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BOARD NEWS

Board Meeting: November 17, 2015 - "Attorney Fee-Related" Rule Concepts

The Board has scheduled a public meeting to discuss several "attorney fee-related" rule concepts. Those concepts have been presented by claimants' attorneys (Chris Moore and Julene Quinn) and concern the following matters: (1) including legal assistant's services in a determination of a reasonable attorney fee award under OAR 438-015-0010(4); (2) providing for a specified time period for the payment of a "carrier-paid" attorney fee award; and (3) establishing a voluntary "attorney fee" procedure, which could be initiated effective upon a successful ALJ/Board decision on the "merits" of the claim. The Members also intend to discuss the designs of the process to be followed in conducting a review of the Board's "out-of-compensation" attorney fee rules.

The meeting will be held at the Board's Salem office (2601 25th St. SE, Ste. 150, Salem, OR 97302) on November 17, 2015, at 10 a.m.

Rulemaking Hearing: December 4, 2015 - Proposed Amendments Addressing HB 2764 (Mostly Division 015 Attorney Fee Rules)

At its September 29 meeting, the Members proposed amendments to its Division 015 (Attorney Fee) rules and OAR 438-005-0035(1) (Board Policy) to apply statutory amendments arising from HB 2764 (2015). The Members took this action after considering a report from its Advisory Committee, which was appointed to consider the statutory amendments and to recommend rule amendments. (The committee members were Nelson Hall, Kathryn Olney, Bill Replogle, and Betsy Wosko. Presiding ALJ Joy Dougherty served as the facilitator for the committee. The Members wish to extend their grateful appreciation to the committee for their valuable assistance in this important matter.)

Notice of this rulemaking action has been filed with the Secretary of State's office. Electronic copies of these rulemaking materials are available on WCB's website at www.wcb.oregon.gov (under the category "Laws & Rules"). Copies have also been distributed to parties and practitioners on WCB's mailing list.

A rulemaking hearing for these proposed rule amendments has been scheduled for December 4, 2015, at 10 a.m. at the Board's Salem office (2601 25th St. SE, Ste. 150, Salem, OR 97302-1280). Any written comments

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submitted in advance of the hearing may be directed to Debra Young, the rulemaking hearing officer. Those comments may be mailed to the above address, faxed to 503-373-1684, e-mailed to rulecomments.wcb@oregon.gov or hand-delivered to a permanently staffed Board office (Salem, Portland, Eugene, Medford).

The Members have also set a Board meeting date of December 10, 2015, to consider the written/oral comments submitted into the December 4 rulemaking record.

CASE NOTES

CDA: "Preferred Worker Status" - Not Waivable - "622(4)(b)"

Jeffrey T. Knopf, 67 Van Natta 1903 (October 28, 2015). Applying ORS 656.236(1), and ORS 656.622(4)(b), the Board approved a Claim Disposition Agreement (CDA), which provided for a full release of all "non-medical service-related" benefits for claimant's compensable injury because the "summary page" of the agreement clarified that he retained his "eligibility for preferred worker status."

Citing ORS 656.622(4)(b), the Board stated that a CDA is prohibited from releasing a claimant's eligibility for preferred worker status. Addressing the proposed CDA, the Board acknowledged that a provision in the CDA (which purported to fully release all of claimant's "non-medical service-related" benefits) did not expressly retain his "eligibility for preferred worker status." Nonetheless, reasoning that the "summary page" of the CDA included a statement clarifying that claimant's "preferred worker status eligibility" was preserved, the Board interpreted the agreement consistent with the "summary page" and ORS 656.622(4)(b).

Based on the aforementioned interpretation, the Board approved the proposed CDA. In reaching its conclusion, the Board noted that an updated CDA form had been posted on its website, which contained provisions addressing this "eligibility for preferred worker status" provision.

Extent: Impairment Findings - "Significant Limitation"/"Repetitive Use" - "035-0019(1)(i)" - "Meaningful" "Important" - Higher Threshold Than Partial Loss of Inability to Repetitively Use Body Part

Angelica M. Spurger, 67 Van Natta 1798 (October 6, 2015). On remand from the Court of Appeals, *Spurger v. SAIF*, 266 Or App 183 (2014), applying OAR 436-035-0019(1)(i), the Board held that claimant was not entitled

Under "622(4)(b)," a CDA is prohibited from releasing a claimant's "preferred worker status" eligibility.

to a “chronic condition” impairment value for a hip condition because her “difficulty” with repetitive actions was insufficient to establish a “significant limitation” of her ability to repetitively use her hip. In remanding to the Board the court had found nothing in the Board’s decision indicating why it had considered claimant’s limitations not “significant” enough to qualify for a “chronic condition” value under OAR 436-035-0019(1)(i).

Plain and ordinary meaning of “significantly limited” denoted a limitation that “meaningful” or “important” (or a synonymous term).

On remand, the Board continued to find the record insufficient to support a “chronic condition” impairment value. Considering the dictionary definition of the term “significant,” and consistent with the rationale in *Godinez v. SAIF*, 269 Or App 578 (2015), the Board concluded that the plain and ordinary meaning of “significantly limited” denoted a limitation that was “meaningful” or “important” (or a synonymous term). The Board reasoned that this meaning was consistent with the intentions expressed by the Workers’ Compensation Division (WCD) regarding the applicable version of the “chronic condition” rule, which was designed to establish a “higher threshold” for receiving an award of impairment than merely a partial loss of ability to repetitively use a body part (an interpretation that had been endorsed in previous case law such as *Donald E. Lowry*, 42 Van Natta 1452, 1453 (1993)).

“Difficulty” with squatting, walking, standing activities not considered meaningful/important limitation in repetitive use of hip.

Turning to the case at hand, the Board concluded that a physician’s statement (ratified by the attending physician) that claimant would have “difficulty with repetitive squatting, walking long distances and static standing for long periods of time” did not represent a meaningful or important limitation in the repetitive use of her hip. The Board further reasoned that the physician’s modification of claimant’s work schedule (to 2 days on, followed by 1 day off), did not meet the requirement for a “chronic condition” award under the rule because the record did not establish that such a “limitation” was meant to be a limitation in the repetitive use of the hip.

Under such circumstances, the Board determined that claimant had not established an error in the reconsideration record regarding WCD’s decision not to award a “chronic condition” impairment value. *Marvin Wood Products v. Callow*, 171 Or App 175, 183 (2000). Accordingly, the Board declined to grant such an award.

Because WCD’s “Industry Notice” issued after NOC, the “Notice” had no bearing in present case.

In reaching its conclusion, the Board acknowledged the December 22, 2014 issuance of WCD’s “Industry Notice,” which interpreted the relevant inquiry under OAR 436-035-0019(1) as whether the worker was “unable to repetitively use the body part for more than two-thirds of a period of time.” Nonetheless, because WCD’s notice had issued after the Notice of Closure in the present case, the Board determined that the notice had no bearing on its decision.

Dissent considered “difficulty” with repetitive motions, in addition to lifting restrictions, sufficient to meet “significant limitation” requirement.

Member Lanning dissented. Although agreeing with the majority’s interpretation of “significant,” Lanning was persuaded that claimant’s “difficulty” with repetitive motions, in addition to her lifting restrictions, established that her limitations were meaningful and likely to have influence or effect on the repetitive use of her left hip. Under such circumstances, Member Lanning asserted that a “chronic condition” award was warranted.

Extent: Impairment Findings - “Chronic Condition” Award - “Significant Limitation/ Repetitive Use” - Meaningful/Important” - “Higher Threshold” Than “Partial Loss of Use”

Standards: Work Disability - “BFC” - “Specific Job Analysis” Outweighs “DOT” Code - More Accurate Description of Strength Requirements of “At-Injury” Job

Donald V. Burch, 67 Van Natta 1866 (October 15, 2015). Applying former OAR 436-035-0019(1), the Board held that claimant was not entitled to a “chronic condition” impairment value for his compensable cervical condition because his inability to perform overhead work and 25-pound “moving” restriction did not constitute a significant limitation in the repetitive use of his cervical spine. Following claimant’s compensable cervical strain/disc injury (which resulted in surgery), his attending physician concurred with a physical evaluation that limited his ability to frequently move more than 25 pounds, with no working with his arms overhead. After a Notice of Closure (NOC) awarded 8 percent permanent impairment, claimant requested reconsideration. When a medical arbiter concluded that claimant was not significantly limited in the repetitive use of his cervical spine, an Order on Reconsideration increased the NOC’s impairment award (but did not grant a “chronic condition” value). Claimant requested a hearing, contending that his “attending physician-ratified” physical findings established his entitlement to a “chronic condition” impairment value.

The Board disagreed with claimant’s contention. Citing the former version of OAR 436-035-0019(1) (which was applicable when the May 2014 NOC issued), the Board stated that a “chronic condition” impairment value concerns a determination as to whether the loss of function to a body part created a significant limitation to the ability to use the affected body part repetitively. See *Gonzalez v. SAIF*, 183 Or App 183, 190 (2002). Relying on *Angelica M. Spurger*, 67 Van Natta 1798, 1804 (2015), the Board reiterated that “the plain and ordinary meaning of ‘significantly limited’ denotes a limitation that is meaningful or important.” Based on the history regarding the relevant version of the “chronic condition” rule, the Board repeated that the rule was designed to establish a “higher threshold” for receiving an award of impairment than merely a partial loss of ability to repetitively use a body part.

Based on its “history,” “chronic condition” rule was designed to establish a “higher threshold” for “significant limitation” than merely partial loss of ability to repetitively use body part.

Turning to the case at hand, the Board assumed for the sake of argument that the “attending physician-ratified” findings were the most accurate. See OAR 436-035-0007(5); *Hicks v. SAIF*, 194 Or App 655, *adh’d to as modified*

on recon, 196 Or App 146, 152 (2004). Although acknowledging the “attending physician-ratified” restrictions, the Board reasoned that they were “qualified” in that they referred to “overhead” work limitations. As such, the Board determined that the restrictions were insufficient to establish entitlement to a “chronic condition” impairment value. See *Johnathan M. Myers*, 65 Van Natta 1174, 1178 (2013); *Ryan T. Grassman*, 62 Van Natta 270, 273 (2010).

Furthermore, the Board concluded that the “attending physician-ratified” restrictions did not constitute a “significant” (meaningful or important) limitation. See *Spurger*, 67 Van Natta at 1804-05. In reaching its conclusion, the Board recognized that the Workers’ Compensation Division had issued an “Industry Notice,” which indicated that “significant limitation” constitutes an inability to repetitively use the body part more than 2/3 of a period of time. Nonetheless, noting that the NOC in the present case had issued in May 2014, the Board reasoned that the “Industry Notice” had no bearing on the case.

Finally, the Board modified the Order on Reconsideration’s “work disability” award, which had been based on a base functional capacity (“BFC”) value of “light.” Noting that the reconsideration order had relied on a Dictionary of Occupational Title (“DOT”) strength category for a “Cable Splicer,” the Board found that a “specific job analysis” for claimant’s “at-injury” job had adjusted the job’s physical demands to a “heavy” strength category. Under such circumstances, the Board substituted the “specific job analysis” for the DOT description because the analysis most accurately described claimant’s “at-injury” job. See OAR 436-035-0012(9)(a).

“Specific Job Analysis” used for “BFC” strength category, because the “analysis” (rather than DOT code) most accurately described “at-injury” job.

Responsibility: Claimant Proves “Actual Causation” Against Earlier Carrier - Established “Presumptive Responsibility” For “LIER” Purposes

Responsibility: Attorney Fee - “382(2)” Fee Payable by Appealing Carrier Who Contested Compensability

Damon E. Smith, 67 Van Natta 1910 (October 28, 2015). On reconsideration of its initial opinion, 67 Van Natta 1763 (2015), the Board continued to find an earlier employer responsible for an occupational disease claim for a shoulder condition because claimant had proven “actual causation” against that earlier employer (which established its presumptive responsibility) and the record did not establish that his employment activities with a later employer independently contributed to a pathological worsening of his underlying condition. Noting that claimant did not seek treatment for his shoulder condition until he was working for the second employer, the first employer contended that presumptive responsibility rested with the second employer. Therefore, asserting that the second employer could not prove that it was impossible

Because claimant did not rely on LIER to prove compensability of OD claim (but rather proved “actual causation”) presumptive responsibility for the claim rests with that employer for defensive use of LIER.

for claimant’s employment with the second employer to have contributed to the claimed condition or that the first employment was the sole cause of the condition, the first employer argued that responsibility remained with the second employer. See *Willamette Industries, Inc. v. Titus*, 151 Or App 76, 82, n 4 (1997).

The Board disagreed with the first employer’s contention. Citing *Roseburg Forest Products v. Long*, 325 Or 305, 313 (1997), the Board stated that, when a claimant has successfully invoked the “last injurious exposure rule” (LIER) to prove compensability, presumptive responsibility lies with the last employer before the onset of disability unless that employer can establish that conditions at its workplace could not possibly have caused the disability or that an earlier employment was the sole cause of the condition. However, where a claimant does not rely on LIER and, instead, proves “actual causation” (*i.e.*, that conditions at a specific place of employment were the major contributing cause of the claimed occupational disease), the Board noted that the “impossibility/sole cause” responsibility defense of LIER was not applicable. *SAIF v. Hoffman*, 193 Or App 750, 753 (2004); *Spurlock v. International Paper Co.*, 89 Or App 461, 464-65 (1988). Instead, the Board explained that the earlier employer may invoke LIER defensively to attempt to shift responsibility to a later employer by proving that the later employment independently contributed to the occupational disease (*i.e.*, actually contributed to a worsening of the underlying condition). *Id.*

Turning to the case at hand, the Board continued to find that, at best, the physicians’ opinions indicated that claimant’s employment with the second employer may have caused some symptoms or possibly contributed to his underlying shoulder pathology. Considering such evidence insufficient to persuasively establish a pathological worsening of claimant’s underlying condition by a reasonable medical probability, the Board determined that responsibility for the claimed shoulder condition remained with the first employer. See *Spurlock*, 89 Or App at 465; *Gormley v. SAIF*, 52 Or App 1055, 1060 (1981).

Because second employer (rather than ultimately responsible first employer) contested compensability in successfully appealing ALJ’s responsibility decision, that carrier was held responsible for a “382(2)” fee on Board review.

Finally, addressing claimant’s counsel’s entitlement to attorney fee awards under ORS 656.386(1) and ORS 656.308(2)(d), the Board apportioned the award in the following manner. Because the first employer had contested compensability of the claim at the hearing level and the ALJ’s determination that the second employer was responsible for the claim had been reversed, the Board held that the first employer was responsible for the ALJ’s attorney fee award under ORS 656.386(1). Furthermore, noting that claimant had successfully contended on review that the first employer was responsible for the claim, the Board awarded claimant’s counsel an attorney fee under ORS 656.308(2)(d). Finally, because the second employer had continued to contest the compensability of the claim on review (while the first employer only challenged responsibility), the Board determined that claimant’s counsel was also entitled to an attorney fee award under ORS 656.382(2), payable by the second employer (who had requested Board review). See *Cigna Insurance Companies v. Crawford & Company*, 104 Or App 329 (1990); *Stuart C. Yekel*, 49 Van Natta 1448, 1452 (1997).

Standards: Work Disability - Release to Regular Work - “214(2)(a),” “726(4)(f)(E)”

Jorge O. Benites, 67 Van Natta 1886 (October 21, 2015). Applying ORS 656.214(1)(d), (2)(a), and ORS 656.726(4)(f)(E), the Board held that claimant was not entitled to a “work disability” award for his shoulder condition because his attending physician’s overhead lifting restrictions did not preclude him from returning to his “at-injury” job as a truck driver. Following claimant’s compensable shoulder injury, his attending physician issued a “full release” to claimant’s truck driving job, subject to a 20-pound overhead lifting restriction. Eventually, the attending physician released claimant to loading/unloading cargo weighing up to 50 pounds. Based on the attending physician’s approval of a job analysis of claimant’s “at-injury” job (as within his physical capabilities), a Notice of Closure did not award work disability. Claimant requested reconsideration, submitting his affidavit stating that he was no longer able to unload his truck. In response, the carrier filed the employer’s affidavit, which stated that claimant’s restrictions did not exceed the physical demands of his truck driving job. When an Order on Reconsideration affirmed the closure notice, claimant requested a hearing.

The Board found that claimant had been released to his regular work and, as such, was not entitled to a work disability award. Citing ORS 656.214(2)(a), and ORS 656.726(4)(f)(E), the Board stated that a claimant is not entitled to work disability if he returns, or is released to return, to his regular work by his attending physician. Relying on ORS 656.214(1)(d), and OAR 436-035-0005(14), the Board noted that “regular work” means “the job the worker held at injury.”

Turning to the case at hand, the Board found that the attending physician had issued a “full release” to claimant’s truck driving position, subject to lifting restrictions. Nonetheless, based on the employer’s job analysis (which the attending physician had approved) and the employer’s affidavit, the Board determined that claimant’s lifting restrictions were not exceeded by the duties of his “at-injury” job.

In reaching its conclusion, the Board acknowledged that the attending physician had also stated that claimant’s lifting restrictions precluded him from “unloading” the truck. However, reasoning that the physician’s opinion was based on an assumption that such “unloading” activities would exceed his physical limitations (which was an assumption not supported by the record), the Board concluded that the record established that claimant had been released to “regular work” by his attending physician. In addition, the Board noted that claimant’s affidavit (which stated that he could no longer “unload” trucks) did not assert that such activities required lifting more than his physical restrictions.

Member Lanning dissented. Contending that claimant’s affidavit was uncontroverted, Lanning was persuaded that he was unable to unload his truck and that the employer had hired others to help him. Because the attending physician had confirmed that claimant’s physical limitations had precluded him from performing these loading/unloading activities, Member Lanning asserted that claimant was entitled to a work disability award.

Based on “AP’s” approval of “at-injury” job analysis and “full release” (subject to lifting restriction), as well as employer’s affidavit, Board found that claimant’s restrictions were not exceeded by job duties.

Based on claimant’s affidavit concerning limitations and AP’s lifting restrictions, dissent considered work disability award warranted.

TTD: “268(4)(c)” - Termination of TTD Benefits Not Authorized - Claimant’s Refusal of “Modified Job” Offer Justified - Not at “Site” Consistent With “Pre-Injury” Employment Arrangement

Donald E. Fermanian, 67 Van Natta 1834 (October 13, 2015). Applying ORS 656.268(4)(c)(B), the Board held that a carrier was not authorized to terminate claimant’s (a long haul truck driver’s) temporary total disability (TTD) benefits after he did not begin an “attending physician-approved” modified job that the employer had offered because the site of the modified job (more than 50 miles from the site of his injury and his residence) was not consistent with his “pre-injury” employment arrangement. Following his compensable injury in Arizona, claimant (a California resident) was restricted to “desk or sitting work only.” After claimant did not begin an “attending physician-approved” modified job at his employer’s home office in Oregon (some 900 miles from his home), the carrier terminated his TTD benefits. Claimant requested a hearing, contending that ORS 656.268(4)(c) allowed him to refuse the modified job offer without the termination of his TTD benefits.

The Board agreed with claimant’s contention. Citing ORS 656.268(4)(c)(B), the Board stated that a worker may refuse modified employment without the termination of TTD benefits if the work site is more than 50 miles from the place of injury and at least 50 miles from the worker’s residence, and the parties had not intended, at the time of hire or as established by the pattern of employment prior to the injury, “that the employer had multiple or mobile work sites and the worker could be assigned to any such site.”

After examining the legislative history regarding ORS 656.268(4)(c)(B), the Board considered the “guiding principle” was to allow an employer to offer modified work at a site that was “within what was previously arranged, agreed, [or] discussed as part of their arrangement,” and also to allow a worker to refuse an offer of modified work that was not “consistent with what the worker agreed to, was subject to or had been engaging in” before the injury. Based on this “guiding principle,” the Board concluded that the modified employment assigned at “any such site” means an assignment that is consistent with the “pre-injury” employment arrangement.

Turning to the case at hand, the Board found that claimant’s job involved driving an “employer-supplied” truck to transport cargo between various locations in western states, which would be assigned by the employer and occasionally included locations around the employer’s office. The Board further noted that, although the employer could have required claimant to go to the office on a “pre-injury” work assignment, he had neither worked in, nor visited, the office.

“Modified Job” assignment for purposes of “268(4)(c)(B)” must be at a work site consistent with “pre-injury” employment arrangement.

Because claimant “pre-injury” truck-driving employment did not involve assignments at employer’s “home” office (which was more than 50 miles from the site of his injury and residence), carrier was not authorized to terminate TTD benefits when he refused modified job offer.

Under such circumstances, the Board concluded that it was the “pre-injury” intent of the parties that the employer had “multiple or mobile work sites.” However, the Board was not persuaded that claimant’s “pre-injury” employment included working at the employer’s office (which was more than 50 miles from claimant’s injury site, as well as his residence).

Consequently, because claimant’s “office” assignment was not consistent with the parties’ “pre-injury” intent regarding work site assignments, the Board concluded that claimant was entitled to refuse the modified job offer. Accordingly, the Board held that the carrier was not authorized to terminate claimant’s TTD benefits.

TTD: Release to “Regular Work” - “At Injury” Duties - “Recurring/Customary” Basis

Sandra L. Read, 67 Van Natta 1905 (October 28, 2015). The Board held that claimant was not entitled to reinstatement of her temporary total disability (TTD) benefits because she was unable to establish that physical restrictions placed on her activities by her attending physician (when releasing her to regular work) precluded her from performing her “at-injury” job as a school teacher. Following claimant’s compensable hamstring injury, her attending physician released her to her regular school teaching duties, provided that she was able to sit for 15 minutes every hour and did not engage in physical altercations. After the carrier terminated claimant’s temporary disability (TTD) benefits, claimant requested a hearing, contending that she had not been released to her regular work because her “at-injury” job required her to stand for excessive periods and intervene in physical interventions.

“Regular Work” consists of work activities performed on “recurring/customary basis.”

The Board found that claimant had not met her burden of proving her entitlement to the additional TTD compensation. See ORS 656.266(1). Citing *Thrifty Payless, Inc. v. Cole*, 247 Or App 232, 237 (2011), the Board stated that “regular work” consists of the “paid labor, task, duty, role, or function that the worker performs for an employer on a recurring or customary basis.”

Injury-related modification in the manner of performing work activities did not necessarily establish an inability to perform duties of the “at-injury” job.

Turning to the case at hand, the Board acknowledged claimant’s assertions that she would not be able to sit down during one-hour “hall duty” or “lunch duty” assignments. Nonetheless, noting her concession that she could move a chair into the hall and “possibly” could have sat during her lunch duty, the Board was not persuaded (particularly considering her job description and her attending physician’s release to regular work) that claimant’s restrictions precluded her from performing her “at-injury” work duties. In reaching its conclusion, the Board reiterated that an injury-related modification in the manner of performing work activities did not necessarily establish an inability to perform the duties of the “at-injury” job. *Geraldine R. Carter*, 62 Van Natta 1706 (2010); *Jessica A. Phares*, 60 Van Natta 3082 (2008).

The Board further recognized claimant’s contention that she had been involved in three or four physical interventions in the five years preceding her compensable injury. Nevertheless, in light of the employer’s job description and

Sporadic “physical interventions” over several years of performing work activities were not considered sufficient to establish “recurring/customary” basis.

Task is to determine whether “the otherwise compensable injury” (i.e., the work-related injury incident), rather than the accepted condition, ceased to be the major contributing cause of disability/ need for treatment of accepted combined condition.

her attending physician’s release to her regular work, the Board was not persuaded that claimant’s sporadic “physical interventions” were sufficient to establish that such activities happened on a recurring or customary basis and, as such, did not constitute her regular work activities.

APPELLATE DECISIONS COURT OF APPEALS

Combined Condition: “Ceases” Denial - “262(6)(c)” - “Otherwise Compensable Injury” - “Work-Related Injury Incident”

Goodman v. SAIF, 274 Or App 316 (October 14, 2015). The court reversed the Board’s order in *Cobey Goodman*, 65 Van Natta 1598 (2013) that had upheld a carrier’s “ceases” denial of claimant’s combined condition under ORS 656.262(6)(c), based on a finding that his “accepted” wrist contusion and strain no longer remained the major contributing cause of his disability/need for treatment of his combined wrist condition. Citing *Brown v. SAIF*, 262 Or App 640, 656, *rev allowed*, 356 Or 397 (2014), the court reiterated that, in evaluating a combined condition denial, the “question is whether claimant’s work-related injury incident is the major contributing cause of the combined condition.”

Applying the *Brown* rationale, the court identified the Board’s task as determining whether the otherwise compensable injury (as distinguished from the accepted conditions) had ceased to be the major contributing cause of the worker’s disability or need for treatment for an accepted combined condition. Reasoning that the Board had considered only whether claimant’s accepted conditions remained the major contributing cause of his combined condition (which was not the correct legal test), the court remanded for the Board to consider whether “claimant’s work-related injury incident” continued to be the major contributing cause of the combined condition.