
In the Matter of the Compensation of
TERI S. PROCK, Claimant
WCB Case No. 11-04972
ORDER ON REVIEW
J Michael Casey, Claimant Attorneys
James B Northrop, SAIF Legal, Defense Attorneys

Reviewing Panel: Members Lowell and Lanning.

Claimant requests review of Administrative Law Judge (ALJ) Wren's order that upheld the SAIF Corporation's denial of claimant's diagnostic medical services claim for cervical x-rays and a cervical MRI scan. On review, the issue is medical services.

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

The ALJ found that a preponderance of the evidence did not establish that the disputed diagnostic services were causally related to the accepted conditions. Consequently, the ALJ upheld SAIF's denial.

On review, claimant continues to assert that her medical services claim is compensable. For the following reasons, we disagree.

The parties agree that the dispute is governed by the first sentence of ORS 656.245(1)(a), which provides that for every "compensable injury," the carrier "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, * * *, including such medical services as may be required after a determination of permanent disability." *See SAIF v. Sprague*, 346 Or 661, 672 (2009); *Cameron J. Horner*, 62 Van Natta 2904, 2905 (2010), *aff'd*, 248 Or App 120 (2012). Thus, we must determine whether the disputed medical services were for a condition "caused in material part by the injury." *SAIF v. Swartz*, 247 Or App 515, 525 (2011). 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. *Id.* at 522-23, 525. Finally, a "material cause" under ORS 656.245(1)(a) is a fact of consequence. *Id.* 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 [a] claimant's current condition." *Id.* at 525-26 (emphasis in original).

In *Swartz*, the court upheld the carrier's denial of the claimant's medical services claim for back injections. Applying the standards set forth in *Sprague v. United States Bakery*, 199 Or App 435, *adh'd to as modified on recons*, 200 Or App 569 (2005), *rev den*, 340 Or 157 (2006), and *SAIF v. Martinez*, 219 Or App 182, 188 (2008), the court identified the issues as: (1) whether the accepted low back contusion was a material cause of the claimant's ongoing low back pain; and (2) whether the claimed injections were "for" that ongoing low back pain. 247 Or App at 525. Because the medical evidence established that the accepted condition had completely resolved (and it was no longer a material cause of the claimant's ongoing pain or any of his ongoing conditions), the court concluded that the proposed injections were not necessary to determine the extent of the accepted injury. Therefore, the *Swartz* court held that the medical services claim was not compensable. *Id.* at 526-27.

Here, as the ALJ explained, the record does not establish that the accepted right shoulder tendonitis conditions were a material cause of claimant's ongoing pain and need for the disputed medical services.¹ Dr. Sotelo testified that when claimant did not improve after shoulder injections, he had "to look for other causes of pain." (Ex. 88-26). He stated, "When you have pain in the shoulder and you have a clinical diagnosis of tendonitis of the shoulder and you treat them acutely for that and they do not get better, *then you have to look for other causes of pain.*" (*Id.*, emphasis added). He explained that the cervical x-rays and MRI were necessary "[b]ecause I had to find out what was the course [*sic*] of the pain. The cause of the pain *besides the tendonitis* could be neurological pain." (Ex. 88-35, emphasis added). He stated that claimant's pain was "not [the] straightforward kind of pain, you know, for rotator cuff; for tendonitis." (Ex. 88-18).

Thus, Dr. Sotelo had ruled out claimant's shoulder tendonitis as a cause of his pain, and ordered the cervical x-rays and MRI to look for "other causes" or causes "besides the tendonitis." As the ALJ reasoned, while the inquiry into why claimant had shoulder pain was ongoing, Dr. Sotelo's opinion establishes that such an inquiry was no longer casually related to the *accepted shoulder tendonitis*. Consequently, we agree with the ALJ's conclusion that diagnostic services to determine a cause for claimant's shoulder pain were not necessitated in material part by the accepted right shoulder tendonitis conditions, nor were they necessary to determine the cause or extent of the compensable injury; *i.e.*, the accepted conditions. Therefore, the disputed cervical x-rays and cervical MRI are not compensable. *Swartz*, 247 Or App at 526-27.

¹ On review, claimant does not dispute the ALJ's finding that the disputed diagnostic services were not causally related to her accepted finger/hand condition. Rather, her arguments on review solely focus on the relationship of those services to her shoulder condition.

Claimant cites *Stuart P. Luxenberg*, 65 Van Natta 65 (2013), and *Francisco M. Carlos-Macias*, 64 Van Natta 307 (2012), in support of her contention that the disputed medical services are compensable. However, in those cases, a preponderance of the medical evidence established that the accepted conditions constituted a material contributing cause of the proposed diagnostic services and that such services were necessary to determine the extent of the accepted conditions. 65 Van Natta at 70; 64 Van Natta at 309. Here, as explained above, there is no persuasive medical evidence establishing a material cause relationship (*i.e.*, a “fact of consequence”) between the disputed medical services and claimant’s accepted shoulder conditions. *See, e.g., Duane G. Bishop*, 64 Van Natta 2096 (2012). Accordingly, we affirm.

ORDER

The ALJ’s order dated December 13, 2012 is affirmed.

Entered at Salem, Oregon on June 19, 2013