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In the Matter of the Compensation of  
**JERAMY L. HALLFORD, Claimant**  
WCB Case No. 09-04361  
ORDER ON REVIEW  
Dale C Johnson, Claimant Attorneys  
Judy L Johnson, Defense Attorneys

Reviewing Panel: Members Biehl and Lowell.

Claimant requests review of that portion of Administrative Law Judge (ALJ) Mundorff's order that upheld the insurer's partial denial of claimant's new/omitted medical condition claim for an L5-S1 disc protrusion, bulge, or herniation. On review, the issue is compensability. We affirm.

FINDINGS OF FACT

We adopt the ALJ's "Findings of Fact."

CONCLUSIONS OF LAW AND OPINION

We adopt the ALJ's "Conclusions and Reasoning," with the following exceptions and supplementation.<sup>1</sup>

We do not adopt the ALJ's "Evidentiary Ruling" because we would reach the same result concerning the compensability issue without considering the admitted medical report.

We replace the next-to-last paragraph in the "Compensability" section as follows:

We find Dr. Kitchel's opinion supporting the claim unpersuasive in light of the remainder of the record. We reach this conclusion primarily based on claimant's history of clinical findings repeatedly described as inconsistent with an injury-related L5-S1 disc condition.

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<sup>1</sup> The first sentence in the "Issues" section should to refer to the insurer's partial denial of claimant's claim for an *L5-S1* disc condition.

For example, except for Dr. Kitchel, no physician opined that claimant had ankle reflexes consistent with disc or nerve root injury. (Exs. 7, 10, 11, 19, 22, 23, 26, 28, 41, 45; *see* Exs. 29, 38, 44, 36). Moreover, Dr. Rosenbaum explained that disc-related reflex abnormalities “are almost always fixed and don’t alter significantly except over protracted periods of time.” (Ex. 45-2). Dr. Rosenbaum’s opinion in this regard is un rebutted and we find it persuasive.

Moreover, the record establishes that claimant presented with abnormal ankle reflex findings on only one occasion, while many physicians previously found his reflex findings normal or unremarkable. It appears that Dr. Kitchel considered only his own singular findings. Considering the remainder of the record, we cannot say that he relied on an accurate and complete history.

Under these circumstances, we do find Dr. Kitchel’s causation opinion persuasive. *Compare Somers v. SAIF*, 77 Or App 259, 263 (1986) (persuasive medical opinions are based on accurate and complete history). Accordingly, absent persuasive medical evidence supporting the claim, we affirm the ALJ’s decision to uphold the insurer’s denial.

#### ORDER

The ALJ’s order dated November 20, 2009 is affirmed.

Entered at Salem, Oregon on April 29, 2010