

---

In the Matter of the Compensation of  
**TROY L. FENNELL, Claimant**  
WCB Case No. 14-00783  
ORDER ON REVIEW  
Scott H Terrall & Associates, Claimant Attorneys  
Gress & Clark LLC, Defense Attorneys

Reviewing Panel: Members Curey and Lanning.

Claimant requests review of Administrative Law Judge (ALJ) Donnelly's order that: (1) upheld the self-insured employer's denial of claimant's current combined low back condition; and (2) declined to award penalties and attorney fees for an allegedly unreasonable denial. On review, the issues are compensability, penalties, and attorney fees.

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

On June 7, 2013, claimant injured his low back while moving furniture at work. (Tr. 6). A June 30, 2013 lumbar MRI showed multiple-level disc protrusions and moderate to severe spinal canal stenosis. (Ex. 1).

On August 6, 2013, claimant consulted Dr. Ackerman, an occupational medicine specialist, for back and leg pain. (Ex. 3). Dr. Ackerman acknowledged that claimant's back pain could be from his spinal canal stenosis, but considered claimant to have enough muscle spasm to warrant a diagnosis of lumbosacral strain. (Ex. 4-1).

On September 11, 2013, Dr. Kokkino, a neurosurgeon, opined that claimant's symptoms represented neurogenic claudication from spinal stenosis that had evolved from L2-3, L3-4, and L4-5 disc protrusions. (Ex. 6a-1).

The employer accepted a lumbar strain. (Ex. 7).

On October 24, 2013, Dr. Kosek, a pain management specialist, administered an epidural steroid injection for lumbar spine stenosis and disc displacement. (Ex. 9-3, -4).

On November 14, 2013, Dr. Coulter, a neurosurgeon, performed an examination at the employer's request. Dr. Coulter opined that the work event combined with preexisting lumbar spondylosis (including disc bulging) and facet

arthritis. (Ex. 12-17). Finding no paravertebral muscle spasm on palpation and reasoning that the strain had substantially improved with treatment, Dr. Coulter concluded that the lumbar strain was medically stationary and without further need for treatment, permanent impairment, or work restriction. (Ex. 12-11, -18). In addressing the employer's question as to whether the otherwise compensable lumbar spine injury had ceased to be the major contributing cause of the disability/need for treatment, Dr. Coulter opined that the lumbar strain was the major contributing cause of the need for treatment through mid-October 2013, after which the preexisting degenerative diseases were the major contributing cause of the need for treatment, including the epidural steroid injection to treat lumbar stenosis. (Ex. 12-18).

Dr. Ackerman concurred with Dr. Coulter's findings and conclusions. (Ex. 13).

On December 17, 2013, the employer amended its acceptance to include a "lumbar strain combined with preexisting multilevel lumbar spondylosis and facet arthritis that occurred effective June 6, 2013." (Ex. 22a).

On December 18, 2013, the employer issued a "ceases" denial, asserting that the "otherwise compensable claim for lumbar strain" had ceased to be the major contributing cause of the need for treatment and disability of the combined condition. (Ex. 23). The denial also asserted that the "otherwise compensable injury" was no longer the major contributing cause of the combined condition. (*Id.*) Claimant requested a hearing.

On April 11, 2014, Dr. Rosenbaum, a neurosurgeon, performed an examination at claimant's request. Dr. Rosenbaum opined that the work event caused a lumbar strain and an L2-3 or L3-4 disc herniation with radiculopathy. (Ex. 30-4). He further opined that the work event combined with preexisting spondylosis (*i.e.*, degenerative arthritis of the lumbar spine). (Ex. 30-5). Reasoning that claimant did not have prior symptoms, he concluded that the work event was the major contributing cause of the disability/need for treatment of the combined condition. (*Id.*)

On April 22, 2014, Dr. Swanson, an orthopedic surgeon, performed an examination at the employer's request. Finding claimant's lower extremity symptoms to be consistent with intermittent neurogenic claudication, he diagnosed a combined condition consisting of a lumbar strain and preexisting lumbar spondylosis and spinal stenosis. (Ex. 31-11, -14, -16). Considering a strain to be an overstretch of a musculotendinous unit with an obligatory recovery period of

six months at most, Dr. Swanson opined that the strain would have been medically stationary and required no further treatment by December 7, 2013, after which the preexisting lumbar spine pathology was the major contributing cause of the need for medical evaluation and treatment. (Ex. 31-14, -16).

On April 23, 2014, Dr. Ackerman changed his opinion. Based on the findings presented by Dr. Rosenbaum, Dr. Ackerman agreed with Dr. Rosenbaum's opinion. (Ex. 31A-2).

On May 6, 2014, Dr. Kokkino agreed with the opinions of Drs. Ackerman and Rosenbaum that claimant's work injury remained the major contributing cause of his lumbar disc herniations and need for treatment. (Ex. 32-2).

On July 22, 2014, Dr. Swanson disagreed with Dr. Rosenbaum's diagnosis of radiculopathy, explaining that claimant's examinations did not demonstrate valid objective findings of radiculopathy, such as sensory changes in a dermatome distribution, reflex changes, atrophy, or muscle weakness. (Ex. 33-6, -7). Rather, he considered claimant's symptoms to be consistent with intermittent neurogenic claudication due to spinal stenosis caused by a small spinal canal (due to congenitally short pedicles) combined with preexisting spondylosis consisting of facet joint arthritis and intervertebral disc degeneration. (Ex. 33-6). Consistent with Dr. Coulter's November 4, 2013 examination, Dr. Swanson maintained his opinion that the work injury had ceased to be the major contributing cause of claimant's need for treatment of the combined condition by December 7, 2013. (Ex. 33-5, -6).

On July 30, 2014, Dr. Coulter reviewed Dr. Rosenbaum's report and reframed his opinion to address the "otherwise compensable injury." Considering all reasonable possible consequences of the work event, he maintained that the work injury was limited to a lumbar strain that had resolved by October 15, 2013. (Ex. 34-3, -4).

On July 30, 2014, Dr. Morgan, a radiologist, conducted a review of the lumbar MRI at the employer's request. Dr. Morgan opined that the MRI's "overall appearance" is consistent with spinal stenosis due to congenital factors and degenerative processes, including disc protrusions. (Ex. 35-1). In his post-hearing deposition, Dr. Morgan testified that the disc protrusions he observed on the MRI are consistent with degenerative disc disease. (Ex. 36-37, -39).

The ALJ upheld the employer's denial. In doing so, the ALJ determined that the language of the denial (setting forth the accepted condition and stating that the compensable injury was no longer the major contributing cause of the combined condition) met the standard for a "ceases" denial set forth in *Brown v. SAIF*, 262 Or App 640, *rev allowed*, 356 Or 397 (2014). Finding the medical opinions of Drs. Swanson, Coulter, and Morgan more persuasive than that of Dr. Rosenbaum, the ALJ concluded that the employer met its burden of proving that the work-related incident ceased to be the major contributing cause of the disability/need for treatment of the combined condition as of the date of denial.

On review, claimant reiterates his argument at hearing that the employer's denial is invalid and contrary to the *Brown* decision. After considering the denial in its entirety, we adopt and affirm the ALJ's reasoning and conclusion that it satisfied the "work-related injury incident" standard established by the *Brown* decision.

Claimant also contests the ALJ's evaluation of the medical evidence. Relying on Dr. Rosenbaum's opinion, claimant contends that the work injury caused an L2-3 or L3-4 disc herniation, which is the major contributing cause of his ongoing disability/need for treatment. He argues that the opinions of Drs. Coulter and Swanson failed to consider the contribution of these disc conditions as part of the accepted combined condition and therefore do not satisfy the employer's burden of proof. For the following reasons, we disagree with claimant's contentions.

A carrier may deny an accepted combined condition if the otherwise compensable injury ceases to be the major contributing cause of the combined condition. *See* ORS 656.262(6)(c). The "otherwise compensable injury" is the "work-related injury incident," and is not limited to the lumbar strain identified in the employer's acceptance. *Brown*, 262 Or App at 652. In evaluating the "ceases" denial, we consider only the components of the combined condition, which are the "otherwise compensable injury" and the statutory preexisting condition. *Vigor Indus., LLC v. Ayres*, 257 Or App 795, 803 (2013), *rev den*, 355 Or 142 (2014).

The word "ceases" presumes 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 or need for treatment of the combined condition. *Brown*, 262 Or App at 656; *Wal-Mart Stores, Inc. v. Young*, 219 Or App 410, 419 (2008). 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).

Because of the disagreement among physicians regarding the cause of claimant’s need for treatment, resolution of this matter presents a complex medical question and requires expert medical opinion. *Barnett v. SAIF*, 122 Or App 279, 283 (1993). 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, Dr. Coulter opined that the work event caused a lumbar strain that combined with preexisting lumbar spondylosis and was the major contributing cause of claimant’s need for treatment until approximately mid-October 2013. (Exs. 12, 34). Dr. Coulter did not believe that the work event caused disc conditions that would constitute “otherwise compensable injuries.” (Ex. 34).

After considering Dr. Coulter’s opinion, we are persuaded that he considered the effects of the work event in determining that the work injury had ceased to be the major contributing cause of claimant’s need for treatment. Specifically, he understood that all consequences of the work injury (not just the accepted claim) must be considered in evaluating whether the otherwise compensable injury had ceased to be the major contributing cause of the need for treatment. (Ex. 34-3). In concluding that the work injury caused a lumbar strain that combined with preexisting degenerative disease, he explained that claimant did not have radicular type pain or a herniated lumbar disc, but, rather, disc bulging and other preexisting degenerative changes resulting in severe spinal stenosis and neurogenic claudication type leg pain. (Ex. 34-1, -2). Based on his examination findings, including the absence of muscle spasm, he concluded that the lumbar strain had substantially improved with treatment and was without further disability/need for treatment. (Ex. 12-11, -18).

In this context, and after analyzing Dr. Coulter’s opinion in response to the employer’s questions, we conclude that his reference to “lumbar strain” is synonymous with the “work injury.” As such, his opinion adequately addresses the standard articulated in *Brown*. See *SAIF v. Strubel*, 161 Or App 516, 521-22 (1999) (medical opinions are evaluated in context and based on the record as a whole to determine sufficiency); *Rogelio Barbosa-Miranda*, 66 Van Natta 1666, 1667 (2014) (physician’s consideration of injurious “event,” “work injury,” and “industrial injury” satisfied the *Brown* standard); *Mauricio G. Maravi-Perez*,

66 Van Natta 1352, 1355 (2014) (medical evidence satisfied the *Brown* standard where physician referred to resolved “lumbar strain,” but also acknowledged that the claimant’s “work injury” combined with the preexisting condition).

Dr. Rosenbaum agreed that the work event caused a lumbar strain, but did not address Dr. Coulter’s opinion that the lumbar strain had resolved. (Ex. 30-5). Instead, based on his assessment that claimant developed a radiculopathy after the injury, Dr. Rosenbaum concluded that a “disc abnormality had to play the major contributing role” in claimant’s disability/need for treatment. (Ex. 30-5, -6). Yet, Dr. Rosenbaum did not respond to the contrary opinions of Drs. Coulter and Swanson that claimant did not have radiculopathy, but rather, neurogenic claudication from preexisting spinal stenosis.<sup>1</sup> (Exs. 33-6, -7, 34-2). Consequently, Dr. Rosenbaum’s opinion does not undermine the persuasiveness of Dr. Coulter’s opinion that the effects of the work-related injury incident were not the major contributing cause of claimant’s disability/need for treatment of his low back condition as of mid-October 2013.<sup>2</sup> See *Janet Benedict*, 59 Van Natta 2406, 2409 (2007), *aff’d without opinion*, 227 Or App 289 (2009) (medical opinion less persuasive when it did not address contrary opinions).

Thus, based on Dr. Coulter’s opinion that the otherwise compensable injury had resolved such that it was no longer the major contributing cause of claimant’s disability/need for treatment of the combined condition, we find that the employer established the requisite change in condition or circumstances pursuant to ORS 656.262(6)(c). See *Kenneth E. Horner*, 65 Van Natta 2492, 2495 (2013) (where

---

<sup>1</sup> The “preexisting condition” component of claimant’s accepted combined condition is “multilevel lumbar spondylosis and facet arthritis.” (Ex. 22). Drs. Coulter and Swanson opined that lumbar spondylosis and facet arthritis contributed to a further narrowing of claimant’s congenitally narrow spinal canal, resulting in moderate to severe lumbar spinal stenosis with intermittent neurogenic claudication in the lower extremities. (Ex. 12-17, -18, 31-14).

<sup>2</sup> We disagree with claimant’s assertion that the employer’s combined condition acceptance constitutes an acceptance of disc conditions. A carrier’s acceptance of a combined condition is not an outright and independent acceptance of the preexisting condition component of the accepted combined condition. See *Fimbres v. SAIF*, 197 Or App 613, 618 (2005); *Multifood Specialty Distribution v. McAtee*, 164 Or App 654, 661 (1999), *aff’d*, 333 Or 629 (2002). The compensability of an independent claim for the disc condition is a separate and distinct issue from the ongoing compensability of the combined low back condition under ORS 656.262(6)(c). See ORS 656.267(1); *Kenneth Anderson*, 60 Van Natta 2538, 2543 (2008), *aff’d without opinion*, 233 Or App 227 (2010) (addressing the compensability of “lumbar facet injury syndrome” as an independent claim under ORS 656.267, which was separate and distinct from the condition as a component of the combined left knee strain and the ongoing compensability of the combined left knee condition under ORS 656.262(6)(c)). The issue on review is the ongoing compensability of the combined low back condition under ORS 656.262(6)(c), not the compensability of the preexisting condition component of that combined condition.

---

the medical evidence established that the compensable right knee sprain injury had resolved by the time of the carrier's "ceases" denial, the carrier had established the required change in condition or circumstances). Accordingly, we affirm the ALJ's decision upholding the employer's "ceases" denial.<sup>3</sup>

ORDER

The ALJ's order dated March 12, 2015 is affirmed.

Entered at Salem, Oregon on October 27, 2015

---

<sup>3</sup> In light of our determination, we conclude that penalties and attorney fees are not warranted.