

In the Matter of the Compensation of  
**JERAMY CARD, Claimant**  
WCB Case No. 15-02343  
ORDER ON REVIEW  
Dale C Johnson, Claimant Attorneys  
SAIF Legal Salem, Defense Attorneys

Reviewing Panel: Members Lanning and Curey.

Claimant requests review of Administrative Law Judge (ALJ) Bloom's order that upheld the SAIF Corporation's denial of claimant's injury claim for a low back condition. On review, the issue is compensability. We affirm.

FINDINGS OF FACT

Before the date of the claimed January 2015 injury, claimant reported mid/low back pain after an incident while serving in Iraq in which a transport vehicle he was riding in hit a pothole. (Exs. C, 1; Tr. 12). He continued to have mid and low back pain, and he was referred for a lumbar x-ray in 2005. (Exs. A, Aa, B, C). He had also complained of left-leg/dorsal foot pain ("sciatica") in 2001 and 2012. (Exs. A, C, 1, 2-2, 16-2).

In August 2014, claimant underwent physical therapy for low back pain. (Ex. 2). Claimant reported having low back pain "forever," and was tender to palpation in the lumbar region. (*Id.*)

On January 6, 2015, claimant, a mass transit bus operator, was driving a different bus (#6209) than he was accustomed to, and which had a seat that tended to bounce and "bottom-out" with road conditions. (Tr. 8-9). He woke the following day with mid and low back stiffness and soreness. (Tr. 10).

On January 26, 2015, claimant treated with Dr. Seidel, who noted a two-week progression of central and lumbar back pain without injury or radiation. (Ex. 3-1). She diagnosed lumbar back pain. (Ex. 3-2).

In February 2015, claimant began treating with Dr. Kovacevic, who noted claimant's bus driving activities. (Ex. 5). Claimant did not indicate any prior back problems. (Ex. 5-1). Ultimately, Dr. Kovacevic diagnosed a lumbar sprain. (Ex. 5-2).

Claimant had an MRI, showing degenerative disc disease from L4 through S1, mild bilateral foraminal narrowing, and a small central disc protrusion narrowing the central spinal canal and impinging the exiting L5 nerve root. (Exs. 7, 21).

Subsequently, claimant returned to Dr. Kovacevic complaining of back pain, radiating into his buttocks, left more than right. (Ex. 8-1). Dr. Kovacevic agreed with the radiologist's interpretation of the MRI, and added an L4-5 disc protrusion with degenerative disc disease to his lumbar sprain diagnosis. (*Id.*)

In mid-February 2015, claimant treated at the emergency department on two occasions for flares of low back, left leg, and buttock pain. (Exs. 9, 10).

In March 2015, Dr. Arnsdorf, physiatrist, noted claimant's history of difficulty driving a bus with a "rigid seat." (Ex. 13-1). He diagnosed progressive left sciatica with weakness in L5 and S1 muscles, L4, L5 and S1 numbness, and left L4-5 disc protrusion. (Ex. 13-3). He recommended a neurosurgical consultation. (*Id.*)

Dr. Buza, neurosurgeon, performed an examination at SAIF's request. (Ex. 15). He reviewed medical records beginning in January 2015, including claimant's February 2015 MRI. (Ex. 15-1-2, -5). He noted a history of "upper back" and right ankle injuries while claimant was in the military, in addition to a left arm compound fracture in approximately 1990. (Ex. 15-3). Claimant reported symptoms associated with his January 2015 exposure as left leg radicular pain with numbness and symptoms into his buttock and lumbar spine. (Ex. 15-3-4). Dr. Buza diagnosed an L4-5 acute ruptured disc with L5-S1 left radiculopathy. (Ex. 15-5). While he noted claimant's underlying degenerative disc disease, he explained that claimant experienced significant bumping and jarring of the lumbar spine. (*Id.*) He concluded that claimant had a combined condition, and that the work incident was the major contributing cause of claimant's disability. (Ex. 15-6).

Subsequently, Dr. Sherman, neurosurgeon, examined claimant, noting that his back pain began after driving a different bus with a "rigid seat." (Ex. 16-1). Dr. Sherman indicated that claimant had classic L5-S1 symptoms down his left leg. (*Id.*) After reviewing the MRI, he diagnosed a left L4-5 paracentral disc herniation and left L5-S1 disc herniation/osteophyte formation with left L5-S1 radiculopathy. (Ex. 16-2). He recommended partial hemilaminectomies and discectomies. (*Id.*)

On March 26, 2015, SAIF denied claimant's low back injury claim. (Ex. 17). Claimant timely appealed that denial.

In April 2015, Dr. Kovacevic noted that claimant had a second neurosurgical opinion with Dr. Angeles, who provided an epidural steroid injection resulting in symptomatic improvement. (Ex. 19). He released claimant to regular work to begin in May 2015. (*Id.*)

In October 2015, the parties deposed Dr. Buza after he reviewed treatment records from before claimant's January 2015 work exposure that he did not have at the time of his examination. (Ex. 21-11). He noted that claimant was previously diagnosed with "sciatica," which he explained was really a description of claimant's "leg pain." (Ex. 24-12). He opined that claimant probably had an L5 nerve root radiculopathy by 2012. (Ex. 24-12-14, -38). He also reviewed physical therapy notes from August 2014, indicating that claimant had low back pain "forever." (Ex. 21-15). After considering the previous treatment records, he opined that the work injury was not the material or major contributing cause of the condition and need for treatment. (Ex. 21-20-25). Finally, he stated that, if claimant's sciatica were not reported "by a physician," then he would adopt his previous opinion. (Ex. 21-39-40).

In December 2015, claimant obtained a concurrence letter from Dr. Roberts, who had evaluated him in 2012. (Ex. 22). Dr. Roberts concluded that "sciatica" was probably claimant's word and that there were no objective findings to substantiate the existence of sciatica. (Ex. 22-2).

### CONCLUSIONS OF LAW AND OPINION

In upholding SAIF's denial, the ALJ found that Dr. Buza's ultimate opinion did not persuasively support the compensability of claimant's claim.

On review, claimant contends that Dr. Buza's initial opinion persuasively supported the compensability of his low back injury claim, and that it was not clear whether Dr. Buza ultimately changed his opinion. In addition, he argues that, even if Dr. Buza changed his opinion, it was based on an inaccurate history and understanding of claimant's prior treatment. For the following reasons, we disagree with claimant's contentions.

Claimant bears the initial burden to show that a work-related injury incident was a material contributing cause of his need for treatment or disability. ORS 656.005(7)(a); ORS 656.266(1); *see Brown v. SAIF*, 262 Or App 640, 652

(2014); *Jean M. Janvier*, 66 Van Natta 1827, 1832-33 (2014). If an otherwise compensable injury combined with a preexisting condition to cause or prolong disability or a need for treatment, the combined condition is compensable only if the otherwise compensable injury was the major contributing cause of the disability or need for treatment of the combined condition. ORS 656.005(7)(a)(B). In the case of a “combined condition,” the carrier bears the burden to establish the existence of a “preexisting condition,” as well as the burden to establish that the “otherwise compensable injury” was not the major contributing cause of the disability or need for treatment of the combined condition. ORS 656.266(1)(a); *Hopkins v. SAIF*, 349 Or 348, 352 (2010); *Steven F. Knight*, 68 Van Natta 751, 752 (2016).

Initially, Dr. Buza reviewed claimant’s treatment records from January 2015 through the date of his examination. (Ex. 15). Based on those records and claimant’s reported history of low back symptoms beginning in January 2015, he concluded that claimant’s work injury was the major contributing cause of his need for treatment/disability for his combined low back condition. (Ex. 15-6).

Thereafter, Dr. Buza had an opportunity to review additional records that preceded claimant’s January 2015 work exposure and treatment, which he explained shed light on the etiology of claimant’s condition. (Ex. 21-20-21). Those records reflected that claimant had a history of left-leg/dorsal foot pain (“sciatica”), which was evaluated in 2001 and 2012. (Exs. A-2, C). He continued to have mid and low back pain documented by providers as recently as August 2014, when it was noted that claimant had low back pain “forever.” (Exs. A, Aa, B, C, 1, 2).

After receiving those additional records, Dr. Buza testified that he changed his causation opinion. (Ex. 21-14). He explained that the records revealed that claimant had leg pain/L5 radiculopathy, referred to as “sciatica” in the records, beginning as early as 2001. (Ex. 21-12, -14). He further relied on the August 2014 notation that claimant reported having back pain “forever.” (Ex. 21-15). Ultimately, he opined that it was more likely that claimant’s work injury was not a material contributing cause of his need for treatment, but rather that the disc degenerated over time, herniated spontaneously, and eventually became symptomatic. (Ex. 21-23). Under such circumstances, Dr. Buza provided a reasonable and persuasive explanation for his change of opinion, based on new information. *See Kelso v. City of Salem*, 87 Or App 630, 634 (1987) (where there was a reasonable explanation in the record for a physician’s change of opinion, that opinion was persuasive).

Claimant further contends that Dr. Buza ultimately reverted to his original opinion that claimant's work injury was the major contributing cause of his need for treatment/disability. Specifically, claimant points to Dr. Buza's testimony that, if the report of sciatica in Dr. Roberts's 2012 chart note was not by a physician, then he would revert back to his original opinion. (Ex. 21-39). However, Dr. Buza then explained that a medical doctor authored that chart note and, as such, it was a "report" by a physician. (Ex. 21-38). Furthermore, even if this portion of Dr. Buza's testimony was less than clear, other portions of his testimony clarify that he interpreted the previous medical records to support the existence of "leg pain" and L5 radiculopathy/nerve root involvement. (Ex. 21-12-14). Consequently, after analyzing Dr. Buza's testimony, we do not consider Dr. Buza's opinion as support for the compensability of claimant's low back injury.

In sum, based on the aforementioned reasoning, we are not persuaded that claimant's low back injury claim is compensable. Accordingly, we affirm.

#### ORDER

The ALJ's order dated January 25, 2016 is affirmed.

Entered at Salem, Oregon on September 6, 2016