

In the Matter of the Compensation of
WILLIAM SNYDER, Claimant
WCB Case No. 15-01191
ORDER ON REVIEW
Jodie Phillips Polich, Claimant Attorneys
SAIF Legal Salem, Defense Attorneys

Reviewing Panel: *En Banc*. Members Lanning, Johnson, Weddell, Curey, and Somers.

Claimant requests review of Administrative Law Judge (ALJ) Riechers's order that affirmed an Order on Reconsideration that did not award permanent impairment for head, neck, and upper back conditions. On review, the issue is permanent disability (impairment).

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

As a result of claimant's June 23, 2014 injury, the SAIF Corporation accepted a concussion and cervical and thoracic strains. (Ex. 4). An October 10, 2014 Notice of Closure awarded no permanent disability, and claimant requested reconsideration and the appointment of a medical arbiter. (Exs. 5, 6).

Dr. Degen performed a medical arbiter examination on January 22, 2015. He identified the accepted conditions and reviewed claimant's medical history, which included chronic neck and back pain, chronic headaches, and 2012 x-rays that showed mild multilevel degenerative changes. (Ex. 7-1-3). He measured reduced cervical and thoracic range of motion (ROM) and noted that claimant complained of neck and upper back pain. (Ex. 7-2-3). He opined that the abnormal ROM findings were "0% due to the accepted conditions of cervical and thoracic strains and 100% due to other conditions." (Ex. 7-4). Dr. Degen also noted that claimant complained of headaches and problems with math skills and short- and long-term memory, but opined that such complaints were not due to a post-concussive syndrome. (Ex. 7-2, -4).

Based on Dr. Degen's report, the ALJ concluded that claimant had no permanent impairment due to the accepted conditions or the direct medical sequelae of the accepted conditions. Citing *Stuart C. Yekel*, 67 Van Natta 1279 (2015), the ALJ further rejected claimant's argument that, under *Brown v. SAIF*, 262 Or App 640, *rev allowed*, 356 Or 397 (2014), the relevant inquiry concerns claimant's permanent impairment due to the work injury rather than to the accepted conditions.

On review, claimant renews his argument that he is entitled an award for impairment that is due to his work injury, not limited to the accepted conditions and their direct medical sequelae. We disagree with claimant's contention.

In *Yekel*, we considered the effect of *Brown* in the context of evaluating a permanent disability award. *Brown* addressed the definition of an "otherwise compensable injury" in the context of evaluating the compensability of a combined condition. 262 Or App at 646-47. In that context, *Brown* held that a "compensable injury" is not limited to an accepted condition, but that it is the "accidental but work-related injury incident that gives rise to a claim." *Id.* at 652.

In *Yekel*, we concluded that the statutory framework, as well as the Director's rules, requires that impairment be awarded based on the accepted conditions and their direct medical sequelae. 67 Van Natta at 1284. We also interpreted "post-*Brown*" case law to support this approach. *Id.* at 1283 (citing *Jeld Wen, Inc. v. Cooper*, 270 Or App 186 (2015)). Accordingly, we declined to extend the *Brown* holding outside its context of compensability disputes. *Id.* at 1284. Instead, we continued to apply an "accepted condition-based" focus to the evaluation of permanent disability. *Id.* at 1284-85.

Here, the ALJ correctly applied *Yekel* and evaluated claimant's permanent impairment that was due to the accepted conditions or their direct medical sequelae.¹ Based on this precedent, we agree with the ALJ's conclusion that the medical record does not support a permanent impairment award. Accordingly, we affirm.

ORDER

The ALJ's order dated August 21, 2015 is affirmed.

Entered at Salem, Oregon on February 9, 2016

¹ We acknowledge that a footnote in *Magana-Marquez v. SAIF*, 276 Or App 32, 34 n 2 (2016), states that the proper focus for assessing a claimant's entitlement to a permanent disability award is whether the permanent impairment or work disability is related to the compensable injury/occupational disease, rather than the accepted conditions. In so noting, the court cited *Brown*, which generally differentiates between the phrases "compensable injury" and "accepted conditions." However, based on the Board's unchallenged finding that there was no causal relationship between the claimant's compensable injury and her impairment findings, the *Magana-Marquez* court noted that the "compensable injury"/"accepted condition" distinction had no bearing on its determination of the claimant's entitlement to a permanent disability award.

Thus, the court's comments are *dicta*. Further, the *Magana-Marquez* court was not confronting the precise issue addressed in the *Yekel* decision. Finally, arguments regarding the *Brown* decision have been presented to the Supreme Court, where a ruling remains pending. Under these circumstances, we believe that the most administratively judicious approach to this subject is for us to continue to adhere to the *Yekel* rationale unless the court rules to the contrary.