

In the Matter of the Compensation of  
**JOHNNIE E. JONES, Claimant**  
WCB Case No. 14-01633  
ORDER ON REVIEW  
Dale C Johnson, Claimant Attorneys  
SAIF Legal Salem, Defense Attorneys

Reviewing Panel: Members Curey and Weddell.

Claimant requests review of Administrative Law Judge (ALJ) Naugle's order that upheld the SAIF Corporation's denial of his current combined cervical and low back conditions. On review, the issue is compensability. We reverse.

FINDINGS OF FACT

We adopt the ALJ's "Findings of Fact."

CONCLUSIONS OF LAW AND OPINION

Claimant has a history of low back and neck injuries that preexisted his compensable injury in September 2013, which was accepted for cervical and lumbar strains. In March 2014, SAIF accepted, effective September 25, 2013, a cervical strain combined with preexisting spondylosis and a lumbar strain combined with degenerative disc disease and lumbar spondylosis. SAIF then denied the combined conditions on the ground that the accepted injury was no longer the major contributing cause of those conditions. Claimant requested a hearing.

In upholding the denial, the ALJ determined that the "otherwise compensable injury" under *Brown v. SAIF*, 262 Or App 640 (2014), consisted of the accepted cervical and lumbar conditions and not a shoulder condition, even though claimant experienced right shoulder symptoms after the compensable injury. The ALJ then evaluated the various medical opinions bearing on the issue of whether the otherwise compensable injury ceased to be the major contributing cause of the combined conditions. After considering medical evidence from an examining physician, Dr. Teed, as well opinions from Drs. Ott and Englander, claimant's treating physicians, the ALJ concluded that SAIF had met its burden of establishing a change in condition or circumstances such that the otherwise compensable injury was no longer the major contributing cause of the disability or need of treatment of the combined conditions.

On review, claimant first contends that the ALJ should not have limited the otherwise compensable injury to cervical and lumbar strains and, second, that Dr. Teed's medical opinion was insufficient to satisfy SAIF's burden of proof under ORS 656.266(2)(a). For the following reasons, we find that SAIF's denial should be set aside.

Neither party challenges the ALJ's application of a "combined condition" standard in deciding the compensability issue. A carrier may deny an accepted combined condition if the otherwise compensable injury ceases to be the major contributing cause of the combined condition. ORS 656.262(6)(c). In *Brown*, the court held that the correct inquiry under ORS 656.262(6)(c), is whether the claimant's "work-related injury incident" (not the accepted condition) remains the major contributing cause of disability or need for treatment of the combined condition. 262 Or App at 656; *Shawn M. Smith*, 66 Van Natta 1381, 1382 (2014) (a carrier may deny an accepted combined condition under ORS 656.262(6)(c), if the "work-related injury incident" ceases to be the major contributing cause of the combined condition).

With regard to the "ceases" denial, SAIF must prove a change in the claimant's condition or circumstances since the acceptance of the combined condition, such that the "work-related injury incident" is no longer the major contributing cause of disability/need for treatment of the combined condition. ORS 656.266(2)(a); *Wal-Mart Stores, Inc. v. Young*, 219 Or App 410, 419 (2008); *Brown*, 262 Or App at 656; *Smith*, 66 Van Natta at 1382. The "effective date" of the combined condition acceptance provides the "baseline" for determining whether there has been a "change" in claimant's condition or circumstances. *Oregon Drywall Sys. v. Bacon*, 208 Or App 205, 210 (2006).

These issues present complex medical questions that must be resolved by expert medical opinion. *Barnett v. SAIF*, 122 Or App 279, 283 (1993). When presented with disagreement between experts, we give more weight to those opinions that are well reasoned and based on complete information. *Somers v. SAIF*, 77 Or App 259, 263 (1986).

Here, the only opinion that supports SAIF's denial is that of Dr. Teed. If his opinion is not persuasive, then SAIF's denial should be set aside.<sup>1</sup>

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<sup>1</sup> Claimant argues that a right shoulder condition should be included as part of the "otherwise compensable injury." Claimant may have a right shoulder condition. However, it is not part of the combined cervical and lumbar strain conditions, which are the only conditions at issue. Claimant, of course, may file a new/omitted medical condition claim for a shoulder condition at any time pursuant to ORS 656.267.

Dr. Teed explained that the combined condition was broader than the accepted strains and that the effects of claimant's injury combined with preexisting spondylosis, but that after the passage of three months, the effects of the work injury were no longer the major cause of claimant's need for treatment. (Ex. 81A-2). In a subsequent report, Dr. Teed reiterated his opinion that the work injury was no longer the major cause of the disability or need for treatment of the combined conditions within a few months of the injury. (Ex. 83-2). However, it is apparent that the primary basis for Dr. Teed's opinion is that strains "classically resolve within three months after injury." (Ex. 73-10). Ultimately, Dr. Teed's only rationale for support of the denial is that sufficient time has passed since the injury date.

Considering the lack of explanation of Dr. Teed's conclusion that the work injury was no longer the major cause of the disability or need for treatment of the combined conditions, and considering that his reasoning regarding the change of condition or circumstances relies heavily, if not solely, on the assumption that strains typically resolve in a certain period of time, Dr. Teed's opinion is not sufficient to establish a change of condition or circumstances such that the "otherwise compensable injury" ceased to be the major contributing cause of the disability or need for treatment of the combined conditions. *See Sherman v. Western Employers Ins.*, 87 Or App 602, 606 (1987) (physician's comments that were general in nature and not addressed to the claimant's particular situation were not persuasive); *Judi Whitney*, 61 Van Natta 392 (2009) (medical opinion that presumed a change in the claimant's condition within a certain time frame was not persuasive); *Steven Fox*, 51 Van Natta 840, 841 (1999) (opinion that strain resolved because it "should have" resolved, unpersuasive because it was essentially general, rather than specific to claimant).

There is no other opinion supporting SAIF's position.<sup>2</sup> Thus, SAIF has not met its burden of proof. *See Jason J. Skirving*, 58 Van Natta 323 (2006), *aff'd without opinion*, 210 Or App 467 (2007) (where the carrier has the burden of proof under ORS 656.266(2)(a), the medical evidence supporting its position must be persuasive). Accordingly, we reverse.

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<sup>2</sup> The ALJ found the medical opinions of Drs. Englander and Ott, which supported claimant's position that the otherwise compensable injury remained the major contributing cause of his need for treatment, unpersuasive. Inasmuch as the compensability issue turns on the persuasiveness of the medical evidence supporting SAIF's denial, and considering that we have found that evidence lacking, we do not address SAIF's arguments regarding the opinions of Drs. Englander and Ott.

Claimant's attorney is entitled to an assessed fee for services at hearing and on review regarding the compensability issue. ORS 656.386(1). After considering the factors set forth in OAR 438-015-0010(4) and applying them to this case, we find that a reasonable fee for claimant's attorney's services at hearing and on review is \$8,500, payable by SAIF. In reaching this conclusion, we have particularly considered the time devoted to the case (as represented by the record, claimant's appellate briefs, claimant's counsel's fee submission, and SAIF's objections), the complexity of the issues, the value of the interest involved, and the risk that counsel may go uncompensated.

Finally, claimant is awarded reasonable expenses and costs for records, expert opinions, and witness fees, if any, incurred in finally prevailing over the denial, to be paid by SAIF. *See* ORS 656.386(2); OAR 438-015-0019; *Nina Schmidt*, 60 Van Natta 169 (2008); *Barbara Lee*, 60 Van Natta 1, *recons*, 60 Van Natta 139 (2008). The procedure for recovering this award, if any, is prescribed in OAR 438-015-0019(3).

#### ORDER

The ALJ's order dated September 3, 2014 is reversed. SAIF's denial is set aside and the claim is remanded to SAIF for processing according to law. For services at hearing and on review, claimant's attorney is awarded an assessed fee of \$8,500, to be paid by SAIF. Claimant is awarded reasonable expense and costs for records, expert opinions, and witness fees, if any, incurred in finally prevailing over the denial, to be paid by SAIF.

Entered at Salem, Oregon on April 27, 2015