

In the Matter of the Compensation of
JUDD BLACKWELL, Claimant

WCB Case No. 15-00872, 14-05809

ORDER ON REVIEW

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Reviewing Panel: Members Lanning and Johnson.

Claimant requests review of Administrative Law Judge (ALJ) Riechers's order that: (1) upheld the self-insured employer's "ceases" denial of claimant's combined low back condition; and (2) upheld the employer's denial of claimant's occupational disease claim for a low back condition. On review, the issue is compensability.

We adopt and affirm the ALJ's order with the following supplementation regarding the "ceases" denial.

In upholding the employer's denial, the ALJ found that the employer met its burden of proving, by a preponderance of the medical evidence, a change in claimant's accepted combined low back condition such that the otherwise compensable injury ceased to be the major contributing cause of the combined condition, and disability or need for treatment thereof. In so finding, the ALJ reasoned that the opinion of Dr. Puziss, who examined claimant at the employer's request and who supported the compensability of his combined condition, was not persuasive.

On review, claimant contends that the employer did not show a change in his condition such that the "otherwise compensable injury" was no longer the major contributing cause of the disability/need for treatment of the combined condition. We disagree.

Under ORS 656.262(6)(c), a carrier may deny a combined condition if the otherwise compensable injury ceases to be the major contributing cause of the combined condition. ORS 656.262(6)(c). The "otherwise compensable injury" is the "work-related injury incident," and is not limited to the lumbar strain identified in the employer's acceptance. *Brown v. SAIF*, 262 Or App 640, 652, *rev allowed*, 356 Or 397 (2014). In evaluating the "ceases" denial, we consider only the components of the combined condition, which are the "otherwise compensable injury" and the statutory preexisting condition. *Vigor Indus., LLC v. Ayres*, 257 Or App 795, 806 (2013), *rev den*, 355 Or 142 (2014).

The word “ceases” presumes a change in the claimant’s condition or circumstances since the acceptance of the combined condition, such that the “work-related injury incident” is no longer the major contributing cause of disability or need for treatment of the combined condition. *Brown*, 262 Or App at 656; *Wal-Mart Stores, Inc. v. Young*, 219 Or App 410, 419 (2008). The “effective date” of the combined condition acceptance provides the baseline for determining whether there has been a “change” in claimant’s condition or circumstances. *Oregon Drywall Sys. v. Bacon*, 208 Or App 205, 210 (2006).

Determination of this issue presents a complex medical question that must be resolved by expert medical opinion. See *Barnett v. SAIF*, 122 Or App 279 (1993). When medical experts disagree, we give more weight to those opinions that are well reasoned and based on complete information. See *Somers v. SAIF*, 77 Or App 259, 263 (1986).

Claimant contends that the physicians relied on by the employer (Drs. Carr, Cann, Borman) only focused on resolution of the strain, and did not consider whether the “compensable injury” in its entirety had changed. According to claimant, the medical evidence (Drs. Cann, Davis, Puziss) establishes a symptomatic worsening of his underlying degenerative arthritic condition, and thus, that the compensable injury is comprised of more than a simple lumbar strain.¹

¹ Claimant also contends that neither the employer nor the physicians identified any legally cognizable preexisting conditions “with specificity.” First, all the medical experts agree that claimant has a combined low back condition. Moreover, we find that the nature of that preexisting condition was adequately and consistently identified.

Dr. Davis stated that claimant had “pre-existing degenerative arthritis” at L5-S1 “as documented on the diagnostic testing,” and that the arthritis combined with the July 8, 2014 work injury “and is a significant cause of [his] recurrent low back injuries.” (Ex. 100-1). Dr. Cann likewise concluded that

claimant had a degenerative lumbar arthritic condition, which included facet arthropathy/facet syndrome. (Exs. 115, 123-5). Dr. Borman also described claimant’s history and imaging studies as consistent with low back degenerative arthritic conditions. (Ex. 108-10). He reported that claimant had “inflammation of the intervertebral disc at L5-S1 as well as arthritis of the facet joints of the lower lumbar spine that pre-existed the work event of July 8, 2014.” (Ex. 108-11). Dr. Carr stated that degenerative disc disease is a naturally occurring phenomenon that is “basically a process of aging.” (Ex. 116D-9). However, he then explained that degenerative disc disease can be mild or severe and lead to significant arthritic changes in the facet joints, and that for claimant, it was markedly advanced at L5-S1 with significant disc height loss and foraminal stenosis, as seen on the MRI. (*Id.*) He noted that claimant’s degenerative disc disease constituted an “arthritic condition” under the legal definition, and that such changes were “easily seen” on the MRI. (Ex. 116D-10-11). Finally, even Dr. Puziss reported that the MRI showed “mild to moderate arthritis of the facet joints bilaterally” at L5-S1. (Ex. 121-13).

Based on the following reasoning, as well as that expressed in the ALJ's order, we consider the opinions of Drs. Borman, Carr, and Cann to adequately address the full effect of the "work-related injury incident" in analyzing the compensability of the denied combined conditions, as required by *Brown*.² See *SAIF v. Strubel*, 161 Or App 516, 521-22 (1999) (medical opinions are evaluated in context and based on the record as a whole to determine sufficiency). Thus, we conclude that the preponderance of the evidence establishes that the lumbar strain was the work injury that resulted from the work accident that caused claimant's disability and need for treatment, and which combined with the preexisting condition. There is no persuasive evidence establishing that the "work-related injury incident" caused other conditions that would constitute "otherwise compensable injuries."

Specifically, Dr. Carr was asked whether the "July 8, 2014 work injury and/or accepted lumbar strain" remained that major contributing cause of claimant's disability/need for treatment. (Ex. 116D-11). He responded that the major contributing cause of claimant's current low back disability and need for treatment was his preexisting underlying degenerative disc disease and not the effects of his two lumbar strains. (*Id.*)

Dr. Borman also considered the effects of the "work event" when rendering his causation opinion. He concluded that the July 8, 2014 "work event would have combined with prior existing conditions * * *, including years of low back pain for which he sought evaluation and treatment from multiple providers, as well as his arthritis of his lower lumbar spine." (Ex. 108-11). Dr. Borman opined that the "July 8, 2014 work injury and the accepted lumbar strain combined with [claimant's] pre-existing degenerative arthritis to cause and prolong his disability and need for treatment," but that by the time of his examination, "the effects of the July 8, 2014 work injury had fully resolved as evidenced by the absence of muscle tenderness. At that time, [claimant's] pre-existing degenerative arthritis became the major contributing cause of his continued low back disability and need for treatment." (Ex. 116-1).

Finally, Dr. Cann explained that "the July 8, 2014, work incident is best understood as resulting in a soft tissue injury, which was ultimately diagnosed as a lumbar strain. With time and conservative treatment this condition resolved, at

² Drs. Borman and Carr examined claimant at the employer's request. Dr. Cann was claimant's attending physician.

which point [claimant's] pre-existing degenerative arthritic condition overcame the July 8, 2014, work injury as the major contributing cause of [claimant's] ongoing disability and need for treatment of the low back." (Ex. 123-6-7).

We disagree with claimant's contention that the record supports a worsening of his preexisting arthritic condition. Claimant cites to a March 24, 2015 concurrence report from Dr. Cann, and a March 26, 2015 concurrence report from Dr. Davis, as confirming that the injury caused a symptomatic worsening of the preexisting degenerative disc disease/arthritis. However, neither opinion (both of which addressed claimant's occupational disease claim) supports claimant's contention.

In her report, Dr. Cann agreed that, although claimant's "job duties and serial work injuries may have contributed to a symptomatic worsening of his degenerative arthritic condition," she was "unable to isolate [claimant's] work activities and various industrial injuries as the major contributing cause for his degenerative disc disease/arthritis of the lumbar spine." (Ex. 117-1). Such a statement, made in the context of an occupational disease claim and considering claimant's overall work activities, the at-issue July 2014 injury, and a prior 2013 low back injury, does not establish that claimant's July 8, 2014 work injury, itself, caused a worsening of claimant's preexisting condition.

Dr. Davis was also asked to consider an "occupational disease" theory, and he agreed that, while claimant's "work duties and various injuries may have produced symptomatic flare-ups of his degenerative arthritic condition," it was "medically improbable that [claimant's] overall work activities and serial work injuries constitute the major contributing cause for his degenerative disc disease/arthritis of the lumbar spine developing." (Ex. 118-1). He further stated that claimant's employment activities and serial work injuries did not independently contribute to an actual worsening of his degenerative disc disease/arthritis of the lumbar spine," although there may have been a "symptomatic flare-up of the degenerative condition." (Ex. 118-2). As with Dr. Cann's opinion, we do not interpret Dr. Davis's report as confirming that the July 2014 work injury, on its own, worsened the preexisting condition.

Nor do we find Dr. Puziss's opinion persuasively supportive of a worsened preexisting condition. Dr. Puziss stated that, following the July 8, 2014 injury, claimant's preexisting degenerative disc disease became "aggravated and permanently became symptomatic." (Ex. 121-17). However, he went on to explain that there was "no way to objectively discern how much pathological

aggravation” claimant had regarding his degenerative disc disease, but that “[w]hat we do know [] is that the patient has a symptomatic right L5-S1 facet syndrome which has occurred only since the injury of 07/08/2014.” (*Id.*)

In response to Dr. Puziss’s “facet syndrome” opinion, Dr. Carr explained that there were no physical findings that identified the facet joints as a source of pain. However, Dr. Carr reasoned that, even if one accepted that claimant’s pain was coming from the L5-S1 facet joint, “the only pathologic entity that would cause such pain would be the degenerative arthritis, which exists as part of his degenerative disc disease.” (Ex. 122-3). According to Dr. Carr, “facet arthritis and facet syndrome are one in the same. * * * [I]f one accepts ‘facet syndrome,’ this is merely a manifestation of the underlying degenerative disc disease, which has rendered the facet joints arthritic.” (Ex. 122-4). Dr. Carr found “no credible basis” for Dr. Puziss’s diagnosis of a non-arthritic “facet syndrome,” and faulted Dr. Puziss’s opinion for not explaining why claimant’s facet joint inflammation was not arthritic. (Ex. 126-2, -3).³

We find Dr. Carr’s opinion to be well reasoned and persuasive, in comparison to that of Dr. Puziss. Dr. Carr thoroughly addressed and persuasively explained the nature of the preexisting condition and why it, rather than the July 8, 2014 work injury (which was the lumbar strain), had become the major contributing cause of claimant’s disability and need for treatment. (Exs. 116D, 126). In doing so, he persuasively rebutted Dr. Puziss’s “facet syndrome” opinion. (Ex. 126). In addition, Dr. Carr’s opinion is supported by those of Drs. Cann and Borman. (Exs. 116, 123).

Consequently, based on the aforementioned reasoning, the employer has satisfied its burden of proof to sustain its “combined condition” denial. *See Mauricio G. Maravi-Perez*, 66 Van Natta 1352, 1355 (2014) (where the acceptance identified a strain as the “otherwise compensable injury,” a denial of a combined condition under ORS 656.262(6)(c) was supported by medical evidence indicating that the “work injury” was the strain and that the strain had resolved). Accordingly, we affirm.

ORDER

The ALJ’s order dated September 16, 2015 is affirmed.

Entered at Salem, Oregon on May 31, 2016

³ Dr. Cann concurred with Dr. Carr’s opinion and findings, including his “facet syndrome/ arthritis” explanation. (Ex. 123-8).