, he “did not have a combined condition at the time of the denial,” and, consequently, “the major cause analysis” of a combined condition is inappropriate. This argument fails for numerous reasons.

To begin, the statutory scheme does not fix the existence of a “combined condition” to “the time of the denial” as claimant’s argument requires. To the contrary, such a condition exists “[i]f an otherwise compensable injury combines

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<sup>1</sup> To the extent that claimant believes that his “otherwise compensable injury” includes unaccepted conditions, he may file a new/omitted medical condition claim at any time. ORS 656.262(6)(d); ORS 656.267.

<sup>2</sup> Claimant’s argument that this precedent is in conflict with *SAIF v. Kollias*, 233 Or App 499 (2010), is unavailing. To begin, *Reid* is squarely on point with the determinative issue in this case, whereas *Kollias* concerned evidentiary and procedural issues concerning combined condition denials. In any event, *Kollias* merely observed that an “otherwise compensable injury,” refers to “a work-related injury that would be compensable under the material contributing cause standard of proof if not for the fact that it combines with a preexisting condition.” 233 Or App at 502 n 1. That observation is not at odds with *Reid*’s directive concerning combined condition denials “to focus on the compensable injury that was shown to have combined with the preexisting condition, and on the actual combined condition that was accepted and then denied.” 241 Or App at 503. Specifically, as applied here, claimant’s accepted right-sided lumbar strain qualifies as an “otherwise compensable injury,” in that it “would be compensable under the material contributing cause standard of proof if not for the fact that it combine[d] with a preexisting condition.” *See Kollias*, 233 Or App at 502 n 1. This record (including the denial in question) does not establish that claimant’s “otherwise compensable injury” extends to any condition beyond what has been accepted. Claimant’s argument would have us presume the compensability of other conditions beyond what has been currently identified, claimed, or accepted. We do not find statutory or case support for such a presumption.

*at any time* with a preexisting condition \* \* \*.” ORS 656.005(7)(a)(B) (emphasis added). Claimant does not dispute that his “otherwise compensable injury combine[d] *at any time* with a preexisting condition.” *See id.* Indeed, as set forth above, claimant specifically requested that SAIF process his “*accepted condition* as a combined condition.” (Ex. 21) (emphasis added). Once that combined condition is established (“at any time”), it remains compensable only so long as the otherwise compensable injury is the major contributing cause of the disability/need for treatment of that condition. *See* ORS 656.005(7)(a)(B); ORS 656.266(2)(a); ORS 656.262(7)(b); ORS 656.262(6)(c); *see also Reid*, 241 Or App at 503. Therefore, in an accepted combined condition claim, if a claimant’s otherwise compensable injury resolves or the preexisting condition component of the combined condition becomes the major contributing cause of a claimant’s disability/need for treatment, the combined condition is no longer compensable.

As applied here, the persuasive medical evidence establishes (and claimant does not dispute) that claimant’s otherwise compensable injury (the accepted lumbar strain) had resolved, such that it was no longer the major contributing cause of claimant’s disability/need for treatment for his combined condition. The statute permits a carrier to deny the compensability of claimant’s combined condition in that circumstance. *See* ORS 656.005(7)(a)(B); ORS 656.266(2)(a); ORS 656.262(7)(b); ORS 656.262(6)(c); *see also Reid*, 241 Or App at 503 (affirming the carrier’s “combined condition” denial where the accepted “otherwise compensable” condition was not the major contributing cause of the accepted combined condition). Claimant’s contention that a fully resolved “otherwise compensable injury” means that he *no longer* has a combined condition is not probative as to whether he had a combined condition *at any time*.

Moreover, claimant’s theory directly conflicts with the express language and purpose of ORS 656.005(7)(a)(B), ORS 656.262(6)(c), ORS 656.262(7)(b), and ORS 656.266(2)(a). As detailed above, those provisions only permit a combined condition to be compensable when the otherwise compensable injury is the major contributing cause of that combined condition or its disability/need for treatment. Under claimant’s reasoning, once that otherwise compensable injury fully resolves, there is no longer a “combined condition,” and therefore a carrier may not deny that “combined condition.” Ostensibly, claimant is contending that a carrier must deny the “combined condition” at some point *after* the otherwise compensable injury is not the major contributing cause of disability/need for treatment of the combined condition, but *before* that injury has completely resolved. There is no basis in the statutory text, case law, or logic that would support such a theory. Indeed, claimant’s proposed system would provide greater compensability for

combined conditions where there is *no* continuing contribution from the otherwise compensable injury than for combined conditions that retain *some* such contribution. We do not find that such a result reflects the legislative intent as provided in the aforementioned statutory scheme.

In sum, we are not persuaded by claimant's arguments that we should set aside SAIF's denial, where the evidence shows that the otherwise compensable lumbar strain has resolved and is, therefore, no longer the major contributing cause of the disability/need for treatment of the accepted combined condition.

### ORDER

The ALJ's order dated January 18, 2011, as amended January 20, 2011, is affirmed.

Entered at Salem, Oregon on September 2, 2011