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In the Matter of the Compensation of  
**RAY MURDOCK, Claimant**  
WCB Case No. 09-06481, 08-06046, 08-00047  
ORDER ON REVIEW  
Hooton Wold & Okrent LLP, Claimant Attorneys  
Sather Byerly & Holloway, Defense Attorneys

Reviewing Panel: Members Langer and Weddell.

Claimant requests review of those portions of Administrative Law Judge (ALJ) Fulsher's order that upheld the self-insured employer's denials of his combined cervical condition and current cervical condition. On review, the issue is compensability.

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

Claimant was compensably injured on July 20, 2006, and the employer accepted a cervical strain. (Ex. 37). On January 24, 2008, the employer modified the acceptance to include a cervical strain combined with preexisting cervical spondylosis as of July 20, 2006. (Ex. 100). One day later, the employer denied claimant's combined condition on the basis that the cervical strain was no longer the major contributing cause of the disability/need for treatment of the combined condition as of October 20, 2006. (Ex. 102). On September 15, 2009, the employer denied claimant's current cervical condition. (Ex. 122A). Claimant requested a hearing.

The ALJ concluded that the medical evidence from Drs. Rosenbaum and Williams established that claimant's cervical strain was no longer the major contributing cause of the disability/need for treatment of the combined condition. In addition, the ALJ upheld the employer's current condition denial.

Claimant argues that under ORS 656.262(6)(c), the "otherwise compensable injury" includes any disability or need for medical treatment that would otherwise be compensable on a material cause standard. He relies on *Boeing Aircraft Co. v. Roy*, 112 Or App 10 (1992), *SAIF v. Kollias*, 233 Or App 499 (2010), and *Davis W. Dawley*, 62 Van Natta 2850 (2010), to support his argument.<sup>1</sup>

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<sup>1</sup> Claimant's arguments on review concerning the current condition denial are based on prevailing on the combined condition denial.

Citing *Roy*, claimant contends that it is not sufficient for the employer to deny his combined condition based on the assertion that a specific diagnosis had resolved. Claimant's reliance on *Roy* is misplaced. In *Roy*, the court explained that in an initial injury claim, a claimant need not prove a specific diagnosis if the symptoms are attributable to the work.<sup>2</sup> 112 Or App at 15. The holding in *Roy* applies to initial compensability claims. After a claim has been accepted, however, where there has been a written acceptance, the scope of acceptance encompasses only those conditions specifically or officially accepted in writing. *Johnson v. Spectra Physics*, 303 Or 49, 56 (1987); *City of Grants Pass v. Hamelin*, 212 Or App 414, 419 (2007) (when there is a written acceptance of a condition, the conclusion as to what has been accepted is generally straightforward and will be based on an interpretation of the writing).

Here, the employer specifically accepted a cervical strain combined with preexisting cervical spondylosis as of July 20, 2006. (Ex. 100). The record does not support claimant's argument that the employer accepted any disability or need for medical treatment that would otherwise be compensable under a material cause standard.

In *Gary D. Sather*, 63 Van Natta 1727 (2011), the claimant argued that the resolution of his accepted lumbar strain was irrelevant with respect to whether the carrier's "combined condition" denial should be upheld. The claimant contended that his "otherwise compensable injury" remained the major contributing cause of his disability/need for treatment, even though his "accepted" injury condition was not the major contributing cause of such disability/need for treatment.

We disagreed, explaining that the claimant's argument was inconsistent with case precedent that focused on whether the carrier had established that the accepted "otherwise compensable" condition was not the major contributing cause of the disability/need for treatment of the accepted combined condition. *Id.* at 1728. We cited *Reid v. SAIF*, 241 Or App 496, 503, *rev den*, 351 Or 216 (2011), where the court affirmed our approach, holding that in determining the propriety of a combined condition denial, "it is correct \* \* \* to focus on the compensable injury that was shown to have combined with the preexisting condition, and on the actual combined condition that was accepted and then denied." In *Sather*, the only "compensable injury" that "was shown to have combined with" the claimant's

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<sup>2</sup> The holding in *Roy* ordinarily applies to initial injury claims. *But see Hugh C. Brown*, 63 Van Natta 849, 851 n 2 (2011) (although in an initial claim, the claimant need not prove a specific diagnosis if the symptoms are attributable to work, the parties specifically identified the issue as compensability of radiculopathy); *Maureen Y. Graves*, 57 Van Natta 2380, 2381 (2005) (existence of the claimed condition is a fact necessary to prove the compensability of a new/omitted medical condition).

“preexisting conditions” was the accepted lumbar strain. Because the lumbar strain was no longer the major contributing cause of the disability/need for treatment for the combined condition, we upheld the carrier’s denial.

In reaching our conclusion in *Sather*, we rejected the claimant’s argument that our prior cases were inconsistent with *Kollias*, 233 Or App at 499. *Sather*, 63 Van Natta at 1729 n 2. We explained that *Reid* was squarely on point with the determinative issue, whereas *Kollias* concerned evidentiary and procedural issues concerning combined condition denials. In any event, we noted that *Kollias* merely observed that an “otherwise compensable injury,” referred to “a work-related injury that would be compensable under the material contributing cause standard of proof if not for the fact that it combines with a preexisting condition.” *Kollias*, 233 Or App at 502 n 1. We found that observation was not at odds with *Reid*’s directive concerning combined condition denials “to focus on the compensable injury that was shown to have combined with the preexisting condition, and on the actual combined condition that was accepted and then denied.” 241 Or App at 503. We explained that the claimant’s accepted lumbar strain qualified as an “otherwise compensable injury,” in that it “would be compensable under the material contributing cause standard of proof if not for the fact that it combine[d] with a preexisting condition.” *Sather*, 63 Van Natta at 1729 n 2 (quoting *Kollias*, 233 Or App at 502 n 1). However, we reasoned that the record did not establish that the claimant’s “otherwise compensable injury” extended to any condition beyond what had been accepted. *Id.* We reach the same conclusion in this case.

Claimant’s also argues that our reasoning in prior cases that found that the employer’s burden in a “ceases” denial is limited to demonstrating that the accepted condition is no longer the major cause of the disability/need for treatment conflicts with our rationale in *Dawley*, 62 Van Natta at 2850. Specifically, he asserts that in *Dawley*, we concluded that the employer was not required to accept disability or a need for treatment caused by the injury event, but arising out of the preexisting condition as a separate and distinct condition, because it had already acknowledged its responsibility for that disability/need for treatment by virtue of its combined condition acceptance.

We disagree with claimant’s interpretation of *Dawley*. In that case, we affirmed an ALJ’s order that upheld the carrier’s denial of the claimant’s current combined left hip strain and left femoral neck bone bruise conditions. In addition, we upheld the carrier’s *de facto* denial of the claimant’s new/omitted medical condition claim for “symptomatic osteoarthritis of the left hip.” We explained that the carrier’s acceptance of the “combined condition” included the osteoarthritis as

a “preexisting condition” component of that “combined condition,” until the carrier’s denial of the combined condition under ORS 656.262(6)(c). *Id.* at 2852.

Based on the medical evidence in the particular record in *Dawley*, we determined that the claimant’s “new/omitted medical condition claim” was for symptoms of the previously accepted conditions (left hip strain and left femoral neck bone bruise combined with preexisting osteoarthritis), and we were not persuaded that the claimed “symptomatic osteoarthritis of the left hip” existed as a condition distinguishable from the accepted combined condition. Based on those findings, we concluded that the claimant’s “independent” claim for the “symptomatic osteoarthritis of the left hip” was not a claim for a “condition.” *Id.* at 2853; see *Young v. Hermiston Good Samaritan*, 223 Or App 99, 105 (2008) (a new/omitted medical condition claim must be for a “condition,” which has been defined as “the physical status of the body as a whole \* \* \* or one of its parts”). Rather, we held that the record established that the claimant’s new/omitted medical condition claim was based on “symptoms” of the preexisting osteoarthritis condition. *Dawley*, 62 Van Natta at 2853.

Here, unlike *Dawley*, the disputed claim on review concerns a combined condition denial under ORS 656.262(6)(c), not a new/omitted condition claim based on symptoms. *Dawley* does not establish that the “otherwise compensable injury” under ORS 656.262(6)(c), includes any disability or need for medical treatment that would otherwise be compensable under a material cause standard. Rather, *Dawley* stands for the proposition that the acceptance of a “combined condition” includes the “preexisting condition” component of the combined condition until a denial of the combined condition is upheld. When, as in this case, the former component is no longer the major contributing cause of disability or a need for treatment, a combined condition denial is appropriate, and the latter component is no longer compensable. *Karen L. Schueller-Susbauer*, 63 Van Natta 1533, 1534 (2011) (medical evidence established that the claimant’s lumbar strain had fully resolved, resulting in a change in her condition sufficient to support the employer’s combined condition denial).

Here, for the reasons explained by the ALJ’s order, we agree that the employer has established that the accepted cervical strain was no longer the major contributing cause of the combined condition. Therefore, we affirm.

#### ORDER

The ALJ’s order dated May 25, 2011 is affirmed.

Entered at Salem, Oregon on December 5, 2011