

In the Matter of the Compensation of
BARBARA A. EASTON, Claimant

WCB Case No. 11-00429

ORDER ON REVIEW

Moore Jensen & Lesh, Claimant Attorneys
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Reviewing Panel: Members Biehl and Langer.

Claimant requests review of Administrative Law Judge (ALJ) Donnelly's order that upheld the SAIF Corporation's denial of her medical services claim. On review, the issue is medical services.

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

After claimant's March 2010 back injury, SAIF accepted a lumbar strain. Dr. Kitchel, a consulting orthopedic surgeon, and Dr. Thrall, claimant's attending physician, requested authorization of an L4-5 and L5-S1 discogram. After claimant's Managed Care Organization (MCO) disapproved the requested discogram, claimant sought assistance from the Workers' Compensation Division (WCD). SAIF disputed both the propriety of the requested discogram and its causal relationship to the accepted condition. WCD transferred the causation dispute to the Hearings Division.

The ALJ reasoned that the discogram was a diagnostic service that was not materially related to the accepted lumbar strain. Accordingly, the ALJ upheld SAIF's denial.¹

On review, claimant contends that the discogram is materially related to the "compensable injury" because even if it is not materially related to the accepted condition, it is materially related to the March 9, 2010 work accident. Claimant further contends that any disc condition for which the discogram is required is encompassed within the accepted "lumbar strain" condition. For the following reasons, we disagree with claimant's contentions.

¹ In its respondent's brief, SAIF challenges the ALJ's denial of its request to cross-examine Dr. Kitchel. Because we affirm the ALJ's decision on the merits of this medical services claim, consideration of the evidentiary issue is unnecessary.

ORS 656.245(1)(a) provides:

“For every compensable injury, the insurer or the self-insured employer shall cause to be provided medical services for conditions caused in material part by the injury for such period as the nature of the injury or the process of the recovery requires, subject to the limitations in ORS 656.225, including such medical services as may be required after a determination of permanent disability. In addition, for consequential and combined conditions described in ORS 656.005(7), the insurer or the self-insured employer shall cause to be provided only those medical services directed to medical conditions caused in major part by the injury.”

Because no party contends that the discogram relates to a “combined” or “consequential” condition, the first sentence of ORS 656.245(1)(a) applies. *See SAIF v. Sprague*, 346 Or 661, 672-73 (2009). Therefore, the discogram may be compensable if it is for a condition caused in material part by the injury. The “compensable injury” to which ORS 656.245(1)(a) refers is the condition previously accepted. *SAIF v. Martinez*, 219 Or App 182, 191 (2008). To establish the compensability of medical services under ORS 656.245(1)(a), the condition for which treatment is sought need not be compensable, but the treatment must be necessitated in material part by the “compensable injury,” *i.e.*, the previously accepted condition. *Id.*

If diagnostic services are necessary to determine the cause or extent of a compensable injury, those services are compensable whether or not the condition that is discovered as a result of them is compensable. *Counts v. Int’l Paper Co.*, 146 Or App 768, 771 (1997); *see also Roseburg Forest Prods. v. Langley*, 156 Or App 454, 463 (1998) (tests were for determining the extent of the original compensable injury rather than for establishing the existence of another condition). Nevertheless, the diagnostic services must be necessitated in material part by the previously accepted condition. *SAIF v. Swartz*, 247 Or App 515, 525 (2011); *Martinez*, 219 Or App at 191.

Swartz addressed a similar question. There, the carrier had accepted a “low back contusion.” The claimant suffered from ongoing pain and sought approval for facet joint injections as a diagnostic service. The *Swartz* court framed the inquiry as: (1) whether the low back contusion was the material cause

of the claimant's ongoing low back pain and (2) whether the injections were "for" that ongoing low back pain. 247 Or App at 525 (citing *SAIF v. Sprague*, 346 Or 661, 672-75 (2009)). The *Swartz* court reasoned that the medical evidence unequivocally established that the low back contusion had resolved. *Id.* at 526. Because the compensable injury had completely resolved and no longer contributed to any ongoing conditions, the *Swartz* court held that the injections were not necessary to determine the extent of the compensable injury. *Id.* at 526-27.

Here, the record similarly establishes that the accepted condition does not materially contribute to claimant's need for diagnostic services. Dr. Thrall unequivocally opined that the lumbar strain had resolved. (Ex. 35-2). Thus, Dr. Thrall's opinion does not support a material relationship between the accepted condition and the discogram.

Dr. Kitchel did not disagree that the lumbar strain had resolved. Instead, he explained that the discogram was to determine whether the work accident had also caused an injury to one of claimant's discs. (Ex. 51-2). Thus, although Dr. Kitchel explained how the discogram related to the March 9, 2010 work accident, he did not opine that there was a material relationship between the accepted condition and the discogram.²

Thus, the record does not support a material relationship between the accepted "lumbar strain" condition and the discogram. Accordingly, we affirm.

ORDER

The ALJ's order dated August 1, 2011 is affirmed.

Entered at Salem, Oregon on March 7, 2012

² Claimant contends that Dr. Kitchel opined that the accepted strain encompasses any disc injury that might be revealed by the discogram. Even if Dr. Kitchel opined that a disc condition could be considered part of a "strain" condition, he did not opine to a degree of medical probability that claimant's disc condition was encompassed within the "lumbar strain" condition that SAIF accepted. To the contrary, Dr. Kitchel opined:

"Given [claimant's] described mechanism of injury, [I would] agree that [claimant's] injury could be limited to a lumbar sprain, but could also cause injury to one of [claimant's] discs." (Ex. 51-1).

Under such circumstances, Dr. Kitchel's opinion does not establish that any potential disc injury was encompassed within the accepted "lumbar strain" condition.