

In the Matter of the Compensation of
JEREMY SCHAFFER, Claimant

WCB Case No. 12-01389

ORDER ON REVIEW

Moore Jensen & Lesh, Claimant Attorneys
James B Northrop, SAIF Legal, Defense Attorneys

Reviewing Panel: Members Weddell and Lowell.

Claimant requests review of that portion of Administrative Law Judge (ALJ) Smith's order that upheld the SAIF Corporation's denial of claimant's medical services claim for a right hand condition. Claimant also moves to remand to the ALJ for the admission of additional medical evidence. On review, the issues are medical services and remand. We deny the motion to remand and affirm.

FINDINGS OF FACT

We adopt the ALJ's "Findings of Fact," as supplemented and summarized as follows.

Claimant was seriously injured on January 28, 2011 when his truck plummeted over the edge of a steep hill at a remote logging site. His neck was immobilized and he was "transferred by Life Flight" to an emergency department. (Exs. A, B, 1). He experienced pain in his pelvis, hip, low back, head, abdomen, right hand, left elbow and shoulder. (Exs. A, B, 1). He was diagnosed with fractures to his neck and pelvis and also a left hip dislocation, pulmonary contusion, left chest wall contusion, and scalp hematoma. (Exs. 1-9). The record also establishes that claimant's right hand was "painful, swollen, and deformed." (Ex. B-4; *see also* Ex. 3-1).

SAIF accepted a disabling claim for the following conditions: "abrasion superior aspect of scalp, left chest wall contusion, left elbow contusion, left hip dislocation, left hip transverse acetabular fracture, right superior and inferior pubic rami fractures and C7 anterior wedge fracture." (Ex. 21). SAIF did not accept any right hand condition. (*Id.*)

Claimant continued to experience right hand pain and sought treatment for that condition on September 23, 2011 with Dr. Meldrum. (Ex. 22; Tr. 7-8). Dr. Meldrum indicated that claimant's right hand was "smashed" and related his right hand symptoms to the January 2011 work injury. (Ex. 22). Dr. Meldrum also stated that his treatment of claimant was "due at least in material part" to that work injury. (Ex. 27).

SAIF refused to pay for Dr. Meldrum's September 23 medical services on the ground that the treatment was "unrelated to a compensable condition." (Ex. 23). Claimant requested a hearing.

CONCLUSIONS OF LAW AND OPINION

Compensability

In upholding SAIF's denial, the ALJ reasoned that under current precedent, claimant did not prove a sufficient causal relationship between his accepted conditions and his right hand condition for which he treated with Dr. Meldrum on September 23, 2011.¹ We affirm.

ORS 656.245(1)(a) provides, in relevant part:

"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). If the claimed medical service is "directed to" a consequential or combined condition, the second sentence of ORS 656.245(1)(a) applies. *Sprague*, 346 Or at 673; *Horner*, 62 Van Natta at 2905.

¹ The ALJ also rejected SAIF's assertion that the Hearings Division lacked jurisdiction to resolve the medical services dispute. See ORS 656.704(3)(b)(C). SAIF does not challenge that determination on review.

Here, the parties' dispute is governed by the first sentence of ORS 656.245(1)(a). Thus, we must determine whether claimant's September 23, 2011 office visit with Dr. Meldrum was "for conditions caused in material part by the injury" under ORS 656.245(1)(a). *SAIF v. Swartz*, 247 Or App 515, 525 (2011).² As explained by the court, "the conditions' are the current conditions for which treatment is sought." *Id.* The "injury" or "compensable injury" is any previously accepted condition, *i.e.*, "abrasion superior aspect of scalp, left chest wall contusion, left elbow contusion, left hip dislocation, left hip transverse acetabular fracture, right superior and inferior pubic rami fractures and C7 anterior wedge fracture." (Ex. 21). Properly reframed, then, the issues are: (1) whether any of claimant's accepted scalp, chest, elbow, hip, pelvis, or neck conditions constitutes a material cause of his current right hand condition for which he treated with Dr. Meldrum on September 23, 2011; and (2) whether Dr. Meldrum's treatment on that date was "for" that current right hand condition. *See Swartz*, 247 Or App at 525 (citing *Sprague*, 346 Or at 673); *accord Duane G. Bishop*, 64 Van Natta 2096, 2097-98 (2012); *James G. Gilliland*, 64 Van Natta 1062, 1066 (2012).

On review, claimant acknowledges that his claim is not compensable under the *Swartz* framework, in that none of the currently *accepted conditions* were a material cause of Dr. Meldrum's September 23, 2011 treatment. Nevertheless, claimant asks us "not to follow" *Swartz*, and instead find the medical service compensable because the *work injury/incident* was a material cause of Dr. Meldrum's September 23 evaluation. (*See Exs. 22, 27*). We have no authority, however, to disregard *Swartz*. Therefore, we affirm.

Remand

Our review is limited to the record developed by the ALJ. We may remand to the ALJ if we find that the case has been "improperly, incompletely or otherwise insufficiently developed." ORS 656.295(5). There must be a compelling reason for remand to the ALJ for the taking of additional evidence. *SAIF v. Avery*, 167 Or App 327, 333 (2000). A compelling reason exists when the new evidence: (1) concerns disability; (2) was not obtainable at the time of the hearing; and (3) is reasonably likely to affect the outcome of the case. *Id.*; *Compton v. Weyerhaeuser Co.*, 301 Or 641, 646 (1986).

² A "material cause" under ORS 656.245(1)(a) is a fact of consequence. *See Swartz*, 247 Or App at 525 (citing *Mize v. Comcast Corp-AT & T Broadband*, 208 Or App 563, 569-71 (2006)). "Thus, the compensable injury could constitute a material cause if it makes 'any contribution' to claimant's current condition." *Id.* at 525-26 (emphasis in original).

Claimant asks that we remand to the ALJ for the purpose of admitting two chart notes, asserting that they were not provided by SAIF until approximately two months after the ALJ's order.³ Neither of the admitted chart notes, however, establishes that claimant's current right hand condition for which he sought treatment with Dr. Meldrum, a hand surgeon, was caused in material part by any of the accepted conditions.⁴ Therefore, remanding to the ALJ for the admission of these documents is not "reasonably likely to affect the outcome of the case." *Avery*, 167 Or App at 333. Consequently, we deny claimant's motion to remand.

ORDER

The ALJ's order dated July 6, 2012 is affirmed.

Entered at Salem, Oregon on February 11, 2013

³ SAIF apparently disclosed the chart notes to claimant within five days of its receipt and claimant does not assert a discovery violation.

⁴ Claimant contends that the chart notes establish that Dr. Meldrum's September 23 treatment was a "diagnostic" medical service. Yet, he acknowledges that *Swartz* precludes finding Dr. Meldrum's examination compensable, "even if diagnostic." (*See* Claimant's Reply Brief, p. 6). Thus, claimant's motion to remand is also premised on disregarding *Swartz*, which we may not do.