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In the Matter of the Compensation of  
**JAMES S. ZIMMERMAN, Claimant**  
WCB Case No. 15-03351  
ORDER ON REVIEW  
Andrews Ersoff & Zantello, Claimant Attorneys  
SAIF Corporation, Defense Attorneys

Reviewing Panel: Members Johnson and Weddell.

Claimant requests review of Administrative Law Judge (ALJ) Naugle's order that upheld the SAIF Corporation's denial of his injury claim for a right index finger condition. On review, the issues are claim preclusion and claim processing. We affirm.

FINDINGS OF FACT

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

CONCLUSIONS OF LAW AND OPINION

On January 15, 2013, claimant signed an 801 form alleging a work incident on January 8, 2013 that resulted in an injury to his right index finger. (Ex. 3). He described the injury as "infection in right index finger." (*Id.*) Claimant's "January 8" injury claim was eventually denied under ORS 656.262(15) for claimant's non-cooperation in the investigation of the claim. (Ex. 17). Because that denial was not appealed, it became final. (Ex. 20).

In July 2015, claimant submitted another 801 form, asserting a January 15, 2013 injury to his right finger. (Ex. 23). SAIF denied the claim, asserting that it had not received timely notice of such an injury. (Ex. 24). Claimant requested a hearing.

At the hearing, SAIF clarified that it was aware of only one work-related injury incident, which occurred on January 8, 2013. (Tr. 5). SAIF noted that it had already denied that claim, which was final. (*Id.*) Accordingly, with no objection from claimant, SAIF expanded the basis of its denial to include preclusion. (*Id.*) SAIF further clarified that, if claimant was alleging a work-related injury incident other than the one on January 8, 2013, SAIF had not received timely notice of such injury. (Tr. 6). Claimant raised no objections to these amendments/clarifications and proceeded with the hearing.

The ALJ upheld SAIF's denial. On review, claimant argues that, because he did not seek treatment until January 10, 2013, (Ex. 1), the denial of the January 8, 2013 injury claim is not preclusive of his current claim. Based on the following, we disagree.

ORS 656.005(7)(a) provides: "A 'compensable injury' is an accidental injury \* \* \* arising out of and in the course of employment requiring medical services or resulting in disability or death[.]" As explained in *Brown v. SAIF*, 262 Or App 640, 652, *rev allowed*, 356 Or 397 (2016), the "compensable injury" means the "work-related injury incident."

This record establishes only one "work-related injury incident." That incident occurred on January 8, 2013.<sup>1</sup> The fact that claimant did not seek treatment until January 10, 2013 does not transform the date of the "work-related injury incident" to the date of his medical treatment based on that incident. Rather, the date of claimant's alleged compensable injury is the date of his "work-related injury incident," which subsequently allegedly resulted in disability/need for treatment. On this record, claimant's January 8, 2013 puncture wound to his right index finger is the alleged "work-related injury incident."

It is undisputed that, on January 15, 2013, claimant completed an 801 form for his January 8, 2013 work-related injury incident for which he received medical treatment on January 10, 2013. (Exs. 1, 3). It is likewise uncontested that claimant's injury claim asserting the compensability of the January 8, 2013 work-related injury incident has been denied, and has not been timely appealed. As such, claim preclusion bars the litigation of such a claim based on the same factual transaction that could have been litigated between the parties in a prior proceeding that has reached a final determination. *See Drews v. EBI Cos.*, 310 Or 134, 142-43 (1990).<sup>2</sup>

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<sup>1</sup> Indeed, claimant did not work for the employer between January 8, 2013 (the alleged date of injury of the denied claim) and February 7, 2013. (Tr. 16).

<sup>2</sup> In *Kenneth E. Kaiser*, 55 Van Natta 2878, 2886 (2003), we explained:

"[F]or purposes of claim preclusion, the meaning of a 'claim' is different than the statutory definition of a 'claim' in workers' compensation law. In *Drews*, the carrier argued that 'claim' should be defined for preclusion purposes the same way it is defined in the workers' compensation statutes. 310 Or at 146; *see* ORS 656.005(6) (defining a 'claim'). The court rejected the carrier's argument, explaining that in *Troutman v. Erlandson*, 287 Or 187 (1979), it had endorsed an expanded definition of claim to include all rights

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Thus, claimant could have litigated the compensability of his injury claim stemming from the January 8, 2013 work-related injury incident had he chosen to contest SAIF's "non-cooperation" denial. Because he did not do so and that denial has become final, claimant's current claim (which is based on the same work-related injury incident) is precluded. *See Mills v. Boeing Co.*, 212 Or App 678, 684-85 (2007) (where there was only one injurious work event upon which the claimant's claim could have been based, the carrier's final denial of that claim, even though it had an incorrect date of injury due to a typographical error, precluded the claimant from relitigating whether his later-diagnosed condition was work-related). Accordingly, we affirm.

ORDER

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

Entered at Salem, Oregon on May 18, 2016

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or remedies between the parties with respect to all or any part of a transaction, or series of connected transactions, out of which the action arose. In *Drews*, the court continued the use of the transactional definition of claim."