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In the Matter of the Compensation of  
WCB Case No. 14-03288, 14-05842  
**ARTURO RODRIGUEZ**, Claimant  
ORDER ON REVIEW  
Arturo Rodriguez, Unrepresented  
SAIF Legal, Defense Attorneys

Reviewing Panel: Members Curey and Weddell.

Claimant, *pro se*,<sup>1</sup> requests review of Administrative Law Judge (ALJ) Fulsher's order that upheld the SAIF Corporation's denials of claimant's new/omitted medical condition claims for a right rotator cuff tear, lumbar strain, and cervical spine conditions. On review, the issue is compensability.

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

On February 17, 2014, claimant suffered a compensable injury while moving a heavy piece of steel at work. (Ex. 1). SAIF accepted a right shoulder sprain. (Ex. 13).

On September 15, 2014, claimant asked SAIF to "process [his] low back, right shoulder, and neck conditions in accordance with Oregon law." (Ex. 33). On November 24, 2014 and November 26, 2014, SAIF issued denials, asserting that claimant's request was for "body parts" and that the low back, right shoulder, and neck were not compensably related to the accepted injury claim. (Exs. 37, 38, 39).

On December 2, 2014, claimant initiated a new/omitted medical condition claim for lumbosacral strain, cervical strain, cervical radiculopathy, and right rotator cuff tear. (Ex. 40). On December 16, 2014, SAIF denied that the claimed conditions were compensably related to the February 17, 2014 injury. (Exs. 41, 42, 43).

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<sup>1</sup> Inasmuch as claimant is unrepresented, he may wish to consult the Ombudsman for Injured Workers. He may contact the Ombudsman, free of charge, at 1-800-927-1271, or write to:

WORKERS' COMPENSATION OMBUDSMAN  
DEPT OF CONSUMER & BUSINESS SERVICES  
PO BOX 14480  
SALEM OR 973090-0405

Claimant requested a hearing. Finding that the medical evidence did not establish compensability of the claimed conditions, the ALJ upheld SAIF's denials. On review, claimant asks us to reverse the ALJ's order. For the following reasons, we affirm the ALJ's decision.

To prevail on a new/omitted medical condition claim, claimant must prove that the claimed conditions exist and that the work injury was a material contributing cause of the disability/need for treatment of the conditions. *See* ORS 656.005(7)(a); ORS 656.266(1); *Maureen Y. Graves*, 57 Van Natta 2380, 2381 (2005). If the evidence establishes an "otherwise compensable injury," and a combined condition is present, the carrier must prove that the otherwise compensable injury is not the major contributing cause of claimant's disability/need for treatment of the combined condition. ORS 656.266(2)(a); *SAIF v. Kollias*, 233 Or App 499, 505 (2010); *Jack G. Scoggins*, 56 Van Natta 2534, 2535 (2004). The "otherwise compensable injury" means the "work-related injury incident." *See Brown v. SAIF*, 262 Or App 640, 652 (2014); *Jean M. Janvier*, 66 Van Natta 1827, 1832-33 (2014) (applying the *Brown* definition of an "otherwise compensable injury" to initial and new/omitted medical condition claims under ORS 656.266(2)(a)).

Here, concerning the claimed right rotator cuff tear and cervical radiculopathy conditions, both Dr. Toal, an orthopedic surgeon who performed an examination at SAIF's request, and Dr. Nicola, claimant's long-time treating orthopedist, opined that claimant does not have a right rotator cuff tear or a cervical radiculopathy condition. (Exs. 44-2, -3, 45-1). Therefore, the record does not establish that the claimed right rotator cuff tear and cervical radiculopathy conditions exist. *Graves*, 57 Van Natta at 2381 (if compensability is generally denied, the claimant has the burden to prove that the claimed condition exists).

Next, the record does not establish that the work injury was a material contributing cause of claimant's disability/need for treatment for a cervical strain. Rather, Dr. Toal's un rebutted opinion was that the work incident was not a material contributing cause of claimant's disability/need for treatment of the cervical spine. (Ex. 44-2).

Finally, concerning the lumbosacral strain, Dr. Nicola reported that, when he examined claimant after the injury, there was no muscle strain, just chronic low back pain. (Ex. 49-11). Similarly, Dr. Toal could not state that the work incident was a material contributing cause of claimant's disability/need for treatment of the lumbar spine. (Ex. 44-2). In any event, both Drs. Nicola and Toal ultimately

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opined that there was a combined low back condition and that preexisting “arthritis” was the major contributing cause of claimant’s disability/need for treatment of the combined condition.<sup>2</sup> (Exs. 44-2, 45-2, -3, 49-12). Consequently, even if claimant sustained an “otherwise compensable injury,” SAIF persuasively met its burden to prove that the “work-related injury/incident” was not the major contributing cause of his disability/need for treatment of the combined lumbar condition.

In sum, based on the aforementioned reasoning, as well as the reasons expressed in the ALJ’s order, the record does not support the compensability of the claimed new/omitted medical conditions. Therefore, we affirm the ALJ’s order upholding SAIF’s denials.

#### ORDER

The ALJ’s order dated September 14, 2015 is affirmed.

Entered at Salem, Oregon on March 10, 2016

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<sup>2</sup> Dr. Nicola reported that claimant had been previously diagnosed with lumbar spondylosis; *i.e.*, “arthritis.” (Ex. 45-2).