
In the Matter of the Compensation of
DAVIS W. DAWLEY, Claimant
WCB Case No. 11-04292
ORDER ON RECONSIDERATION
Hooton Wold & Okrent LLP, Claimant Attorneys
Holly O'Dell, SAIF Legal, Defense Attorneys

Reviewing Panel: Members Weddell, Langer and Herman.

On December 21, 2012, we abated our November 26, 2012 order that affirmed an Administrative Law Judge's (ALJ's) order that upheld the SAIF Corporation's denial of claimant's new/omitted medical condition claim for left hip osteoarthritis. We took this action to address claimant's motion for reconsideration. Having received SAIF's response (which adheres to its previous arguments), we have reconsidered this matter and replace the Board's prior order as follows.¹

After claimant's work-related left hip injury, SAIF accepted a left femoral neck bone bruise combined with arthritis of the left hip, and a left hip strain combined with arthritis of the left hip. Thereafter, SAIF issued a "combined condition" denial under ORS 656.262(6)(c), contending that the accepted conditions had ceased to be the major contributing cause of the combined condition. SAIF also denied claimant's new/omitted medical condition claim for "symptomatic osteoarthritis" of his left hip. Following litigation, both denials were upheld.² *Davis W. Dawley*, 62 Van Natta 2850 (2010) ("*Dawley I*"). That order has become final by operation of law.

Claimant then filed an omitted medical condition claim for "osteoarthritis of the left hip," which SAIF denied. (Exs. 38, 39A). Claimant requested a hearing from that denial, which resulted in our prior order affirming the ALJ's upholding of SAIF's denial. On reconsideration, claimant seeks clarification of our prior order. Having considered claimant's arguments, and upon further consideration of this record, we replace our previous analysis as follows.

¹ We continue to adopt the ALJ's "Findings of Fact."

² In reaching our conclusion, we held that claimant's "symptomatic osteoarthritis" was not a "condition."

From the outset, claimant has pursued his new/omitted medical condition claim as a “combined condition.” See *Gail Moon*, 62 Van Natta 1238, 1239 (2010) (claimant bears the burden of proving the existence of the claimed combined condition). He contends that because the injury event caused his preexisting osteoarthritic condition to become symptomatic such that the work event was a cause of the disability and need for treatment for the preexisting condition, the “otherwise compensable injury” necessarily includes that disability and need for treatment, and not just the disability and need for treatment caused by the formally accepted hip strain and/or contusion. According to claimant, he does not have multiple, independent combined conditions. Rather, he is pursuing his osteoarthritis as an “element” of the “otherwise compensable injury” portion of his combined condition. He asserts that this is not an “independent” claim, separate and distinct from the previously accepted combined condition, but rather that SAIF’s prior acceptance of a combined condition mandates the inclusion of the osteoarthritis condition (for which the work injury caused a need for treatment) as an element of the “otherwise compensable injury” as a matter of law.

Assuming, without deciding, that it is permissible for claimant to assert a “combined condition” consisting of the work event combined with his preexisting osteoarthritis resulting in symptoms from osteoarthritis requiring treatment/disability, the medical record persuasively establishes that the effects of his work event (whether or not described as the “otherwise compensable injury”) were not the major contributing cause of his need for treatment/disability for his left hip condition. (See Ex. 40).

In this regard, Dr. Vessely explained that, although the otherwise compensable injury contributed to claimant’s combined condition, it was not the major contributing cause of the combined condition or any need for treatment. (Ex. 40-3). In reaching that conclusion, Dr. Vessely set forth numerous factors that supported his opinion, including: (1) the severity of claimant’s preexisting arthritis condition; (2) the delay in claimant’s treatment; (3) the absence of acute pathological change in the preexisting condition; and (4) the insufficiency of the “mechanics or force” of the work injury. (Ex. 40-3, -4). We find this opinion to be well explained and persuasive. See *Somers v. SAIF*, 77 Or App 259, 263 (1986) (in evaluating medical opinions, more weight is generally given to those opinions that are well reasoned and based on accurate and complete information).

The only potentially contrary expert medical opinion was provided by Dr. Button, who observed that the work injury was the major cause of claimant’s “symptoms.” (Ex. 34-13). Assuming for the sake of argument that Dr. Button’s

opinion can be interpreted as stating that the “otherwise compensable injury” was the major cause of claimant’s “need for treatment” of the combined condition, we find his observation on that point conclusory, particularly in light of the detailed and more thoroughly reasoned opinion of Dr. Vessely.

In sum, we are most persuaded by the opinion of Dr. Vessely. As set forth above, that opinion does not support the compensability of claimant’s omitted “combined condition” osteoarthritis claim.

Under these circumstances, we agree with the ALJ’s conclusion that SAIF’s denial of claimant’s new/omitted medical condition claim for left hip osteoarthritis should be upheld. Accordingly, on reconsideration, in lieu of the Board’s prior order, we affirm the ALJ’s order.

ITS IS SO ORDERED.

Entered at Salem, Oregon on May 28, 2013