
In the Matter of the Compensation of
VICKI SALVADOR, Claimant
WCB Case No. 14-04476
ORDER ON REVIEW
Jodie Phillips Polich, Claimant Attorneys
SAIF Legal Salem, Defense Attorneys

Reviewing Panel: Members Lanning and Curey.

Claimant requests review of Administrative Law Judge (ALJ) Wren's order that affirmed an Order on Reconsideration that did not award any permanent impairment for her cervical and lumbar strain conditions. On review, the issue is extent of permanent disability (impairment).

We adopt and affirm the ALJ's order, except for the last paragraph of the "Conclusions of Law and Opinion," with the following supplementation.

Claimant argues that, under *Schleiss v. SAIF*, 354 Or 637 (2013), she is entitled to impairment ratings for the decreased ranges of motion (ROM) findings in her cervical and lumbar spine documented by Dr. Heusch, the medical arbiter, because he did not identify any legally cognizable "preexisting condition," or attribute the decreased ROM findings to any such condition. (Ex. 14-3, -6-7). According to claimant, *Schleiss* stands for the proposition that "ALL permanent partial disability is rated unless there is a combined condition." (App. Br., p. 3). For the following reasons, we disagree with claimant's arguments.

For the purpose of rating permanent impairment, only the opinions of claimant's attending physician at the time of claim closure, other medical findings with which the attending physician concurred, and the findings of a medical arbiter may be considered. ORS 656.245(2)(b)(C); ORS 656.268(7); *Tektronix, Inc. v. Watson*, 132 Or App 483 (1995); *Koitzsch v. Liberty Northwest Ins. Corp.*, 125 Or App 666 (1994). On reconsideration, where a medical arbiter is used, impairment is established based on objective findings of the medical arbiter, except where a preponderance of the medical evidence demonstrates that different findings by the attending physician, or impairment findings with which the attending physician has concurred, are more accurate and should be used. OAR 436-035-0007(5);

SAIF v. Owens, 247 Or App 402, 414-15 (2011), *recons*, 248 Or App 746 (2012).¹ Only findings of impairment that are permanent and caused by the accepted compensable condition may be used to rate impairment. OAR 436-035-0007(1); *Khrul v. Foremans Cleaners*, 194 Or App 125, 130 (1994).

Here, Dr. Heusch, the medical arbiter, documented decreased ROM in claimant's cervical and lumbar spine. (Ex. 14-3, -6-7). He considered the findings to be valid for the purposes of rating permanent impairment, but opined that the "examination failed to reveal abnormal objective physical findings due to the accepted condition." (Ex. 14-4). When asked to apportion any impairment findings due to the accepted conditions or direct medical sequela versus due to qualifying preexisting or unrelated conditions, Dr. Heusch stated that there was "no permanent impairment or direct medical sequela of the cervical or lumbar spine due to the accepted conditions." (Ex. 14-5).

Unlike in *Schleiss*, where there was impairment due to the compensable injury, Dr. Heusch's opinion does not support such a conclusion. See OAR 436-035-0007(1). This record also does not establish a statutory qualifying "preexisting condition" under ORS 656.005(24)(a)(A). Therefore, because claimant's cervical and lumbar impairment is due to causes unrelated to the compensable injury, a permanent impairment award for reduced range of motion is not appropriate. See *Marla S. Scanlon*, 66 Van Natta 2060, 2061 (2014); *Paula Magana-Marquez*, 66 Van Natta 1300, 1302 (2014) (where the claimant's impairment was due solely to causes unrelated to the compensable injury, a permanent impairment award was not appropriate).

In reaching this conclusion, we acknowledge claimant's contention that she is entitled to impairment ratings for the decreased cervical and lumbar ROM findings because Dr. Heusch opined that the impairment findings were not due to the "accepted conditions," rather than the "compensable injury," as defined in *Brown v. SAIF*, 262 Or App 640, 652 (2014). However, absent an opinion from Dr. Heusch that claimant's decreased ROM findings that are not due to the "accepted conditions" were due to the "compensable injury," we may not make such an inference. See *Benz v. SAIF*, 170 Or App 22, 25 (2000) (although the Board may draw reasonable inferences from the medical evidence, it is not free to reach its own medical conclusions in the absence of such evidence); *see also*

¹ Because claimant's claim was closed by an April 25, 2014 Notice of Closure, the applicable standards are found in WCD Admin. Order standards are found in WCD Admin. Order 12-061 (eff. January 1, 2013). See OAR 436-035-0003(1).

SAIF v. Calder, 157 Or App 224, 227-28 (1998) (the Board is not an agency with specialized medical expertise and must base its findings on medical evidence in the record).²

Based on the foregoing reasons, in addition to those expressed in the ALJ's order, claimant has not met her burden of establishing error in the reconsideration process. *See Marvin Wood Prods. v. Callow*, 171 Or App 175, 183-84 (2000). Consequently, we affirm.

ORDER

The ALJ's order dated February 4, 2015 is affirmed.

Entered at Salem, Oregon on June 12, 2015

² In any event, should Dr. Heusch's opinion regarding claimant's impairment findings be considered ambiguous, we still would not find that claimant is entitled to a permanent impairment award for her cervical and lumbar conditions. In particular, we note that Dr. Carver, claimant's attending physician, expressly opined that claimant had no permanent impairment as it related to her compensable injury. (*See Exs. 3, 8-2, 10-3*).