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In the Matter of the Compensation of  
**TOMMY S. ARMS, Claimant**  
WCB Case Nos. 10-05062, 10-02902  
**ORDER ON REMAND**  
Moore Jensen, Claimant Attorneys  
SAIF Legal, Defense Attorneys

Reviewing Panel: Members Weddell, Curey, and Somers.<sup>1</sup> Member Weddell dissents.

This matter is before the Board on remand from the Court of Appeals. *Arms v. SAIF*, 268 Or App 761 (2015). The court has reversed our order that affirmed an Administrative Law Judge’s (ALJ’s) order that upheld the SAIF Corporation’s denial of claimant’s medical services claim for C6-7 discectomy and fusion surgery. Reasoning that our analysis of the medical services claim under ORS 656.225 and ORS 656.245(1)(a) was either flawed or not supported by substantial evidence or reasoning, the court has remanded. Having received the parties’ supplemental briefs, we proceed with our review.

FINDINGS OF FACT

We continue to adopt the ALJ’s “Findings of Fact.”

CONCLUSIONS OF LAW AND OPINION

The issues at hearing were: (1) the compensability of claimant’s claim for C6-7 disc degeneration as a “consequential condition”; and (2) the compensability of a proposed C6-7 discectomy/fusion surgery. (I Tr. 1-2).

In closing arguments, claimant acknowledged that the evidence did not establish that the C5-6 fusion surgery (which occurred in 2003 to address an accepted C5-6 disc herniation) was the major contributing cause of his current C6-7 disc degeneration. (II Tr. 4). Nevertheless, he argued that the proposed surgery was compensable under ORS 656.225. (*Id.*) Claimant asserted that his C6-7 disc degeneration was a preexisting condition that had been pathologically worsened by the work injury, and that the proposed surgery was solely directed to that worsened preexisting condition. (II Tr. 4-5).

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<sup>1</sup> Member Lowell was a member of the initial reviewing panel. Because Member Lowell is no longer a member of the Board, Member Curey has participated in this review.

Finding that the record did not support the compensability of claimant's C6-7 degeneration as a "consequential condition," the ALJ upheld SAIF's denials of that condition.<sup>2</sup> The ALJ determined that ORS 656.225 did not govern the medical services dispute because the proposed C6-7 surgery was not "solely directed to a preexisting condition." In reaching that conclusion, the ALJ reasoned that the proposed surgery was directed solely to the C6-7 degeneration, but that claimant's current C6-7 degeneration involved a combination of the effects of the C5-6 fusion with his preexisting condition. The ALJ also concluded that the proposed surgery was not compensable under ORS 656.245(1)(a), as a medical service for a "consequential condition," because the C6-7 degeneration was not caused, in major part, by the injury. Accordingly, the ALJ upheld the medical services denials.<sup>3</sup>

On review, we adopted and affirmed the ALJ's order without supplementation. On appeal to the court, claimant reiterated his contention that the proposed surgery was compensable under ORS 656.225, although he conceded that the surgery was not compensable as directed to a "consequential condition" pursuant to ORS 656.245(1)(a). *Arms*, 268 Or App at 767.

The court explained that ORS 656.245(1)(a), not ORS 656.225, directs carriers to provide medical services benefits. *Id.* at 767-68. The court reasoned that, rather than creating an entitlement to medical services, ORS 656.225 creates limitations on compensation that are incorporated into ORS 656.245(1)(a). *Id.* at 768. Thus, the court concluded that if disputed medical services are for a condition that was "caused in material part" by a compensable injury, the next step is to evaluate the applicability of the limitations set forth in ORS 656.245(1)(a), such as the limitations of ORS 656.225 and the limitations of the second sentence of ORS 656.245(1)(a) for consequential or combined conditions. *Id.*

The court noted that it was undisputed that "claimant has a compensable injury (the C5-6 injury) [and] that he sought medical services (surgery) for a condition (the C6-7 degeneration) that was caused in material part by that injury." *Id.* Accordingly, the court explained, the proper question is whether a limitation identified in ORS 656.245(1)(a) precludes compensation for the surgery. *Id.* at 768-69.

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<sup>2</sup> SAIF denied the C6-7 disc condition on May 20, 2010, October 14, 2010, and October 25, 2010. (Exs. 55, 62A, 63A).

<sup>3</sup> SAIF denied the proposed surgery on June 10, 2010, and again on August 20, 2010. (Exs. 58A, 61A).

The court then turned to our conclusion that claimant’s proposed surgery did not fall within the terms of ORS 656.225 because the surgery was directed to a combined condition rather than “solely directed to a preexisting condition.” *Id.* at 769. The court noted the difference between a “combined condition” and a worsening of a preexisting condition, and further observed that all of the medical opinions referred to a worsening of claimant’s preexisting C6-7 degeneration and not to a combined condition.<sup>4</sup> *Id.* at 770-71. Therefore, the court reasoned that our conclusion (*i.e.*, that the C6-7 degeneration was a combined condition instead of a worsened preexisting condition) either was in error or was not supported by substantial evidence or reason. *Id.* Accordingly, the court remanded.

Consequently, we evaluate the medical services claim for the proposed C6-7 surgery under the statutory framework as explained by the court. As noted by the court, it is not disputed that the C6-7 degeneration for which surgery is proposed was “caused in material part” by the compensable injury.<sup>5</sup> Accordingly, we must evaluate the applicability of “the limitations set out in ORS 656.225 and the limitations for consequential or combined conditions.” *Id.* at 768.

For the reasons discussed below, we conclude that, under the limitation stated in the second sentence of ORS 656.245(1)(a) for “consequential conditions,” the proposed surgery is not compensable.

To determine which provisions of ORS 656.245(1)(a) state the requisite causal relationship between the compensable injury and a medical service, we must classify the condition to which the disputed medical service relates, *i.e.*, claimant’s C6-7 degeneration.<sup>6</sup> *SAIF v. Sprague*, 346 Or 661, 663 (2009). As the *Sprague*

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<sup>4</sup> The court rejected SAIF’s contention that the C6-7 degeneration was not a statutory “preexisting condition” under ORS 656.005(24)(a). *Id.* at 772-73.

<sup>5</sup> The “compensable injury” to which ORS 656.245(1)(a) refers is not *limited* to the accepted C5-6 disc herniation. *SAIF v. Carlos-Macias*, 262 Or App 629, 637 (2013). Instead, the “compensable injury” refers to the work-related injury incident. *Id.*; *see also Brown v. SAIF*, 262 Or App 640, 652 (2014).

<sup>6</sup> 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

court explained, “Roughly speaking, the workers’ compensation statutes divide medical conditions into four categories: (1) ordinary conditions; (2) preexisting conditions; (3) consequential conditions; and (4) combined conditions.” *Id.*

Carriers are generally responsible for medical services for “ordinary conditions” that are “caused in material part” by compensable workplace injuries. *Id.* at 664. ORS 656.245(1)(a) incorporates the limitations of ORS 656.225, under which “medical services directed at treating only a preexisting condition generally are not compensable.” *Id.* Finally, the second sentence of ORS 656.245(1)(a) incorporates additional limitations related to the compensability standards for consequential and combined conditions under ORS 656.005(7)(a). *Id.* at 665. For such conditions, the carrier is responsible for medical services that are directed to conditions caused in major part by the compensable injury. *Id.* at 666.

The court has already expressly clarified that the C6-7 degenerative condition to which the proposed surgery relates is a worsened “preexisting condition,” and not a “combined condition.” 268 Or App at 771. SAIF contends, however, that the worsened C6-7 degenerative condition is a “consequential condition” that was not caused in major part by the compensable injury. As explained below, considering the causal relationship between claimant’s work injury and the C6-7 degeneration to which his medical services claim (*i.e.*, the proposed C6-7 surgery) relates, we agree with SAIF’s contention.<sup>7</sup>

The distinguishing feature of a “consequential condition” is that it is not directly caused by the “work-related injury incident,” but instead is a separate condition that arises as a consequence of an injury or condition caused directly by the “work-related injury incident.” *Allen v. SAIF*, 279 Or App 135, 138 (2016); *English v. Liberty Northwest Ins. Corp.*, 271 Or App 211, 215 (2015). An illustrative example would be a back strain caused by an altered gait resulting from a compensable foot injury. *Fred Meyer, Inc. v. Crompton*, 150 Or App 531, 536 (1997); *Albany Gen. Hosp. v. Gasperino*, 113 Or App 411, 415 n 2 (1992). Thus, to determine whether a condition should be analyzed under “consequential

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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.”

<sup>7</sup> Accordingly, we need not determine whether ORS 656.225 also precludes the compensability of the proposed surgery.

condition” standards, we must determine whether the causal relationship, between the work injury and the condition to which the proposed C6-7 surgery is directed, is indirect.

Here, as discussed above, claimant had preexisting C6-7 degeneration, the C6-7 degeneration worsened, and the proposed surgery is directed to the worsened C6-7 degeneration. According to Dr. Kitchel, who performed the 2003 C5-6 fusion and on whose opinion claimant relies, that fusion was the major contributing cause of the worsening of the preexisting C6-7 degeneration (although age and genetics, not the C5-6 fusion, were the major contributing cause of the *overall* condition). (Exs. 58-1, 60-2, 61-1, 62-1, -3). However, Dr. Kitchel also opined that the work injury did not directly contribute to the C6-7 degeneration. (Ex. 62-2-3).

Based on Dr. Kitchel’s explanation, we conclude that the work injury did not directly cause any portion of claimant’s C6-7 degeneration; instead, the work injury contributed to the worsened preexisting condition indirectly, as a consequence of the C5-6 herniation and resultant fusion.<sup>8</sup> Thus, although the C6-7 degeneration was a preexisting condition that did not “arise” from the compensable injury (which it preceded, and from which it did not originate),<sup>9</sup> the *worsened* C6-7 degeneration was only causally related “as a consequence of a compensable injury.” *SAIF v. Walker*, 260 Or App 327, 336 (2013); *Clementita L. MacKenzie*, 60 Van Natta 1744, 1746 n 2 (2008) (medical opinion that a work incident injured a tendon, ligament, or muscle complex, which, in turn, worsened preexisting spondylolisthesis implicated a “consequential condition” theory of compensability).

Under such circumstances, we conclude that the “consequential condition” standards apply to claimant’s C6-7 degeneration condition.<sup>10</sup> This approach is also consistent with claimant’s position at the hearing level. Specifically, he

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<sup>8</sup> Even if we did not find Dr. Kitchel’s opinion persuasive, the record does not contain persuasive medical evidence supporting a direct relationship between the work injury and claimant’s worsened C6-7 degeneration.

<sup>9</sup> To “arise” is “to originate from a specified source” or “to come into being.” *Webster’s Third New Int’l Dictionary* 117 (unabridged ed 1993).

<sup>10</sup> In reaching this conclusion, we distinguish between the C6-7 degeneration as it existed at the time of the injury, which was simply a “preexisting condition,” and the *worsened* C6-7 degeneration that now requires treatment, which was caused in part (albeit not in major part) as a consequence of treatment for the compensable injury.

pursued his new/omitted medical condition claim for C6-7 disc degeneration “as a consequential condition arising out of his accepted industrial injury, which is a right-sided C5-6 disc herniation, which was treated surgically with a fusion.” (I Tr. 1).

This approach is also consistent with the *Walker* rationale. In *Walker*, the claimant had been diagnosed with an L4-5 disc condition before his work injury (a foot crush injury), and pursued a consequential condition claim for a worsened L4-5 disc condition. On Board review, based on a persuasive medical opinion, we found that the claimant’s altered gait (which resulted from the crush injury) was the major contributing cause of the worsened L4-5 disc condition. *David D. Walker*, 63 Van Natta 2601, 2603-04 (2011). On appeal, the carrier argued that because the herniation existed before the compensable injury, it was not possible for the herniation to have been a consequence of the subsequent compensable injury. 260 Or App at 335. The court disagreed with the carrier’s argument because, although the *herniation* preexisted the compensable injury, the *worsening* of the herniation was a consequence of the compensable injury.<sup>11</sup> *Id.* at 336. In other words, the court reasoned that the work injury contributed to the preexisting condition by indirectly (through an altered gait) causing a worsening. Similarly, in this case, the preexisting C6-7 degeneration condition is only causally related to the compensable injury indirectly, through a “consequential condition” relationship; *i.e.*, the effects of the C5-6 herniation and resultant surgery on his worsened C6-7 degeneration condition.<sup>12</sup>

Because the current, worsened C6-7 degeneration to which the proposed surgery is directed is a “consequential condition,” medical services directed to the worsened C6-7 degeneration would be compensable only if the worsened condition were caused in major part by the compensable injury. ORS 656.245(1)(a); *Sprague*, 346 Or at 674.

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<sup>11</sup> The court also noted that the carrier had not disputed the applicability of the “consequential condition” standard. *Id.* at 335 n 3. Similarly, here, claimant has not disputed the applicability of that standard to his C6-7 degeneration condition, which he claimed as a “consequential condition” and is the basis for his medical services claim.

<sup>12</sup> Citing *Fred Meyer, Inc. v. Evans*, 171 Or App 569 (2000), the dissent reasons that a worsened preexisting condition is not a consequential condition. *Evans* is distinguishable because, there, the condition at issue was actually a “combined condition.” 171 Or App at 573. As the court explained in this case, claimant’s C6-7 degeneration is not a “combined condition.”

Claimant contends that the proposed C6-7 surgery is directed to the worsening of his preexisting C6-7 degeneration, and that the C5-6 fusion was the major contributing cause of that worsening. However, the record does not establish that the worsening of the C6-7 degeneration is a distinct condition to be discretely addressed by the proposed surgery, as opposed to the overall C6-7 degeneration. To the contrary, Dr. Kitchel proposed “anterior cervical discectomy and fusion” surgery to treat “the C6-7 level.” (Exs. 44-4, 56, 57A-3). In doing so, Dr. Kitchel did not specifically limit the proposed surgery to the “worsened” portion of the condition. Rather, the surgery was proposed for the overall condition.

Claimant has not challenged the ALJ’s determination that his C6-7 degeneration is not compensable as a consequential condition. Thus, it is the law of the case (as the medical record persuasively establishes) that the compensable injury was not the major contributing cause of claimant’s C6-7 degeneration. *See Americold Corp. v. Hoyt*, 209 Or App 243, 247 (2006); *Kenneth E. Horner*, 66 Van Natta 1631, 1633 (2014) (under the “law of the case” doctrine, when a ruling or decision has been made in a particular case by an appellate court, it is binding upon the both any inferior court and the appellate court itself in any subsequent proceeding in the same litigation). Therefore, because the condition was not caused in major part by the compensable injury, medical services directed to the C6-7 degeneration are not compensable under ORS 656.245(1)(a).

Finally, claimant contends that the proposed surgery is compensable under ORS 656.225. However, as the court explained, “ORS 656.225 does not direct insurers to provide benefits.” *Arms*, 268 Or App at 767. Instead, ORS 656.225 creates a limitation that, along with the limitations for consequential or combined conditions, may preclude compensation for medical services for conditions caused in material part by compensable injuries. *Id.* at 768. As noted above, because the “consequential condition” limitation of ORS 656.245(1)(a) precludes compensation for the proposed surgery, we need not reach the additional limitations of ORS 656.225.

Accordingly, we conclude that the proposed C6-7 surgery is not compensable. Therefore, on reconsideration, we affirm the ALJ’s order dated June 30, 2011.

**IT IS SO ORDERED.**

Entered at Salem, Oregon on August 5, 2016

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Member Weddell dissenting.

The majority reasons that the proposed C6-7 surgery is not compensable because it is directed to a “consequential condition” that was not caused, in major part, by the compensable injury. Because I conclude that the “consequential condition” standard does not apply to this claim, and that the causal relationship required by ORS 656.225 has been satisfied, I respectfully dissent.

As *SAIF v. Sprague*, 346 Or 661, 664 (2009), explained, “Roughly speaking, the workers’ compensation statutes divide medical conditions into four categories: (1) ordinary conditions; (2) preexisting conditions; (3) consequential conditions; and (4) combined conditions.” *Id.* The first sentence of ORS 656.245(1)(a), which directs carriers to cause medical services to be provided for conditions “caused in material part” by the compensable injury, incorporates the limitations of ORS 656.225 applicable to medical services for preexisting conditions.<sup>13</sup> *Id.* at 664. The second sentence of ORS 656.245(1)(a) provides that for consequential or combined conditions, the carrier is responsible for medical services that are directed to conditions caused in major part by the compensable injury. *Id.* at 666.

As the majority summarizes, claimant had preexisting C6-7 degeneration, the C6-7 degeneration worsened, and the proposed surgery is directed to the worsened C6-7 degeneration. Further, Dr. Kitchel’s persuasive opinion establishes

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<sup>13</sup> ORS 656.225 provides:

“In accepted injury or occupational disease claims, disability solely caused by or medical services solely directed to a worker’s preexisting condition are not compensable unless:

“(1) In occupational disease or injury claims other than those involving a preexisting mental disorder, work conditions or events constitute the major contributing cause of a pathological worsening of the preexisting condition.

“(2) In occupational disease or injury claims involving a preexisting mental disorder, work conditions or events constitute the major contributing cause of an actual worsening of the preexisting condition and not just of its symptoms.

“(3) In medical service claims, the medical service is prescribed to treat a change in the preexisting condition as specified in subsection (1) or (2) of this section, and not merely as an incident to the treatment of a compensable injury or occupational disease.”

that the 2003 C5-6 fusion, which he had performed to address a compensable C5-6 herniation, was the major contributing cause of the subsequent worsening of claimant's C6-7 degeneration.<sup>14</sup> (Exs. 58-1, 60-2, 62-1). Such evidence establishes that claimant's C6-7 degeneration is a "preexisting condition" that worsened as a result of the C5-6 fusion. *See Arms v. SAIF*, 268 Or App 761, 671-73 (2015) (claimant's C6-7 degeneration was a "preexisting condition" and the medical evidence unanimously refers to a worsening of that condition). Accordingly, medical services directed to the C6-7 degeneration are "directed to a worker's preexisting condition," and are subject to the limitations of ORS 656.225.<sup>15</sup>

Before turning to ORS 656.225, however, I address the majority's conclusion that the proposed surgery is not compensable under the second sentence of ORS 656.245(1)(a). The majority reasons that although claimant's C6-7 degeneration is a preexisting condition, it is *also* a "consequential condition." However, a "consequential condition" is "a separate condition that arises from the compensable injury." *Fred Meyer, Inc. v. Crompton*, 150 Or App 531, 536 (1997). A condition that exists prior to a compensable injury, by definition, cannot arise from the compensable injury. *See Webster's Third New Int'l Dictionary* 117 (unabridged ed 1993) ("arise" means "to originate from a specified source" or "to come into being"). Therefore, a condition that preexisted a compensable injury "is

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<sup>14</sup> I consider Dr. Kitchel's opinion more persuasive than that of Dr. Rosenbaum, who examined claimant at SAIF's request.

<sup>15</sup> SAIF contends that ORS 656.225 does not apply because, by its terms, it applies "[i]n accepted injury or occupational disease claims." In SAIF's view, an "accepted injury claim" does not include conditions that have been denied, such as claimant's C6-7 disc degeneration. SAIF interprets such language as precluding a finding that any medical services would be compensable if the preexisting condition to which it is solely directed has been denied.

Because ORS 656.225 only provides limitations on medical service benefits that would otherwise be compensable under ORS 656.245(1)(a), the effect of SAIF's interpretation would *lift* the ORS 656.225 limitations on medical services directed to a denied preexisting condition. Under this approach, medical services directed to a *denied* preexisting condition would only be limited by ORS 656.245(1)(a), but medical services directed to an accepted preexisting condition (and, perhaps, medical services directed to a preexisting condition that has been neither accepted nor denied), would be subject to additional limitations of ORS 656.225. Under this interpretation, it would be unnecessary to consider the limitations of ORS 656.225 in this case.

I consider it more logical to apply ORS 656.225 in all claims in which an injury or occupational disease claim has been accepted. This interpretation is also more consistent with the text of the statute. Thus, because SAIF has accepted an injury claim, and claimant made his medical services claim in the context of that accepted injury claim, the limitations of ORS 656.225 apply.

not a separate condition that arose from the compensable injury,” and is not subject to consequential condition standards. *Fred Meyer, Inc. v. Evans*, 171 Or App 569, 573 (2000).

The majority reasons that *SAIF v. Walker*, 260 Or App 327 (2013), supports the application of “consequential condition” standards to claimant’s C6-7 condition. *Walker* is distinguishable in two respects. First, in *Walker*, the parties had agreed that the condition for which compensability was at issue met the definition of a “consequential condition.” 260 Or App at 335 n 3. Here, by contrast, claimant asserted the compensability of the C6-7 degeneration as a “consequential condition,” but also asserted that the surgery was compensable under ORS 656.225, and explained that “slightly different standards apply” to the two claims. (I. Tr. 2-3). Thus, claimant always contended that the medical services claim was subject to the worsened “preexisting condition” standard under ORS 656.225, not the “consequential condition” standard under the second sentence of ORS 656.245(1)(a). Second, *Walker* clarified that it was only the *worsening* of the preexisting condition, as opposed to the overall condition that included both the preexisting condition and the worsening, that was a consequence of the compensable injury. 260 Or App at 336. Here, in contrast, the proposed surgery is directed to claimant’s C6-7 degeneration, which is a worsened preexisting condition.

Under such circumstances, I consider claimant’s C6-7 degeneration to be a preexisting condition, not a consequential condition. This treatment is consistent with the *Sprague* court’s “division” of medical conditions into four separate categories. Accordingly, I turn to ORS 656.225, which provides that medical services directed solely to the C6-7 degeneration are not compensable unless the requirements of ORS 656.225(1) and (3) are satisfied.<sup>16</sup>

ORS 656.225(1) requires that “work conditions or events constitute the major contributing cause of a pathological worsening of the preexisting condition.” As noted above, Dr. Kitchel opined that the 2003 C5-6 fusion was the major contributing cause of the worsening of claimant’s C6-7 degeneration, and I find his opinion persuasive.

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<sup>16</sup> The requirements of ORS 656.225(2) do not apply because this claim does not involve a “preexisting mental disorder.”

SAIF argues that ORS 656.225(1) implies that “work conditions or events” must *directly* cause the pathological worsening of the preexisting condition. Thus, SAIF reasons, a medical service solely directed to a pathological worsening caused by the *treatment* of a compensable injury is not compensable. I disagree with SAIF’s contention.

ORS 656.225(1) applies in both injury and occupational disease claims, and the phrase “work conditions or events” recognizes the differing requirements for such claims. A “compensable injury” is defined by the accidental but work-related injury incident that gives rise to the claim. *Brown v. SAIF*, 262 Or App 640, 652 (2014); *see also English v. Liberty Northwest Ins. Corp.*, 271 Or App 211, 214 (2015) (the “compensable injury” in a consequential condition claim is the work-related injury incident, not limited to accepted conditions). On the other hand, an “occupational disease” is caused by “employment conditions,” which may include a specific event but may not be limited to a specific event. ORS 656.802(2)(a); *see also Anthony Castro*, 59 Van Natta 2008, 2013 (2007); *Michael G. O’Connor*, 58 Van Natta 689 (2006), *aff’d without opinion*, 215 Or App 358 (2007). Textually, there is no difference between “events” and “incidents,” or between “work conditions” or “employment conditions”; the phrases mean exactly the same thing.<sup>17</sup> Thus, the phrase “work conditions or events” describes the causes of both injuries and occupational diseases.

It is well established that where a work injury causes medical treatment that, in turn, causes another condition, the treatment is part of the incident’s causal contribution (and of the employment conditions’ causal contribution) to the condition that resulted from the treatment. *See Barnett Bus. Servs. v. Hames*, 130 Or App 190, 196, *rev den*, 320 Or 492 (1994) (treatment of compensable injury deemed part of the compensable injury when determining the major contributing cause of a consequential condition); *Alonso M. Herrera*, 60 Van Natta 445 (2008) (treatment of compensable injury included in “employment conditions” that contributed to the claimant’s occupational disease). The statutory requirement that “work conditions or events” be the major contributing cause of the worsening of the preexisting condition requires the consideration of any medical treatment that resulted from the work incident (*i.e.*, the C5-6 fusion).

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<sup>17</sup> “Event” and “incident” are both synonymous with “occurrence.” *Webster’s* at 788, 1142, and 1561. “Employment” and “work” are synonymous. *Id.* at 743, 2634.

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As noted above, the record persuasively establishes that the C5-6 fusion was the major contributing cause of the pathological worsening of the C6-7 degeneration. Accordingly, ORS 656.225(1) is satisfied.

I turn to ORS 656.225(3), which requires that the medical service be prescribed to treat the change in the preexisting condition specified in ORS 656.225(1), “and not merely as an incident to the treatment of a compensable injury or occupational disease.” As discussed above, the preexisting condition has pathologically worsened as specified in ORS 656.225(1). Further, the C6-7 fusion is proposed to treat the worsening of the preexisting condition, and not “merely as an incident to the treatment of a compensable injury or occupational disease.” *Cf. Michael L. Wofford*, 48 Van Natta 1087, 1090, *recons*, 48 Van Natta 1313 (1996) (where compensable carpal tunnel syndrome (CTS) was not the major contributing cause of a pathological worsening of a preexisting fungal infection, treatment of the fungal condition, proposed as a prelude to treatment of the CTS, was “prescribed merely as an incident to the treatment of the CTS”). Thus, ORS 656.225(3) is satisfied.

Accordingly, I conclude that neither the limitations of ORS 656.225, for preexisting conditions, nor the limitations of the second sentence of ORS 656.245(1)(a), for consequential and combined conditions, apply to limit the compensability of the proposed surgery. Accordingly, I would reverse the ALJ’s order and set aside SAIF’s medical services denial. Because the majority does otherwise, I respectfully dissent.