
In the Matter of the Compensation of
JOHN W. STEVENS, JR., Claimant
WCB Case No. 01-09567
ORDER ON REVIEW
Philip H Garrow, Claimant Attorneys
Bruce A Bornholdt, SAIF Legal, Defense Attorneys

Reviewing Panel: Members Lowell, Bock, and Biehl. Member Biehl chose not to sign the order.

Claimant requests review of Administrative Law Judge (ALJ) Martha Brown's order that upheld the SAIF Corporation's denials of claimant's combined low back condition. On review, the issue is compensability.

We adopt and affirm the ALJ's order with the following supplementation.

SAIF accepted claimant's July 17, 2000 injury claim for a lumbar sprain and later amended its acceptance to include, effective the date of injury, a "combined condition" involving the sprain injury and claimant's preexisting conditions of L5-S1 spondylolisthesis with L4-5 degenerative disc disease and L4-5 facet degenerative joint disease. (Ex. 44). At the same time, SAIF denied claimant's "combined condition" on the ground that claimant's accepted injury was no longer the major contributing cause of his combined condition. (Ex. 44).

Claimant later requested acceptance of the following conditions: lumbar sprain including injury to L3-4; lumbar sprain combined with preexisting degenerative condition at L3-4; and injury to L3-4 motion segment. (Ex. 46). SAIF issued a denial of these conditions as well and claimant requested a hearing.

The ALJ upheld SAIF's denials, concluding that claimant failed to prove that his compensable injury was the major contributing cause of claimant's need for treatment for a combined condition. The ALJ reasoned that Dr. Belza's opinion supporting the claim was inadequately reasoned to carry claimant's burden. We agree with the ALJ's decision.

The parties agree that the issue on review is the compensability of claimant's L3-4 condition. The record establishes, and the parties do not dispute, that claimant's L3-4 condition was a combined condition involving his compensable lumbar sprain and his preexisting lumbar disc disease and a preexisting fusion

condition. For claimant to prove his claim for a combined condition, he must show that his work injury was the major contributing cause of his disability and/or need for treatment for the combined condition. *See* ORS 656.005(7)(a)(B).

Where, as here, the causation issue involves complex medical questions, we necessarily rely on expert medical opinions. *Uris v. Compensation Dept.*, 247 Or 420 (1967); *Barnett v. SAIF*, 122 Or App 279 (1993). This case is complex because claimant had multiple possible causes of his combined low back condition.

We agree with the ALJ that Dr. Belza's causation opinion is insufficient to establish that claimant's work injury was the major contributing cause of his need for medical treatment for his "combined" L3-4 disc condition. Dr. Belza primarily relied on the fact that claimant was able to return to heavy work for numerous years following the 1994 fusion surgery without seeking medical treatment. (Exs. 13, 19). However, claimant reported to Dr. Becker that he had "intermittent problems" after the surgery. (Ex. 35-2). This report is consistent with claimant's testimony that he experienced some morning stiffness in his back since his fusion. (Tr. 13). Therefore, claimant's history to Dr. Becker and his testimony contradict Dr. Belza's report that claimant had "no problems whatsoever" with his back until his injury in July 2000. (Ex. 38).

In any event, claimant's ability to perform heavy work (even if relatively pain free) would not be inconsistent with Dr. Schilperoort's and Dr. Eckman's theory that degenerative changes attributable to the noncompensable fusion surgery were the major contributing cause of claimant's current condition. (Ex. 43). In this regard, we agree with the ALJ that Drs. Schilperoort and Eckman provided the most persuasive expert medical opinion regarding causation. They attributed claimant's disability and need for treatment to degenerative changes, rather than the July 2000 work incident.¹ (Ex. 43).

The doctors explained that as a result of claimant's preexisting fusion, an additional load was shifted to the motion segment immediately above the fusion level (L3-4). The doctors further explained that, as a result of the L4 to sacrum arthrodesis, the L3-4 became a "target site" for degenerative changes. According

¹ Drs. Schilperoort and Eckman made an addition error in their report, referring to claimant's auto accident as occurring "ten years ago" when it in fact occurred eight years ago. (Ex. 43-5). However, we do not consider this error fatal to their opinion (*i.e.*, their opinion was not based on the number of years between claimant's auto accident and his current complaints, rather it was based on years since fusion surgery) and find their reasoning concerning the sequelae of a fusion persuasive.

to the doctors, it generally takes about five years following an arthrodesis before the next motion segment above the fusion begins to develop degenerative changes, which would be consistent with claimant's history. (Ex. 43).

Claimant argues that Drs. Schilperoort and Eckman attributed claimant's condition to degenerative problems at the L3-4 that were not documented by any objective medical evidence. Claimant asserts that Drs. Schilperoort and Eckman suggested, without reference to MRI scans or x-rays, that the L3-4 became symptomatic because of degenerative changes at the L3-4 itself. We do not find claimant's arguments persuasive.

While Drs. Schilperoort and Eckman opined that claimant sustained "symptomatic exacerbation of . . . L3-4 degenerative changes," they explained that the basis for this opinion was the underlying degenerative changes from the prior L4 to sacrum fusion. As they described, the "L3-4 becomes a target site for degenerative changes" and it takes "about five years following an arthrodesis before the next motion segment above that spinal arthrodesis begins to develop degenerative changes and perhaps showing symptoms." (Ex. 43-9). Based on claimant's symptoms, Drs. Schilperoort and Eckman opined that the timing was "right on the money" for claimant to be experiencing an exacerbation of L3-4 degenerative changes as a consequence of his July 2000 injury. (Ex. 43-9). Based on the reasoning previously expressed, Drs. Schilperoort's and Eckman's opinion persuades us that claimant's L3-4 condition resulted from degenerative problems following his fusion surgery.

Consequently, for the reasons the ALJ expressed, and as supplemented in this order, claimant failed to prove that his compensable injury was the major contributing cause of his need for medical treatment for his combined low back condition. Accordingly, we affirm.

ORDER

The ALJ's order dated April 8, 2002 is affirmed.

Entered at Salem, Oregon on November 6, 2002