

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

WCB Case No. 11-05627

ORDER ON REVIEW

Hooton Wold & Okrent LLP, Claimant Attorneys
Holly O'Dell, SAIF Legal Salem, Defense Attorneys

Reviewing Panel: Members Lowell and Weddell.

Claimant requests review of that portion of Administrative Law Judge (ALJ) Kekauoha's order that upheld the SAIF Corporation's *de facto* denial of his new/omitted medical condition claim for a lumbar spine condition. In its respondent's brief, SAIF contests that portion of the ALJ's order that awarded a \$750 penalty-related attorney fee for SAIF's allegedly unreasonable claim processing. On review, the issues are compensability and attorney fees.

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

In upholding SAIF's denial of claimant's new/omitted medical condition claim for lumbar degenerative disc disease (DDD), the ALJ determined that this claim involved a "combined condition" and that SAIF satisfied its burden of proof under ORS 656.266(2)(a). In making this determination, the ALJ found the medical opinion of Dr. Silver, an examining physician, to be the most persuasive.

On review, claimant contends that the ALJ incorrectly determined that the claim should be considered as a combined condition separate from the combined condition previously accepted by SAIF and that the preexisting condition should be part of the "otherwise compensable injury" component of a single combined condition. For the following reasons, we disagree.

Claimant initiated a claim for DDD. However, SAIF previously accepted DDD as the preexisting component of a combined condition. Claimant now seeks to add this condition to the "otherwise compensable injury" component of the combined condition, arguing that the "otherwise compensable injury" includes the "work event." Assuming that DDD can be considered part of the "otherwise compensable injury," we agree with the ALJ's reasoning that Dr. Silver's opinion establishes that the "otherwise compensable injury" was not the major contributing cause of the disability or need for medical treatment of the combined condition. *See* ORS 656.266(2)(a).

ORDER

The ALJ's order dated July 31, 2012 is affirmed.

Entered at Salem, Oregon on July 15, 2013