
In the Matter of the Compensation of
DAVE H. WHERLEY, Claimant
WCB Case No. 12-06266
ORDER ON REVIEW
Unrepresented Claimant
SAIF Legal, Defense Attorneys

Reviewing Panel: Members Curey and Weddell.

Claimant, *pro se*, requests review of Administrative Law Judge (ALJ) Otto's order that upheld the SAIF Corporation's denial of his current combined low back condition.¹ On review, the issue is compensability.

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

In upholding SAIF's denial, the ALJ reasoned that the compensable February 2007 injury was no longer related to claimant's current low back condition or need for treatment. Specifically, the ALJ cited medical evidence that claimant's continuing low back symptoms and need for treatment were no longer due to the lumbar strain component of the accepted combined condition.

In *Brown v. SAIF*, 262 Or App 640, 656 (2014), the court held that in analyzing a "ceases" denial under ORS 656.262(6)(c), a carrier must prove that the "otherwise compensable injury" (*i.e.*, the work-related injury incident, not the accepted condition), was no longer the major contributing cause of the combined condition. Therefore, under ORS 656.262(6)(c), a carrier may deny an accepted combined condition if the "otherwise compensable injury" (*i.e.*, the work-related injury incident) ceases to be the major contributing cause of the combined condition. *Id.*

¹ Because claimant is no longer represented, he may wish to consult the Ombudsman for Injured Workers, whose job it is to assist injured workers. He may contact the Ombudsman, free of charge, at 1-800-927-1271, or write to:

OMBUDSMAN FOR INJURED WORKERS
DEPT OF CONSUMER & BUSINESS SERVICES
PO BOX 14480
SALEM, OR 97309-0405

In accordance with the *Brown* rationale and to support its denial under ORS 656.262(6)(c), SAIF must prove a change in claimant's condition or circumstances such that the "otherwise compensable injury" is no longer the major contributing cause of the disability or need for treatment of the combined condition. ORS 656.262(6)(c); *Washington County-Risk v. Jansen*, 248 Or App 335, 345 (2012); *Wal-Mart Stores, Inc. v. Young*, 219 Or App 410, 419 (2008). The "combined condition" consists only of the "otherwise compensable injury" and preexisting conditions that are a component of the combined condition. *Vigor Indus., LLC v. Ayres*, 257 Or App 795, 807 (2013).

Here, having reviewed the medical evidence, we are persuaded that it establishes that the work-related injury incident ceased to be the major contributing cause of the combined condition and was no longer the major contributing of the disability or need for treatment of the combined condition. (Exs. 88-1, 89-1, 93-2, 94-8). Therefore, we agree with the ALJ's decision upholding SAIF's denial.

ORDER

The ALJ's order dated May 9, 2014 is affirmed.

Entered at Salem, Oregon on November 7, 2014