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In the Matter of the Compensation of  
**KATHERINE A. LAPRAIM, Claimant**  
WCB Case No. 15-00873  
ORDER ON REVIEW  
Moore Jensen, Claimant Attorneys  
SAIF Legal Salem, Defense Attorneys

Reviewing Panel: Members Lanning and Curey.

Claimant requests review of Administrative Law Judge (ALJ) Ogawa's order that found that her low back injury claim was not prematurely closed. On review, the issue is premature closure.

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

As a result of claimant's compensable injury, the SAIF Corporation accepted a lumbar strain. (Ex. 13). After Dr. Toal, who examined claimant at SAIF's request, opined that the lumbar strain was medically stationary, and Dr. Carter, claimant's attending physician, concurred with that opinion, SAIF issued a Notice of Closure. (Exs. 7, 11, 12). After an Order on Reconsideration did not find that the claim was prematurely closed, claimant requested a hearing.

Relying on Dr. Carter's opinion, the ALJ concluded that claimant's compensable lumbar strain was medically stationary. In reaching this determination, the ALJ did not find that the opinion of Dr. Croson (a physician who administered an epidural steroid injection) persuasively established that the work injury had caused symptoms in claimant's facet joints or that the symptomatic facet joints were direct medical sequelae of the accepted lumbar strain. The ALJ further reasoned that Dr. Croson's recommendation for further diagnostic treatment did not support a reasonable expectation of material improvement in claimant's accepted lumbar strain. Thus, the ALJ concluded that the claim had not been prematurely closed.

On review, claimant contests the ALJ's "medically stationary" conclusion. Based on the following reasoning, we affirm.

A claim may be closed when the claimant's condition is medically stationary and there is sufficient information to determine the extent of permanent disability. ORS 656.268(1)(a); OAR 436-030-0020(1)(a). "Medically stationary" means that no further material improvement would reasonably be expected from medical treatment or the passage of time. ORS 656.005(7). The term "medically

stationary” does not mean there is no longer a need for continuing medical care. *Maarefi v. SAIF*, 69 Or App 527, 531 (1984); *Pennie Richerd-Puckett*, 61 Van Natta 336 (2009). When determining whether claim closure was premature, we consider the medically stationary status of only the accepted conditions at the time of claim closure and any direct medical sequelae. See ORS 656.268(15); OAR 436-035-0005(6) (defining direct medical sequelae);<sup>1</sup> *Manley v. SAIF*, 181 Or App 431, 438 (2002) (accepted conditions and direct medical sequelae must be medically stationary at claim closure). Claimant bears the burden of proving that her condition was not medically stationary at claim closure. ORS 656.266(1); *Berliner v. Weyerhaeuser Corp.*, 54 Or App 624 (1981).

Here, it is undisputed that claimant’s accepted lumbar strain was medically stationary at the time of claim closure. However, citing the rationale expressed in *Brown v. SAIF*, 262 Or App 640, *rev allowed* 356 Or 397 (2014), claimant contends that the claim may only be closed when she is medically stationary “as to all the effects of the injury event.” See *id.* at 652 (a “compensable injury” is an “accidental but work-related injury incident”). In so arguing, claimant contends that Dr. Croson’s opinion establishes that, at claim closure, she was not medically stationary as to all the effects of the work-related injury incident. For the following reasons, we disagree with claimant’s contention.

We have declined to apply the *Brown* holding in the context of rating a claimant’s permanent disability at claim closure. See *Stuart C. Yekel*, 67 Van Natta 1279, 1283-84 (2015) (finding that “statutory and administrative authority make clear the impairment is based on the accepted conditions and the direct medical sequelae of the accepted conditions”).<sup>2</sup> In doing so, we reasoned that such an analysis would disregard the “accepted condition-based” focus of the overall statutory scheme involving claim closure and the rating of permanent disability.<sup>3</sup> *Id.* at 1284.

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<sup>1</sup> Claimant’s claim was closed by a November 7, 2014 Notice of Closure. Thus, the applicable standards are found in WCD Admin. Order 12-061 (eff. January 1, 2013).

<sup>2</sup> Members Weddell and Lanning dissented.

<sup>3</sup> “Non-accepted” conditions can be considered in evaluating claim closure and the rating of permanent disability if those conditions are “direct medical sequelae” of the accepted condition. See ORS 656.268(15); OAR 436-035-0005(6); *Office Depot, Inc. v. Jorres*, 195 Or App 756, 759-60 (2004); *Khamphouk Thanasouk*, 60 Van Natta 20, 22 (2008). Here, the record does not establish that a direct medical sequela of claimant’s accepted lumbar strain was not medically stationary when the claim was closed. If claimant is asserting that a condition related to the compensable injury itself is not “medically stationary,” in accordance with the *Manley* and *Yekel* rationales, that condition must be claimed and, if accepted or determined to be compensable, SAIF would be required to reopen the claim and process it to closure. *Yekel*, 67 Van Natta at 1286 n 6.

We likewise decline to apply the *Brown* holding in the context of determining medically stationary status and premature closure. In doing so, we note that the *Manley* court expressed reasoning similar to that applied in *Yekel* in explaining why claim closure requires that medical sequelae of the accepted condition must be medically stationary. The court explained:

“The workers’ compensation statutes treat omitted conditions, new medical conditions, and other consequential conditions differently from direct medical sequelae. The former must be accepted to be rated. *See* ORS 656.262(6); ORS 656.267. The latter must be rated as part of the ‘original accepted condition’ unless specifically denied. [Former] ORS 656.268(14). The text of the statute makes clear that direct medical sequelae are an exception to the general rule that a condition must be accepted to be rated. Moreover, by directing that the original accepted condition and any direct medical sequelae that were not specifically denied be rated, the legislature necessarily implied that both the condition and its sequelae must be medically stationary at the time of claim closure. There would be no point in rating the extent of a worker’s impairment if the causes of that impairment were not medically stationary.”  
181 Or App at 437 (footnote omitted).

Thus, because direct medical sequelae of the accepted condition, as opposed to new/omitted medical conditions, must be rated, *Manley* supports the proposition that direct medical sequelae must be medically stationary before claim closure. Consistent with this reasoning, the “medically stationary” status of unaccepted conditions (or such conditions’ direct medical sequelae) are not relevant to a “premature closure” analysis.

In sum, in *Yekel*, we declined to apply the “work-related injury incident” focus of *Brown* in the context of rating permanent impairment/disability at claim closure. Consistent with that rationale, as further supported by the *Manley* holding, we likewise decline to apply the *Brown* holding in the context of this premature claim closure dispute.<sup>4</sup>

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<sup>4</sup> In any event, for the reasons expressed in the ALJ’s order, we are not persuaded that Dr. Croson’s diagnostic service recommendation (and accompanying conclusory opinion) establishes that any effects of the work-related injury incident were not medically stationary at claim closure.

ORDER

The ALJ's order dated August 12, 2015 is affirmed.

Entered at Salem, Oregon on January 8, 2016