

In the Matter of the Compensation of
STEVEN N. SIECZKOWSKI, Claimant
WCB Case No. 11-03528
ORDER ON REVIEW
Moore Jensen & Lesh, Claimant Attorneys
Brian L Pocock, Defense Attorneys

Reviewing Panel: Members Langer and Biehl.

Claimant requests review of Administrative Law Judge (ALJ) Ogawa's order that: (1) upheld the self-insured employer's denials of his combined low back condition; and (2) declined to award penalties and attorney fees for an alleged discovery violation. On review, the issues are compensability, penalties, and attorney fees.

We adopt and affirm the ALJ's order with the following change and supplementation. In the last paragraph on page 3, we change the date of the "IME" to "February 2010."

The employer accepted claimant's July 24, 2009 injury claim as an acute lumbar strain combined with unrelated preexisting lumbar degenerative disc disease. His October 2009 injury claim was accepted as an aggravation of the July 24, 2009 claim. (Ex. 1B).

On July 13, 2011, the employer denied claimant's combined condition, explaining that the July 2009 injury was no longer the major contributing cause of the disability/need for treatment for a combined condition. (Ex. 5). The employer also denied the combined condition on November 10, 2011. (Ex. 10A).

In upholding the employer's denials, the ALJ determined that the employer satisfied its burden of proving that the lumbar strain component of the combined condition was no longer the major contributing cause of the disability or need for treatment for the combined condition. *See* ORS 656.262(6)(c). In making this determination, the ALJ relied on medical evidence indicating that the accepted lumbar strain had resolved.

On review, claimant argues that the employer's denials should be set aside because there has been no appreciable change in his condition. He contends that the opinions of Drs. Keiper and Knowlton, his treating physicians, are the most persuasive. Claimant notes that Dr. Keiper acknowledged that his lumbar strain

had resolved, but relies on his opinion that “other aspects of his current need for treatment have not resolved and his *industrial exposure* continues to be the major source of exacerbation of the symptoms from his pre-existing condition.” (Ex. 10; emphasis added). He also relies on Dr. Kassube, who explained that the “industrial injury” represented the major cause of claimant’s current disability/need for treatment. (Ex. 6-2). For the following reasons, we do not find claimant’s arguments persuasive.

After the carrier accepts a combined condition, it may deny the combined condition if the otherwise compensable injury ceases to be the major contributing cause of the combined condition. ORS 656.262(6)(c), (7)(b). In combined condition injury claims, the carrier bears the burden to prove such a cessation. ORS 656.266(2)(a); *Washington County-Risk v. Jansen*, 248 Or App 335, 345 (2012); *Wal-Mart Stores, Inc. v. Young*, 219 Or App 410, 419 (2008).

For the reasons explained by the ALJ, we conclude that the employer has established, with persuasive medical evidence, that the compensable lumbar strain component of the accepted combined low back condition has resolved and was no longer the major contributing cause of claimant’s disability or need for treatment for the combined condition.

Furthermore, claimant’s reliance on Dr. Keiper’s opinion that his “industrial exposure continues to be the major source of exacerbation of the symptoms from his pre-existing condition” is misplaced. The issue is not whether claimant’s “industrial exposure” remains the major contributing cause of his disability and need for treatment. Rather, the issue is whether the accepted lumbar strain remains the major contributing cause of the disability or need for treatment of the combined low back condition. *See Reid v. SAIF*, 241 Or App 496, 503 (2011) (under ORS 656.005(7)(a)(B), 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); *Gary D. Sather*, 63 Van Natta 1727 (2011). Dr. Knowlton, who concurred with Dr. Keiper’s opinion, is unpersuasive for the same reason.

Similarly, Dr. Kassube explained that the “industrial injury,” not the lumbar strain, represented the major cause of claimant’s current disability/need for treatment. Therefore, the opinions of Drs. Keiper, Knowlton, and Kassube are not sufficient to rebut the persuasive medical opinions supporting the employer’s denials.

Because we agree with the ALJ's reasoning and conclusion that the otherwise compensable lumbar strain ceased to be the major contributing cause of the disability or need for treatment of the combined condition, we conclude that the employer satisfied its burden of proof. ORS 656.266(2)(a); ORS 656.262(6)(c). Therefore, we affirm.

ORDER

The ALJ's order dated March 1, 2012 is affirmed.

Entered at Salem, Oregon on August 16, 2012