Workers' Compensation Board

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BOARD NEWS

Salem and Portland Offices Security Update

The Salem office reception and security checkpoint have been moved to the northeast entrance of the building, to the left of the main entrance. Once inside, there are signs to direct the public to the first door on the right. Please ring the doorbell to be let in by security and to be screened. All visitors will be screened by the security guard with a wand scan and bag search. Once screened, visitors will sign in and either be escorted to a hearing room or, if a witness, be placed in Counsel Room 4 next to the new reception area.

If visitors need to leave for any reason (e.g., to use bathroom facilities in the main lobby), they will need to be screened again upon reentry. The area connecting both hearing room hallways and reception will be restricted.

Scheduled completion for construction is the end of June. The Board will provide updates as the work concludes.

Additionally, the Portland reception area will be moved back to the main lobby in mid-May.

Thank you for your patience and consideration through this process.

CASE NOTES

ISSUE PRECLUSION: Issue Preclusion Did Not Apply to Prior Order on Reconsideration That Rescinded Notice of Closure as Premature

TTD: Claimant Entitled to Additional Temporary Disability Benefits Based on Attending Physician's Authorizations

PENALTIES: Carrier Had Legitimate Doubt on Obligation to Pay Temporary Disability Benefits Based on Evidence Identifying Different Attending Physician

Laura Ayala, 77 Van Natta 185 (April 21, 2025). Citing ORS 656.005(12)(b) and ORS 656.262(4)(g), the Board held that the claimant was entitled to additional temporary disability benefits based on its determination that a physician who treated claimant's compensable injury was the attending physician and authorized temporary disability benefits for that period. In reaching that conclusion, the Board found that issue preclusion did not apply to the attending physician/temporary disability issue. Referencing *Kiltow v. SAIF*, 271

Or App 471 (2015), the Board explained that, although a prior Order on Reconsideration found that a different physician was the claimant's attending physician for a certain period, the issue preclusion doctrine did not apply to the reconsideration order because the order had rescinded the closure notice as premature and thus, did not bar another action or proceeding on the same transactional claim.

Finally, the Board concluded that, although the claimant was entitled to additional temporary disability benefits, the carrier had a legitimate doubt as to its obligation to pay those benefits because the record included evidence of a different physician treating the claimant's compensable injury. Therefore, the Board found that the carrier's actions were not unreasonable and declined to award penalties.

WORKER-REQUESTED MEDICAL EXAMINATION: Carrier's Medical Services Denial Was Based on IME for Purposes of WRME Entitlement – WRME Applied to Medical Services Denial and Eligibility Met

Cheri L. Goss, 77 Van Natta 159 (April 9, 2025). Analyzing ORS 656.325(1)(e), the Board reversed an Administrative Law Judge's (ALJ) order that denied a worker-requested medical exam (WRME). The Board determined that whether the claimant's hearing request on a medical services denial constitutes a hearing request on "a denial of compensability as required by ORS 656.319(1)(a)" entitling the claimant to a WRME, was a matter of statutory construction of ORS 656.325(1)(e).

First, the Board stated that ORS 656.319(1)(a) described a timely request for hearing as an "objection by a claimant to [a] denial of a claim for compensation under ORS 656.262" that was filed within 60 days of the denial. It noted that ORS 656.262(9) stated that the carrier must provide written notice of the denial if it "denies a claim for compensation." Moreover, the Board indicated that ORS 656.005(6) defines a "claim" as a "written request for compensation from a subject worker or someone on the worker's behalf, or any compensable injury of which a subject employer has notice or knowledge," and that ORS 656.005(8) provides the definition of compensation, which includes "medical services."

Applying this information, the Board concluded that, for purposes of ORS 656.325(1)(e), "a denial of compensability" included denials of medical services. Under such circumstances, the Board determined that the claimant was entitled to a WRME based on the medical services denial.

A dissenting opinion agreed with the ALJ that there is no entitlement to a WRME for medical services disputes because ORS 656.325(1)(e) makes no reference to ORS 656.245(1)(a), the statute governing medical services claims. Moreover, the dissent disagreed with the majority that "compensability" and "compensation" are synonymous. Reasoning that claimant's request for

administrative review of the disapproval of the proposed surgery was not a denial of compensability, the dissent would have found that the WRME eligibility criteria were not met.

NOTICE: Unnecessary to Resolve Timely Notice Question Where Compensability Was Not Established

Rodolofo Martinez, 77 Van Natta 179 (April 16, 2025). Citing ORS 656.265(5), *John Murray*, 70 Van Natta 667 (2018), and *Jackie S. Jacobson*, 63 Van Natta 865 (2011), the Board determined that it was unnecessary to address whether the claimant provided timely notice of his work injury because the issue was not jurisdictional and the record did not establish compensability. In reaching its compensability determination, the Board noted that the only physician who offered a causation opinion opined that the conditions and treatment were unrelated to the work event. *See* ORS 656.005(7)(a); ORS 656.266(1).

APPELLATE DECISIONS
COURT OF APPEALS

COMBINED CONDITION: Record Did Not Establish That Work Injury Was Major Contributing Cause of Pathological Worsening of Preexisting Condition

Barnes v. Cache Valley Electric, 339 Or App 371 (April 2, 2025). Reviewing the Board's order for substantial evidence and errors of law, the Court of Appeals affirmed the Board's order in *Brian Barnes*, 75 Van Natta 282 (2023), that upheld the carrier's denial of the claimant's cervical spondylosis (a preexisting arthritic condition), upheld a "ceases" denial, and declined to award attorney fees.

The court disagreed with the claimant that, because the cervical sprain/strain injury made his preexisting spondylosis symptomatic and that those symptoms required treatment, the spondylosis was compensable, independent of its status as the preexisting component of the accepted combined condition. The court explained that the spondylosis could only be compensable if the work injury was the major contributing cause of its pathological worsening. ORS 656.225; *Schleiss v. SAIF*, 354 Or 637, 644 n 2 (2013). The court cited a lack of medical evidence that the workplace injury caused or was the major contributing cause of the preexisting spondylosis.

The claimant also alleged that the medical experts incorrectly compared the work accident, rather than the otherwise compensable cervical strain/sprain, and the preexisting spondylosis. As such, the claimant argued that it was legally insufficient for the Board to rely on their opinions when upholding the "ceases" denial. The court disagreed, stating that a reasonable reading of the medical evidence established that the accepted cervical strain/sprain ceased to be the major contributing cause of the claimant's need for treatment.

Finally, the court agreed with the Board that an attorney fee under ORS 656.386(1) was not due, concluding that the carrier's acceptance of the spondylosis as the preexisting component of the combined condition was not an outright acceptance of that condition (but rather limited to the combined condition) and did not constitute a rescission of its denial of the same condition. *See Multifoods Specialty Distribution v. McAtee*, 164 Or App 654 (1999), ***aff'd***, 333 Or 629 (2002). The court, therefore, affirmed the Board's order.

EQUITABLE ESTOPPEL: Employer Representative Lacked Knowledge for Equitable Estoppel to Apply

Geoghegan v. SAIF, 339 Or App 802 (April 16, 2025). In a nonprecedential memorandum opinion under ORAP 10.30, the court affirmed a Board order that upheld the carrier's denial of the claimant's new or omitted medical condition claim for a compression fracture. On appeal, the claimant argued that the Board erred in concluding that equitable estoppel did not apply. The court explained that, in order to establish equitable estoppel, the claimant was required to prove that the employer representative accepted his claim "with knowledge of the facts," among other requirements. *Brockway v. Allstate Property and Casualty Ins. Co.*, 284 Or App 83, 90. However, in reviewing the record, the court determined that there was insufficient evidence that the employer representative had such knowledge and, therefore, equitable estoppel did not apply.

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