

In the Matter of the Compensation of  
**JOHN M. ENGLISH, Claimant**

WCB Case No. 11-05186

ORDER ON REVIEW

Jodie Phillips Polich, Claimant Attorneys  
Law Office Of Thomas A Andersen Eug, Defense Attorneys

Reviewing Panel: Members Langer and Lanning.

Claimant requests review of Administrative Law Judge (ALJ) Naugle's order that upheld the insurer's denials of claimant's new/omitted medical condition claim for multiple left knee conditions. On review, the issue is compensability.

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

We agree with the ALJ's determination that claimant has not met his burden of proving that it was more probable than not that his *accepted* left knee medial hamstring strain and/or lateral compartment contusion was the major contributing cause of his claimed consequential knee conditions. ORS 656.266(1); ORS 656.005(7)(a)(A); *Fred Meyer, Inc. v. Crompton*, 150 Or App 531, 536 (1997) (a consequential condition is "a separate condition that arises from the compensable injury, for example, when a worker suffers a compensable foot injury that results in an altered gait that, in turn results in back strain."); *Albany Gen. Hosp. v. Gasperino*, 113 Or App 411, 415 (1992) (a consequential condition is a condition caused by a *compensable injury* rather than by the *industrial accident* itself); *see also Vasquez v. SAIF*, 237 Or App 59, 64-65 (2010) (where "the evidence is explicit that the carpal tunnel syndrome [CTS] was *not* caused by the industrial accident itself, but was brought on, in material part, by the swelling that resulted from the [accepted] injury," the major contributing cause standard under ORS 656.005(7)(a)(A) applied because the CTS was "the result of the injury, and not the industrial accident.") (emphasis in original); *Lidia G. Bistrika*, 64 Van Natta 1502 (2012) (to prove compensability of her consequential shoulder condition, the claimant had to prove that either her accepted left upper arm sprain or left shoulder sprain, or treatment for either of those conditions, was the major contributing cause of her consequential condition).

Here, Dr. Van Tassel concluded that claimant's "hamstring strain and his buckling weakness may have been the etiology of his secondary event when he fell going down some steps." (Ex. 24-3). Thus, to the extent that Dr. Van Tassel indicated there was any causal connection between the accepted left hamstring

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strain and the currently claimed conditions (which were caused by the second fall), his opinion in that regard was stated only in terms of possibility (*i.e.*, “may have been”). *See Gormley v. SAIF*, 52 Or App 1055 (1981) (persuasive medical opinions must be based on medical probability, rather than possibility); *Kyle G. Anderson*, 61 Van Natta 2117, 2117-18 (2009) (the words “can be” and “may be” indicate only possibility, not medical probability). Thus, taken as a whole, we are unable to conclude that Dr. Van Tassel’s opinion is sufficient to support a finding of compensability under ORS 656.005(7)(a)(A).<sup>1</sup>

Consequently, on this record, claimant has not established the compensability of his claimed left knee conditions. Accordingly, we affirm.

### ORDER

The ALJ’s order dated May 30, 2012 is affirmed.

Entered at Salem, Oregon on December 20, 2012

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<sup>1</sup> Because of that finding, we need not address the persuasiveness of the contrary medical opinions. *See Lorraine W. Dahl*, 52 Van Natta 1576 (2000) (if medical opinions supporting compensability are insufficient to meet the claimant’s burden of proof, the claim fails, regardless of the persuasiveness of countervailing opinions).