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In the Matter of the Compensation of  
**FELIX V. ROBLE, Claimant**  
WCB Case No. 12-00189  
ORDER ON REVIEW  
Dye & Clingerman, Claimant Attorneys  
David Runner, SAIF Legal Salem, Defense Attorneys

Reviewing Panel: Members Lanning and Langer.

Claimant requests review of that portion of Administrative Law Judge (ALJ) Naugle's order that upheld the SAIF Corporation's denial of his combined low back condition. On review, the issue is compensability.

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

Claimant's September 23, 2010 work injury was initially accepted as a lumbar strain. SAIF issued a Notice of Closure on April 6, 2011. On December 14, 2011, pursuant to a stipulation,<sup>1</sup> SAIF modified its notice of acceptance to accept the additional new/omitted medical condition "lumbar strain combined with pre-existing spondylolisthesis causing L5-S1 radiculopathy and L5-S1 radiculitis effective September 23, 2010." (Ex. 56-1). The acceptance further stated, "SAIF accepts this combined condition so long as and to the extent that the injury remains the major contributing cause of the disability and/or need for treatment of the combined condition." (*Id.*)

On December 21, 2011, SAIF issued a denial of claimant's current combined condition of the lumbar spine on the ground that the otherwise compensable injury was no longer the major contributing cause of the combined lumbar condition. (Ex. 57-1). Claimant requested a hearing.

The ALJ found that Dr. Borman, who examined claimant on SAIF's behalf, had opined that claimant's lumbar strain had resolved, and Dr. Truong, claimant's attending physician, had opined that the accepted lumbar strain was medically

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<sup>1</sup> Claimant had earlier requested a hearing regarding SAIF's *de facto* denial of his new/omitted medical condition claim for "symptomatic unstable isthmic spondylolisthesis at L5-S1; radiculitis L5-S1; radiculopathy L5-S1 and lumbar sprain." (Exs. 44, 54-1). The terms of the stipulation provided for SAIF to accept "a combined condition between claimant's lumbar strain and his pre-existing spondylolisthesis at L5-S1 causing L5-S1 radiculopathy and L5-S1 radiculitis." (Ex. 54-2). A prior ALJ approved the agreement and dismissed claimant's request for hearing with prejudice on December 9, 2011. (Ex. 55-1-2).

stationary and without symptomatology. Consequently, the ALJ concluded that the otherwise compensable lumbar strain was no longer the major contributing cause of claimant's combined lumbar condition. Accordingly, the ALJ upheld SAIF's denial.

On review, claimant does not dispute the medical evidence that his lumbar strain resolved, and thus ceased to be the major contributing cause of the combined condition, or of disability or need for treatment of the combined condition. However, claimant contends that SAIF cannot prevail by only establishing that the lumbar strain has resolved, but must rather show a change in condition or circumstances regarding the L5-S1 radiculopathy and L5-S1 radiculitis. We disagree with claimant's contention.

After a 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). The word "ceases" presumes a change in the worker's condition or circumstances such that the otherwise compensable injury is no longer the major contributing cause of the combined condition. See *Wal-Mart Stores, Inc. v. Young*, 219 Or App 410 (2008); *State Farm Ins. Co. v. Lyda*, 150 Or App 554, 559 (1997).

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 (2012); *Wal-Mart Stores, Inc. v. Young*, 219 Or App 410, 419 (2008). In determining whether such a cessation has occurred, we examine only the specific combined condition that was accepted and denied, without regard to other compensable conditions. *Reid v. SAIF*, 241 Or App 496, 503 (2011).

Although claimant does not dispute that his lumbar strain resolved, he asserts that the accepted combined condition consists of more than the strain and spondylolisthesis conditions because it also included L5-S1 radiculopathy and L5-S1 radiculitis, which have not resolved. Thus, claimant reasons, the resolution of the lumbar strain does not establish that the "otherwise compensable injury" ceased to be the major contributing cause of the combined condition. SAIF responds that its acceptance included L5-S1 radiculopathy and L5-S1 radiculitis only insofar as they were symptoms of the combined condition consisting of the otherwise compensable lumbar strain injury and the preexisting spondylolisthesis condition. Thus, SAIF reasons, the resolution of the lumbar strain establishes such a cessation. As explained below, we agree with SAIF.

A “combined condition” consists of two components: (1) an “otherwise compensable injury”; and (2) a “preexisting condition” under ORS 656.005(24). *Gaylen J. Kiltow*, 64 Van Natta 1136, 1143 (2012); *Susan E. Deshon*, 63 Van Natta 1391, 1394 (2011). Here, the December 14, 2011 Notice of Acceptance identified the two components of the combined condition as lumbar strain and spondylolisthesis, describing the spondylolisthesis as the preexisting condition. Thus, under the terms of the December 14, 2011 Notice of Acceptance, the “otherwise compensable injury” component of the accepted combined condition was limited to lumbar strain. *See Johnson v. Spectra Physics*, 303 Or 49, 56 (1987) (where there is a written acceptance, the scope of acceptance encompasses only those conditions specifically or officially accepted in writing); *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); *Steven N. Sieczkowski*, 64 Van Natta 1588, 1589 (2012).

Although the December 14, 2011 Notice of Acceptance addressed L5-S1 radiculopathy and L5-S1 radiculitis, it did so only insofar as they were caused by the “lumbar strain combined with pre-existing spondylolisthesis.” Further, because the December 14, 2011 Notice of Acceptance stated that “SAIF accepts this combined condition,” and did not identify L5-S1 radiculopathy and L5-S1 radiculitis as separate conditions, it did not additionally accept L5-S1 radiculopathy or L5-S1 radiculitis as separate conditions, but only as symptoms of the combined condition consisting of lumbar strain and spondylolisthesis.

Therefore, regardless of whether L5-S1 radiculopathy or L5-S1 radiculitis might be compensable independently of the lumbar strain, the accepted combined condition is limited to the “otherwise compensable injury” of lumbar strain and the “preexisting condition” of spondylolisthesis, and included the L5-S1 radiculopathy and L5-S1 radiculitis only as symptoms of the combined condition. Because the only “otherwise compensable injury” included in SAIF’s combined condition acceptance was the lumbar strain, SAIF’s denial is supported by evidence persuasively establishing that the lumbar strain had ceased to be the major contributing cause of the combined condition, or of claimant’s disability or need for treatment of the combined condition. *See Efren S Alonso-Santos*, 64 Van Natta 1340 (2012) (“ceases” denial of accepted combined strain condition upheld where the otherwise compensable strain had resolved). Accordingly, we affirm.

#### ORDER

The ALJ’s order dated August 22, 2012 is affirmed.

Entered at Salem, Oregon on January 31, 2013