
In the Matter of the Compensation of
JASON L. GRAHAM, Claimant
WCB Case No. 15-01007
ORDER ON REVIEW
Jodie Phillips Polich, Claimant Attorneys
Law Offices Of Kathryn R Morton, Defense Attorneys

Reviewing Panel: Members Weddell and Johnson.

Claimant requests review of Administrative Law Judge (ALJ) Mills's order that upheld the insurer's denial of his medical services claim for prescription medication. On review, the issue is medical services. We affirm.

FINDINGS OF FACT

We adopt the ALJ's "Findings of Fact."

CONCLUSIONS OF LAW AND OPINION

After claimant's May 4, 2011 work injury, the insurer accepted a recurrent L5-S1 disc herniation. (Exs. 4, 10). Claimant filed a new/omitted medical condition claim for right S1 radiculitis, post-laminectomy syndrome, and neurofibrosis, which the insurer denied. (Exs. 11, 12).

The parties then agreed to a Disputed Claim Settlement (DCS), which provided that the new/omitted medical condition claim denial would be fully effective, and a Claim Disposition Agreement (CDA), in which claimant agreed to release all rights to "non-medical-service-related" benefits potentially arising out of his May 2011 claim. (Exs. 14, 15, 16, 17). In April 2014, those agreements were approved.

On December 31, 2014, the insurer informed claimant that a prescription for Gralise would not be reimbursed because it was for the post-laminectomy syndrome and right S1 radiculitis, the compensability of which were resolved by the DCS. (Ex. 23). Claimant requested administrative review by the Workers' Compensation Division (WCD). (Ex. 26). Because the dispute required a determination of the causal relationship between medical services and an accepted claim, the WCD transferred the dispute to the Board's Hearings Division. (Ex. 28).

After reviewing the opinion of Dr. Takacs, claimant's attending physician, the ALJ concluded that the Gralise prescription was not for the L5-S1 disc injury, but was directed to a noncompensable condition. On review, claimant contends that his medical services claim is compensable. As explained below, we disagree.

The requisite causal relationship between medical services and a compensable injury is defined by ORS 656.245(1)(a), which 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.”¹

The “compensable injury” to which medical services must relate is the “work-related injury incident,” not the accepted condition. *SAIF v. Carlos-Macias*, 262 Or App 629 (2014); *see also Brown v. SAIF*, 262 Or App 640, 652, *rev allowed*, 356 Or 397 (2014). Nevertheless, ORS 656.245(1)(a) does not require an evaluation of the direct causal relationship between the compensable injury and the need for medical services. *SAIF v. Sprague*, 346 Or 661, 674 (2009). Instead, the statute requires an evaluation of the causal relationship between the compensable injury and the relevant medical condition to which the medical services relate. *Id.*

¹ A November 21, 2013 Notice of Closure declared claimant's condition medically stationary as of January 23, 2013. (Ex. 13). Claimant contends that because his condition had become medically stationary, the medical services are compensable under ORS 656.245(1)(c), even if they are not compensable under ORS 656.245(1)(a). However, ORS 656.245(1)(c)(A)-(L) do not eliminate the requirement that medical services be causally related to the compensable injury, but instead describe exceptions to the general principle that “medical services after the worker's condition is medically stationary are not compensable.” ORS 656.245(1)(c); *Basin Tire Serv. v. Minyard*, 240 Or App 715, 1720 (2011) (“ORS 656.245(1)(c) provides that only limited types of medical services remain compensable” after the claimant's conditions become medically stationary). Furthermore, whether medical services “qualify as compensable medical services among those listed in ORS 656.245(1)(c)” is not a matter concerning a claim, and is therefore within WCD's jurisdiction, not the Board's. ORS 656.704(3)(b)(B); *AIG Claim Servs. v. Cole*, 205 Or App 170, 174 (2006).

Accordingly, we must identify the medical condition to which the Gralise prescription relates. As explained below, we conclude that the prescription was for the denied and settled radiculitis condition.

The insurer requested that Dr. Takacs identify whether Gralise, as well as several other medications, were prescribed for the L5-S1 herniation, post-laminectomy syndrome, right S1 radiculitis, neurofibrosis, or “Other.” (Ex. 18). In response, he checked boxes indicating that Gralise was prescribed for the radiculitis and post-laminectomy syndrome conditions, and did not check boxes for herniation or “Other” conditions. (Ex. 18-1).

Dr. Takacs later explained that Gralise was prescribed to control pain complaints which, he opined, resulted from the work injury. (Ex. 25-1-2). He stated that he had not earlier indicated that Gralise was prescribed for the disc herniation because claimant’s pain complaints were better characterized by the radiculitis and post-laminectomy syndrome diagnoses. (Ex. 25-2). He opined that Gralise gave claimant “profound relief of radicular symptoms” and was being prescribed “because of the effects of the accepted condition of herniated disc at L5-S1.” (Ex. 29-1).

In a deposition, Dr. Takacs opined that if claimant did not have the denied conditions, but had only the accepted herniation, he would not have prescribed Gralise because the disc would not be pushing on a nerve root and causing radiating pain into the legs. (Ex. 30-14-16). He commented that “radiculitis” referred to such pain, “radiculopathy” described a wider variety of symptoms, and he would “gravitate more to radiculopathy” to describe claimant’s condition because of its chronic nature. (Ex. 30-17-18). Thus, Dr. Takacs opined that the L5-S1 disc herniation was contributing to claimant’s radicular nerve pain. (Ex. 30-28). Parsing the denied conditions out from the herniation, he opined that the disc did not contribute to claimant’s need for Gralise. (Ex. 30-30). He ultimately agreed that “the exhaustive list of the conditions requiring the Gralise would be the radiculitis/radiculopathy.” (Ex. 30-38).

We interpret Dr. Takacs’s opinion to support the conclusion that Gralise was prescribed for the radiculitis condition. Although he opined that Gralise was “for” the effects of the work injury and the herniation, he explained that his opinion was based on the contribution of the accepted herniation to the radiculitis condition. Further, he did not opine that Gralise was “for” or “directed to” another condition that was caused by the work-related injury incident.

As previously noted, claimant's radiculitis condition was denied. By virtue of the approved DCS that upheld the denial, claimant agreed with the insurer's position that the radiculitis condition was "not, in any way or degree of contribution, the result or consequence of claimant's on the job injury." (Ex. 14-2, -4). Consequently, because this record establishes that the Gralise prescription was for the radiculitis condition, we conclude that it is not causally related to the work-related injury incident. *See Lloyd W. Rainboth*, 67 Van Natta 1650, 1652 (2015). Accordingly, we affirm.

ORDER

The ALJ's order dated June 23, 2015 is affirmed.

Entered at Salem, Oregon on February 26, 2016