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In the Matter of the Compensation of  
**ELVIA GARCIA-SOLIS, Claimant**  
WCB Case No. 12-03622  
ORDER ON REVIEW  
Alvey Law Group, Claimant Attorneys  
Lyons Lederer LLP, Defense Attorneys

Reviewing Panel: Members Lowell and Weddell.

Claimant requests review of Administrative Law Judge (ALJ) Wren's order that upheld the insurer's denial of her medical services claim for a psychology referral. On review, the issue is medical services.

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

Claimant was compensably injured when a large tent pole was blown down, striking her in the head and slamming her against a wall. The insurer ultimately accepted left midshaft clavicle fracture, first through third left rib fractures, C7-T3 spinous process fractures, full thickness scalp laceration with facial scarring, right supraorbital nerve injury, left elbow contusion, T5-T8 compression fractures, concussion, chronic headache syndrome, and status post closed head injury.<sup>1</sup> (Ex. 134-1).

Dr. Erb, claimant's attending physician, noted that claimant was fearful outdoors, worried that things would fall on her head, and would not go outside at all if it was windy. She referred claimant for a psychological evaluation to address post-traumatic stress disorder (PTSD)-like symptoms. Asserting that the psychological evaluation was not directed to an accepted condition, the insurer declined to authorize it.

The ALJ reasoned that medical evidence did not establish the requisite causal relationship between the disputed medical service and an accepted condition to satisfy ORS 656.245(1)(a). On review, claimant contends that the requisite relationship was shown by Dr. Erb's opinion that claimant's need for the disputed medical service was caused in material part by her "work injury." As explained below, we agree with the ALJ's reasoning.

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<sup>1</sup> Claimant has also been diagnosed with, and treated for, adjustment disorder with mixed anxiety and depressed mood, although that condition has not been accepted. (Exs. 141-4, 162, 169-1).

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.”

Here, the parties do not dispute the ALJ’s determination that this medical services dispute is governed by the first sentence of ORS 656.245(1)(a). Thus, we must determine whether the psychological referral is “for conditions caused in material part by the injury.” A “material cause” under ORS 656.245(1)(a) is a fact of consequence. *SAIF v. Swartz*, 247 Or App 515, 525 (2011); *Mize v. Comcast Corp-AT & T Broadband*, 208 Or App 563, 569-71 (2006). The “injury” or “compensable injury” is a previously accepted condition. *SAIF v. Martinez*, 219 Or App 182, 191 (2008). Therefore, although the condition for which treatment is sought need not be an accepted condition, the treatment must be necessitated in material part by an accepted condition. *Swartz*, 247 Or App at 525; *Martinez*, 219 Or App at 191.

Here, the psychology referral is for PTSD-like symptoms. Therefore, it is only compensable if the PTSD-like symptoms were caused in material part by an accepted condition. *Swartz*, 247 Or App at 515; *Cindy L. Roach*, 65 Van Natta 62, 64 (2013). Claimant contends that the causal relationship between the accepted conditions and the psychology referral is established by Dr. Erb’s opinion, which took the form of a concurrence letter. The letter first listed the accepted conditions. (Ex. 170-1). The letter then asked:

“Is [claimant’s] need for medical services in the form of ‘Psychology referral to address PTSD-like symptoms’ caused in **material part** by her work injury of February 25, 2009 in which she sustained severe injuries, the diagnoses of which are set forth above as her accepted conditions?” (Ex. 170-2, emphasis original).

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In response, Dr. Erb concurred with the following statement:

“Yes, Ms. Garcia-Solis’ need for medical services in the form of ‘Psychology referral to address PTSD-like symptoms’ is caused in *material part* by her work injury of February 25, 2009.” (*Id.*, emphasis original).

Although the concurrence letter identified the accepted conditions, it asked Dr. Erb only about the causal relationship between the psychology referral and the “work injury,” rather than between the psychology referral and an accepted condition. Likewise, her answer addressed only the causal relationship between the psychology referral and the “work injury.” Further, because the letter described the “work injury” as the injury “in which she sustained” her accepted conditions, we conclude that the “work injury” referred to the injurious work accident rather than to an accepted condition.

Under such circumstances, we do not find that Dr. Erb opined that the psychology referral was necessitated in material part by an accepted condition. While we agree that her opinion supports a causal relationship between the psychology referral and the injurious work accident, *Swartz* requires a causal relationship with an accepted condition, not merely the work injury/incident.<sup>2</sup> *Jeremy Schaffer*, 65 Van Natta 292, 294 (2013). Accordingly, we affirm.

#### ORDER

The ALJ’s order dated September 17, 2013 is affirmed.

Entered at Salem, Oregon on March 26, 2014

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<sup>2</sup> We recognize that this requirement may be an obstacle to claimant obtaining diagnostic medical services to determine the cause or extent of a work-related, but unaccepted, condition. However, we have no authority to disregard *Swartz*.