
In the Matter of the Compensation of
JOHN S. MCKEAN, Claimant
WCB Case No. 12-01866, 11-05308
ORDER ON REVIEW
Moore Jensen, Claimant Attorneys
MacColl Busch Sato PC, Defense Attorneys

Reviewing Panel: Members Weddell and Langer.

Claimant requests review of Administrative Law Judge (ALJ) Donnelly's order that: (1) upheld the self-insured employer's denial of his new/omitted medical condition claims for L5-S1 facet joint strain and referred myofascial pain; (2) upheld its denial of his new/omitted medical condition claim for multiple combined low back conditions; and (3) upheld the denial of his current combined low back strain condition. On review, the issue is compensability.

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

In upholding the denial of claimant's current combined condition, the ALJ found that the employer had met its burden of establishing that the otherwise compensable lumbar strain condition had ceased to be the major contributing cause of the disability/need for treatment for the previously accepted combined low back condition (lumbar strain combined with preexisting noncompensable lumbar spondylosis). ORS 656.262(6)(c); ORS 656.266(2)(a).

On review, claimant asserts that the "otherwise compensable injury" should first have been analyzed as the "work event," followed by a determination as to whether that event had ceased to be the major contributing cause of the disability/need for treatment of the combined condition. We disagree.

As claimant acknowledges, his interpretation of what constitutes an "otherwise compensable injury" does not comport with established court and Board precedent. *See Reid v. SAIF*, 241 Or App 496, 503 (2011), *rev den*, 351 Or 216 (2011) (under ORS 656.005(7)(a)(B), 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); *see also Ray Murdock*, 63 Van Natta 2411 (2011), *aff'd without opinion*, 260 Or App 767 (2014) (upholding combined condition denial where the carrier established that the accepted cervical strain was no longer the major contributing cause of the combined condition); *Royce L. Brown, Sr.*, 64 Van Natta 100 (2012) (rejecting the

claimant's argument that his "otherwise compensable injury" should be considered to be the combined lumbar strain and preexisting degenerative disease); *Gary D. Sather*, 63 Van Natta 1727 (2011) (resolution of otherwise compensable injury sufficient to establish that it ceased to be the major contributing cause of the combined condition).

Here, we agree with the ALJ's conclusion that a preponderance of the medical evidence (consisting of the opinions of Drs. Rosenbaum, Reimer, Sandell, Ackerman, and Dunn) establishes that claimant's lumbar strain had resolved no later than July 1, 2011. (Exs. 68-8, 70, 114-3, 116-2, 121-2, 122-3). Under such circumstances, we find that the employer has met its burden of proving that claimant's otherwise compensable injury (*i.e.*, the accepted lumbar strain) ceased to be the major contributing cause of his disability/need for treatment of the combined low back condition as of July 1, 2011. Thus, we affirm.¹

ORDER

The ALJ's order dated September 20, 2013 is affirmed.

Entered at Salem, Oregon on April 25, 2014

¹ Concerning the employer's other denials, we agree with the ALJ's reasoning regarding the persuasiveness of the opinions of Drs. Ackerman, Rosenbaum, Reimer, and Sandell.