



DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

MEMORANDUM

DATE: June 9, 2014

TO: MLAC

FROM: Carol A. Parks, Senior Assistant Attorney General
Business Activities Section *cap*

SUBJECT: *Brown v. SAIF Case Summary*
DOJ File No: 440420-GB0178-14

SHORT SUMMARY

The Court of Appeals reversed and remanded a case to the Workers' Compensation Board (Board) where the Board's order, 64 Van Natta 1100 (2012), had affirmed the ALJ's opinion, which affirmed a denial of the injured workers' combined-condition claim, based on the ALJ's determination that the injured worker's accepted lumbar strain was no longer the major contributing cause of the combined condition. The issue framed by the court related to the legal standard for denying a previously accepted combined condition. The court determined the question that needed to be answered was whether the insurer must prove that the "accepted condition" or the "accidental injury" was no longer the major contributing cause of the disability or need for treatment. Ultimately, the court determined that it was the latter; the insurer must prove that the original "accidental injury" was no longer the major contributing cause of the disability and need for treatment.

SUMMARY OF CASE

The Court of Appeals reversed and remanded to the Workers' Compensation Board (Board) a case where the Board's order, 64 Van Natta 1100 (2012), had affirmed the ALJ's opinion, which affirmed a denial of the injured workers' combined-condition claim, based on the ALJ's determination that the injured worker's accepted lumbar strain was no longer the major contributing cause of the combined condition. The issue framed by the court related to the legal standard for denying a previously accepted combined condition. The court determined the question that needed to be answered was whether the insurer must prove whether it was the "accepted condition" or the "accidental injury" that was no longer the major contributing cause of the disability or need for treatment.

Based on ORS 656.005(7)(a),¹ the definition of a compensable claim, the court reasoned that the definition of a compensable injury is “injury-incident focused,” which requires a determination that there is an “injury incident that caused disability or requirement for treatment.” Pursuant to ORS 656.005(7)(a)(B), the court acknowledged that there is a limitation in that when an “otherwise compensable injury” combines with a preexisting condition to “cause or prolong” disability or the need for treatment, the “combined condition” is compensable only if and so long as the “otherwise compensable injury” is the major contributing cause of the disability or need for treatment. In its decision, the court summarized the parties positions as follows: 1) the injured worker argued that in order to deny the combined condition, the insurer was required to prove that the “accidental injury” was no longer the major contributing cause of the combined condition; and 2) the insurer argued that once it defines the “accepted condition,” it can sustain its burden of proof to deny the combined condition by showing that the specific accepted condition is no longer the major contributing cause of the combined condition.

The court reasoned that the compensability of a combined condition is dependent on its relationship to the “otherwise compensable injury” because there is no express statutory provision linking the compensability of the combined condition to the “accepted condition.” Additionally, the definition of “compensable injury” does not make it dependent on the insurer’s acceptance of particular conditions. The court also reviewed the relevant legislative history and determined that when the legislature enacted legislation requiring the listing of accepted conditions and requesting acceptance of new or omitted conditions, it did not intend to modify the incident-based definition of “compensable injury.” In fact, the court concluded that the legislative history established that an insurer’s/employer’s obligation to specify the accepted conditions was not intended to have a negative impact on the injured worker’s right to benefits resulting from the compensable injury.

The court’s review of the legislative history led the court to conclude that the legislature did not intend to change the incident-based focus of the definition of “compensable injury” in ORS 656.005(7)(a), and specifically, the legislature did not mean to equate a “compensable injury” with an “accepted condition.” Thus, the court held that the “otherwise compensable injury” used in relationship to combined or consequential conditions is the work injury resulting from the work accident that caused the disability or need for treatment. As a result, the question that must be answered is whether claimant’s work-related injury incident is the major cause of the combined condition.

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¹ A “compensable injury” is an accidental injury, or accidental injury to prosthetic appliances, arising out of and in the course of employment requiring medical services or resulting in disability or death; an injury is accidental if the result is an accident, whether or not due to accidental means, if it is established by medical evidence supported by objective findings ***.