
In the Matter of the Compensation
CINDY L. CHRISTIANSON, Claimant
WCB Case No. 02-01228
ORDER ON REVIEW
Aller & Morrison, Claimant Attorneys
Gilroy Law Firm, Defense Attorneys

Reviewing Panel: Members Langer, Bock, and Phillips Polich. Member Phillips Polich concurs in part and dissents in part.

Claimant requests review of Administrative Law Judge (ALJ) Howell's order that upheld the self-insured employer's partial denial of claimant's current low back condition. On review, the issues are propriety of the denial and compensability.

We adopt¹ and affirm the ALJ's order, with the following correction and supplementation.

The date in the first sentence of the fourth paragraph on page 2 is December 14, 2001, rather than September 14, 2001.

We agree with the ALJ that the employer's January 31, 2002 acceptance of claimant's combined low back condition relates back to its initial, October 22, 2001 acceptance of a lumbosacral sprain.² *See Carrin M. Owens*, 54 Van Natta 2505 (2002) (where effective date of "combined condition" acceptance preceded denial of current combined condition, denial was proper under ORS 656.262(6)(c)). Thus, because the modified acceptance identified a period of acceptance for the combined condition *before* the denial (that issued the same day as the acceptance), we conclude that the denial was proper under ORS 656.262(6)(c). *Id.*

Finally, because we also agree that the medical evidence does not persuasively establish that claimant's compensable injury remains the major contributing cause of the disability or need for treatment for the combined

¹ We do not adopt note 4.

² The ALJ found that the employer accepted claimant's combined condition "up to" January 31, 2002. (Opinion and Order, p.3). We agree, because the January 31, 2002 modified acceptance specified no date that differed from the initial October 22, 2001 acceptance. *See Ted A. Diggs*, 53 Van Natta 1012 (2001), *aff'd mem*, 183 Or App 533 (2002); *John J. Shults*, 53 Van Natta 383 (2001).

condition (as of and after January 31, 2002), we further agree that the denial must be upheld under ORS 656.005(7)(a)(B). *Compare James J. Warren*, (where the persuasive medical evidence did not establish that the compensable injury ceased to be the major contributing cause of the claimant's consequential condition, the condition remained compensable).³

ORDER

The ALJ's order dated May 24, 2002 is affirmed.

Entered at Salem, Oregon on January 16, 2003

Board Member Philips Polich, concurring in part and dissenting in part.

I agree with the majority that the employer's partial denial was *procedurally* proper. However, I would find claimant's current low back condition compensable, based on the April 12, 2002 opinion of Dr. Keiper, attending physician. (Ex. 26).

Dr. Keiper considered and weighed the causal contributions of claimant's underlying congenital spondylolisthesis and her compensable September 2001 work injury. He noted that claimant had an immediate onset of low back pain with her work injury, followed by progressive radicular symptoms, and she had no such problems and no treatment for her low back before the work injury. Considering claimant's immediate symptoms and disability, Dr. Keiper reasoned that the work injury caused a pathological worsening of her preexisting condition and the previously asymptomatic preexisting condition contributed considerably less than did the injury. (*Id.*).

Dr. Keiper also relied on the mechanics of claimant's injury, which involved sudden movements to support the weight of a corpse falling from a collapsed gurney. Considering the nature of the injury, specifically, the body mechanics involved, Dr. Keiper explained that the injury involved precisely the type of movement which would and did cause a pathological worsening of the preexisting condition. (*Id.*). Thus, Dr. Keiper explained how and why he concluded that claimant's work injury was the major contributing cause of her low back condition

³ Unlike the dissent, we find the opinion of Dr. Keiper insufficient to infer that he was addressing claimant's condition after January 31, 2002.

as of his April 12, 2002 opinion. I would find Dr. Keiper's opinion persuasive, because it is well-reasoned and based on an accurate history.

The majority declines to rely on Dr. Keiper's opinion, reasoning that the opinion fails to address claimant's "current" low back condition as of and after the employer's January 31, 2002 denial. I disagree, because the opinion issued *after* the denial. And, contrary to the majority's reasoning, nothing about the opinion limits its applicability to claimant's "pre denial" condition.

Moreover, the majority acknowledges, and I agree, that the contrary causation opinions are not persuasive because *they* do not address the cause of claimant's condition on and after the employer's January 31, 2002 "current condition" denial (and they are inadequately reasoned). Under these circumstances, I would conclude that Dr. Keiper's reasoning and conclusions are persuasive and sufficient to carry claimant's burden of proof. Consequently, although I agree with the majority that the employer's partial current condition denial was procedurally proper, I must respectfully dissent from the portion of the majority's order that upholds the denial on its merits.