
In the Matter of the Compensation of
COBEY GOODMAN, Claimant
WCB Case Nos. 12-05714, 12-05683
ORDER ON REVIEW
Philip H Garrow, Claimant Attorneys
Julie Masters, SAIF Legal Salem, Defense Attorneys

Reviewing Panel: Members Langer and Lanning.

The SAIF Corporation requests review of Administrative Law Judge (ALJ) Otto's order that: (1) set aside its denial of claimant's combined right wrist condition; and (2) set aside its denial of his medical services claim for proposed right wrist surgery. On review, the issues are compensability and medical services. We reverse.

FINDINGS OF FACT

We adopt the ALJ's findings of fact with the following changes. In the third paragraph on page 2, we replace the third sentence with the following: "He was diagnosed with a navicular/scaphoid fracture and a wrist sprain/strain. (Ex. 1-4)." In the first full paragraph on page 4, we delete the last sentence. We do not adopt the findings of ultimate fact.

We provide the following summary of the pertinent facts.

In 1996, claimant broke the navicular bone in his right wrist while riding in a rodeo. His wrist was in a cast for six weeks. Over the next 15 years, claimant had intermittent right wrist symptoms with activity.

In November 2011, claimant carried a gun while hunting and noticed numbness in three fingers of his right hand. (Ex. 1-2; Tr. 15).

On January 4, 2012, claimant sought emergency treatment for pain just below the base of the right thumb and in the inner aspect of the right wrist. He reported that his grip was getting weaker and that he had experienced increasing pain and numbness for the past six weeks. (Ex. 1). Right wrist x-rays were interpreted as showing a longstanding scaphoid fracture nonunion with advanced osteoarthritis of the radiocarpal joint. (Ex. 2-2). He was diagnosed with a navicular/scaphoid fracture and a wrist sprain/strain. (Ex. 1-4).

On January 19, 2012, Dr. Verheyden, orthopedic surgeon, explained that claimant had injured his right wrist in a rodeo when he was 18. Claimant reported that he had hit his right wrist about two months ago and had persistent pain. Dr. Verheyden diagnosed a chronic scaphoid nonunion with traumatic arthritis of the right wrist, as well as mild bilateral carpal tunnel syndrome (CTS). He recommended right wrist surgery for the nonunion and a possible carpal tunnel release, if conservative treatment for the CTS failed. Claimant decided to think over the surgery before proceeding. (Ex. 3).

On May 8, 2012, claimant was compensably injured when he was opening a stuck valve at work that suddenly broke free and jammed his right thumb backwards. The incident also caused right wrist pain and swelling. Claimant did not immediately seek treatment because he hoped the symptoms would diminish.

On May 30, 2012, claimant sought treatment for persistent right wrist and thumb pain and was referred to an orthopedist. (Exs. 5, 6). Dr. Hanington diagnosed a chronic scaphoid nonunion with radiocarpal arthritis, related to the injury of 10 years ago, intermittently symptomatic. He opined that the recent work injury had aggravated the preexisting right wrist arthritis. (Ex. 10).

SAIF accepted a contusion to the dorsal surface of the right wrist. (Ex. 8).

Claimant returned to Dr. Verheyden on June 25, 2012. Dr. Verheyden diagnosed a right wrist scaphoid nonunion and posttraumatic arthritis, as well as CTS. He suspected that the nonunion and posttraumatic arthritis had been exacerbated by the recent work injury and again recommended surgery. (Ex. 12).

On August 17, 2012, Dr. Wigle, orthopedic surgeon, examined claimant on behalf of SAIF. (Ex. 14). Dr. Verheyden concurred with Dr. Wigle's report. (Ex. 15).

Claimant filed a new/omitted medical condition claim for a right wrist work injury combined with prior scaphoid nonunion and posttraumatic arthritis, and an acute strain of the radial collateral ligament attached to the radial styloid. (Ex. 19).

SAIF accepted an acute strain of the radial collateral ligament attached to the radial styloid, right wrist. (Ex. 22). On November 8, 2012, SAIF accepted a combined condition, explaining that the "injury and/or contusion to the dorsal surface of the right wrist and acute strain of the radial collateral ligament attached to the radial styloid" of the right wrist combined with prior right wrist scaphoid

nonunion fracture and posttraumatic arthritis, beginning on May 8, 2012. SAIF denied compensability of the current combined condition, asserting that the accepted injury was no longer the major contributing cause of the disability and need for treatment for the combined condition. (Ex. 24). Claimant requested a hearing.

On November 9, 2012, the Workers' Compensation Division (WCD) Medical Section issued a "Defer and Transfer Order" regarding the causal relationship of the proposed right wrist surgery. The Director also deferred review regarding the appropriateness of the surgery.

CONCLUSIONS OF LAW AND OPINION

Combined Condition

The ALJ determined that the effective date of SAIF's combined condition acceptance was May 8, 2012. The ALJ concluded that SAIF did not sustain its burden of proving that the compensable injury ceased to be the major contributing cause of his need for treatment for the combined right wrist condition.

On review, the parties do not dispute the effective date of the combined condition acceptance. However, SAIF contends that the medical evidence establishes that the accepted conditions have ceased to be the major contributing cause of claimant's disability/need for treatment. For the following reasons, we agree.

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. *See* ORS 656.262(6)(c), (7)(b). In such cases, the issue is whether the accepted condition remains the major contributing cause of the disability or need for treatment of the previously accepted combined condition.

SAIF bears the burden to show a change in circumstances or a change in condition such that claimant's otherwise compensable injury ceased to be the major contributing cause of the disability/need for treatment of the combined condition. 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). In *Reid v. SAIF*, 241 Or App 496, 503, *rev den*, 351 Or 216 (2011), the court explained that in determining whether the "otherwise compensable injury" had "ceased" to be the major contributing cause for purposes of ORS 656.262(6)(c), it was correct under ORS 656.005(7)(a)(B) to focus on the actual combined condition that was accepted and then denied.

Here, the combined condition at issue is the contusion to the dorsal surface of the right wrist and acute strain of the radial collateral ligament attached to the radial styloid of the right wrist combined with prior right wrist scaphoid nonunion fracture and posttraumatic arthritis. (Ex. 24). Thus, the “otherwise compensable injury” component of the accepted combined condition is limited to the contusion to the dorsal surface of the right wrist and acute strain of the radial collateral ligament attached to the radial styloid of the right wrist. *See Reid*, 241 Or App at 503 (when evaluating the denial of an accepted combined condition, only the condition that was accepted and then denied is considered); *Felix V. Roble*, 65 Van Natta 206, 208 (2013). SAIF must establish, with persuasive medical evidence, that the aforementioned compensable components of the accepted combined condition are no longer the major contributing cause of claimant’s disability or need for treatment for the combined condition.

SAIF relies on the opinions of Drs. Wigle and Verheyden to sustain its burden of proof.

On August 17, 2012, Dr. Wigle concluded that claimant’s acute sprain of the radial collateral ligament attachment to the radial styloid of the right wrist was medically stationary. (Ex. 14-6). He also diagnosed preexisting posttraumatic scaphoid nonunion advanced collapse arthritis, as well as preexisting CTS. (Ex. 14-6, -8). Dr. Wigle explained that the work injury was the major contributing cause of the need for treatment for six to 12 weeks after the injury. He concluded that after that time, the work-related condition ceased to be the major contributing cause of the need for treatment, and the preexisting conditions became the major contributing cause of the need for treatment. (Ex. 14-9). In reaching that conclusion, Dr. Wigle explained that the majority of claimant’s tenderness was now over the radiolunate and radioscapoid portion of the wrist and not just the radial styloid itself. He noted that the need for wrist surgery was due to the scaphoid nonunion advanced collapse arthritis, not the work injury. (*Id.*)

In September 2012, Dr. Verheyden concurred with Dr. Wigle’s diagnoses and his opinion regarding the major contributing cause of the current disability and need for treatment and surgery. Dr. Verheyden also agreed that the accepted contusion to the dorsal surface of the right wrist was medically stationary. (Ex. 15).

On October 16, 2012, Dr. Verheyden reported that claimant had an interval improvement in symptoms since the prior examination and had tolerated his cast well. (Ex. 18-1). He performed a complete bilateral hand and wrist examination

and determined that there was no interval change in examination. (Ex. 18-2). He determined that claimant had no impairment related to the work injury. He removed claimant's cast and again recommended right wrist surgery. Dr. Verheyden explained:

“[Claimant] has a pre-existing problem which was asymptomatic prior to his work-related injury. His work-related injury flared up and exacerbated his pre-existing problem, necessitating treatment. At this time, that problem, related to his work related injury, has reached medically stationary status. [Claimant] has severe posttraumatic arthritic changes related to previous trauma and injury to the wrist, which are not work-related. * * * In my medical opinion, the need for [claimant's] surgery, consisting of scaphoid excision and attempted 4 corner fusion, will be related to his pre-existing problem and not his work-related injury.” (*Id.*)

In a February 2013 concurrence letter from claimant's attorney, Dr. Verheyden opined that claimant's most significant problem “today” was severe posttraumatic wrist arthritis as a result of a prior rodeo injury. (Ex. 25-1). He explained that the work injury resulted in a right wrist sprain and contusion that combined with the underlying arthritis. Dr. Verheyden agreed that claimant's “medical condition had not changed significantly” since the work injury, noting that he still had the same symptoms and that the palliative treatment was no longer effective. (Ex. 25-2).

Dr. Verheyden explained that when he had declared claimant's condition “medically stationary” on October 16, 2012, he meant that claimant had “recovered from the effects of a strain or contusion to the right hand and wrist but for the underlying condition.” He stated that claimant's condition had “not truly stabilized in the sense that he still needs the proposed surgical treatment of a partial fusion.” (*Id.*) Dr. Verheyden stated that claimant's current condition, or as of his last treatment with him on October 16, 2012, was “pretty much the same” as it was in May 2012. He found “no significant changes in either his pathology or his symptomatology. The definitive treatment remains the surgery.” He agreed that absent the surgery, he did not have any additional treatment to offer at this time, and thus considered claimant's condition medically stationary. (Ex. 25-3).

SAIF contends that the combined condition denial is supported by the fact that claimant's work-related injuries were medically stationary, without impairment, and the accepted conditions were no longer the cause of his need for treatment. Claimant responds that Dr. Verheyden found no interval change in his examination on October 16, 2012, and stated that there were no significant changes in either his pathology or symptomatology.

Dr. Verheyden opined that claimant's "medical condition had not changed significantly" since the work injury, noting that he still had the same symptoms and that the palliative treatment was no longer effective. (Ex. 25-2). But the issue is not whether claimant's "medical condition" remains the major contributing cause of his disability and need for treatment or whether he had "significant" changes in his pathology or symptomatology. Rather, the issue is whether the accepted right wrist contusion and strain remain the major contributing cause of the disability or need for treatment of the combined right wrist condition. *See Reid*, 241 Or App at 503; *William A. Drey*, 63 Van Natta 2010, 2019 (2011).

Drs. Verheyden and Wigle determined that the accepted right wrist contusion and acute strain were medically stationary. (Exs. 15, 15, 18). We acknowledge that "medically stationary" status does not necessarily mean a change of condition for the purposes of a "ceases" denial. *See David A. Thulstrup*, 62 Van Natta 2089, 2093 (2010). Here, however, Dr. Verheyden also concluded that claimant did not have impairment related to the work injury. (Ex. 18). Moreover, the record does not support the conclusion that claimant continued to need treatment for his accepted contusion or strain. Instead, Drs. Verheyden and Wigle explained that claimant's need for treatment was related to the preexisting right wrist scaphoid nonunion fracture and posttraumatic arthritis. (Exs. 14-9, 15, 18).

Therefore, based on the opinions of Drs. Wigle and Verheyden, we are persuaded that there was a change of circumstances, consisting of the resolution of claimant's accepted contusion and strain, which is sufficient to establish that the "otherwise compensable" right wrist contusion and strain ceased to be the major contributing cause of the disability or need for treatment of the combined condition. ORS 656.266(2)(a); ORS 656.262(6)(c); *see Steven T. Bostick*, 65 Van Natta 323 (2013) (resolution of the claimant's cervical strain was sufficient to support the denial of the current combined condition); *Roble*, 65 Van Natta at 208 (because the only "otherwise compensable injury" included in the combined condition acceptance was the lumbar strain, the carrier's denial was supported by evidence persuasively establishing that the lumbar strain had ceased to be

the major contributing cause of the disability/need for treatment for the combined condition). Accordingly, we reverse the ALJ's order and uphold SAIF's combined condition denial.

Medical Services

The ALJ reasoned that, because the compensable injury remained the major contributing cause of claimant's need for treatment of the combined right wrist condition, he had established the requisite causal connection between the injury and the proposed right surgery.

On review, SAIF contends that the medical evidence does not establish that the surgery was for or made necessary by the accepted conditions. SAIF argues that Drs. Verheyden and Wigle explained that the proposed surgery was not related to the work injury. Claimant contends that Dr. Verheyden found no change in his condition and determined that he continued to need surgical treatment for his wrist.

ORS 656.245(1)(a) provides:

“For every compensable injury, the insurer or the self-insured employer shall cause to be provided medical services for conditions caused in material part by the injury for such period as the nature of the injury or the process of the recovery requires, subject to the limitations in ORS 656.225, including such medical services as may be required after a determination of permanent disability. In addition, for consequential and combined conditions described in ORS 656.005(7), the insurer or the self-insured employer shall cause to be provided only those medical services directed to medical conditions caused in major part by the injury.”

If the claimed medical service is “for” an “ordinary” condition, the first sentence of ORS 656.245(1)(a) governs the compensability of medical services. *SAIF v. Sprague*, 346 Or 661, 672 (2009); *Cameron J. Horner*, 62 Van Natta 2904, 2905 (2010), *aff'd*, 248 Or App 120 (2012). Here, because SAIF accepted a “combined condition,” the second sentence of ORS 656.245(1)(a) governs the medical services dispute.

We first determine the “condition” to which the claimed medical service (proposed right wrist surgery) relates. *See Sprague*, 346 Or at 672; *Bonita E. Dunne*, 63 Van Natta 853, 856 (2011). Accordingly, we turn to the record to determine the subject of the proposed surgery. *See Charles E. Pharis, Jr.*, 62 Van Natta 406, 408 (2010).

In October 2012, Dr. Verheyden discussed with claimant the need for a “proximal row carpectomy with a 4 corner fusion, for his previous SNAC arthritis changes.” (Ex. 18-2). He noted that “SNAC arthritis” means scaphoid nonunion advanced collapse wrist arthritis. (*Id.*) Dr. Verheyden explained that claimant had severe posttraumatic arthritic changes in the wrist related to previous trauma, which were not work-related. He concluded that the need for surgery, “consisting of scaphoid excision and attempted 4 corner fusion, will be related to his pre-existing problem and not his work-related injury.” (*Id.*)

Dr. Wigle explained that Dr. Verheyden had recommended surgery to address the preexisting scaphoid nonunion advanced collapse arthritis. He concluded that the work injury was not the major cause for the requested surgery. (Ex. 14-9).

Based on the opinions of Drs. Verheyden and Wigle, we find that the “condition” to which the proposed right wrist surgery relates is scaphoid nonunion advanced collapse arthritis. As previously discussed, SAIF’s “combined condition” denial (which includes the scaphoid nonunion advanced collapse arthritis) has been upheld. Thus, it follows that the proposed surgery is not related to an accepted condition.

Moreover, the medical evidence does not establish that the surgery is related to the accepted condition of “acute strain of the radial collateral ligament attached to the radial styloid, right wrist” or the contusion to the dorsal surface of the right wrist. *See SAIF v. Swartz*, 247 Or 515, 525 (2011) (medical services not compensable where the compensable injury had completely resolved); *Horner*, 62 Van Natta at 2095. Dr. Verheyden explained that the surgery was for claimant’s preexisting problem, not his work injury. Therefore, we conclude that the medical evidence is not sufficient to establish that the proposed right wrist surgery was directed to medical conditions caused in either material, or major, part by the injury. ORS 656.245(1)(a). Therefore, we reverse.

ORDER

The ALJ's order dated February 19, 2013, as corrected March 15, 2013, is reversed. SAIF's combined condition and medical services denials are reinstated and upheld. The ALJ's \$5,500 assessed attorney fee and cost awards are also reversed.

Entered at Salem, Oregon on August 13, 2013