
In the Matter of the Compensation of
SHAWN CAMPBELL, Claimant
WCB Case No. 14-02665
ORDER ON REVIEW
Ransom Gilbertson Martin et al, Claimant Attorneys
Sather Byerly & Holloway, Defense Attorneys

Reviewing Panel: Members Weddell, Curey and Somers. Member Weddell dissents.

Claimant requests review of Administrative Law Judge (ALJ) Kekauoha's order that upheld the self-insured employer's denial of his current combined low back condition. On review, the issue is compensability.

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

After claimant's May 2013 work injury, the employer initially accepted a lumbar strain. (Ex. 13).

In January 2014, Dr. Weinstein, a neurosurgeon who examined claimant on the employer's behalf, diagnosed a work-related lumbar strain and preexisting lumbar spondylosis/degenerative disc disease. (Ex. 22-7).

Claimant's pain symptoms persisted. (*See* Exs. 24, 25; Tr. 15-17).

In May 2014, Dr. Rosenbaum, another neurosurgeon who examined claimant at the employer's request, also diagnosed a lumbar strain and preexisting spondylosis. (Ex. 26-5). He opined that claimant had a combined condition composed of the work-related lumbar strain combined with the preexisting spondylosis. (*Id.*) However, given that the work-related strain had adequate time for healing, he considered the major contributing cause of claimant's current condition to be the preexisting condition. (*Id.*) Dr. Matheson, claimant's attending physician, concurred with Dr. Rosenbaum's report. (Ex. 27).

On May 28, 2014, the employer issued a Modified Notice of Acceptance that identified the accepted condition as "[l]umbar strain which combined with pre-existing lumbar spondylosis on 5/8/2013." (Ex. 28-1). On May 30, 2014, the employer denied the combined condition. (Ex. 30). Claimant requested a hearing.

In September 2014, Dr. Matheson reported that he did not fully concur with Dr. Rosenbaum's opinion. (Ex. 34-3). He stated that another MRI should be obtained to determine the cause of claimant's current condition. (*Id.* at 2). He did not believe that claimant's functional overlay "significantly impact[ed] this case." (*Id.* at 1). Dr. Matheson did not believe that there was any significant change in claimant's condition to support a denial. (*Id.* at 3).

The ALJ upheld the employer's denial. In doing so, the ALJ considered the opinions of Drs. Weinstein and Rosenbaum to persuasively establish a change in claimant's condition such that the otherwise compensable injury was no longer the major contributing cause of his need for treatment or disability.

On review, claimant notes that Drs. Weinstein and Rosenbaum based their opinions, to a large extent, on the passage of time and the expected course of healing for a lumbar strain. Claimant contends that such reasoning is based only on a "statistical analysis" and is insufficient to rebut the opinion of Dr. Matheson, who did not support a change in claimant's condition. We disagree with claimant's contention.

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 v. SAIF*, 262 Or App 640 (2014), *rev allowed*, 356 Or 397 (2014), 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 the disability or need for treatment of the combined condition. *Id.* at 652.

To support its "ceases" denial, the employer 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 or need for treatment of the combined condition. ORS 656.266(2)(a); *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).

Here, the combined condition issue presents 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).

Dr. Weinstein opined that claimant's work injury did not cause any conditions other than a lumbar strain, and did not worsen any preexisting conditions. (Ex. 35-25-26). He did not believe that the work injury pathologically worsened the preexisting spondylosis, but opined that the preexisting spondylosis was impeding claimant's recovery. (Ex. 22-8). Dr. Weinstein opined that the lumbar strain and preexisting lumbar spondylosis combined to cause claimant's need for medical treatment. (*Id.*)

Dr. Weinstein noted that the best person to comment on any changes in symptoms indicating improvement in claimant's condition would be the treating physician. (Ex. 35-15). However, he explained that, by definition, a lumbar strain and its symptoms usually resolve in three or four months. (Ex. 35-8). Accordingly, he would consider claimant's preexisting lumbar spondylosis to be the major cause of claimant's symptoms, need for treatment, and disability after that time. (*Id.*)

Dr. Rosenbaum also opined that claimant's work injury was a lumbar strain that had resolved. (Ex. 26-7). He explained that claimant's symptoms persisted far too long to be accounted for by a lumbar strain. (Ex. 36-17). He opined that strain injuries generally resolve in two to three weeks, and that he would attribute symptoms to the lumbar strain for up to 90 days to give claimant the benefit of the doubt and account for the possibility of claimant being an outlier in regard to the known course of healing for a strain. (*Id.* at 20).

Dr. Rosenbaum acknowledged that there was no "significant change" in claimant's symptoms, but explained that the symptoms were all subjective. (Ex. 36-10). He stated that, although one does look at the individual patient to determine whether their symptoms are consistent with a resolved strain, this was not possible in claimant's particular circumstances because he had no objective findings and indications of functional overlay. (*Id.* at 17-20).

As an initial matter, we disagree with claimant's contention that Drs. Weinstein's and Rosenbaum's reliance on statistical propositions regarding the duration of a lumbar strain renders their opinions unpersuasive. In addition to relying on such information, they also relied on claimant's medical history, the mechanism of injury, the imaging findings, and their own examinations showing no objective findings indicative of a persistent acute injury. Consideration of such factors establishes that Drs. Weinstein and Rosenbaum considered claimant's individual circumstances, and not only general assumptions regarding the duration of strain injuries. *See Roger Packett*, 62 Van Natta 821, 823 (2010) (finding

physician's opinion that lumbar strain had resolved was persuasive when it relied not only on clinical studies, but also on the claimant's medical history, imaging studies and the mechanism of injury).

Although initially concurring with Dr. Rosenbaum's May 2014 report, Dr. Matheson later explained that he did not fully concur with Dr. Rosenbaum's opinion because he considered it inappropriate to make conclusions regarding claimant's need for treatment without another MRI. (Ex. 34-3). Furthermore, Dr. Matheson stated that claimant's physical examination had been fairly consistent and "there [had] not been a significant change in his condition to support a denial based on a change in his condition." (*Id.*)

However, Dr. Matheson did not otherwise respond to Drs. Weinstein's and Rosenbaum's opinions that claimant's "otherwise compensable injury" was limited to a lumbar strain, which had resolved due to adequate treatment and the passage of time. *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). Moreover, Dr. Matheson did not provide a rationale for a repeat MRI other than noting that the last MRI had been performed over a year ago. (Ex. 34-2).

In summary, we conclude that the opinions of Drs. Weinstein and Rosenbaum are the most persuasive and establish a change in claimant's condition or circumstances such that the "work-related injury incident" was no longer the major contributing cause of disability/need for treatment of the combined condition. Consequently, the employer has satisfied its burden of proof to sustain its "combined condition" denial. *See Mauricio G. Maravi-Perez*, 66 Van Natta 1352, 1355 (2014) (where the acceptance identified a strain as the "otherwise compensable injury," a denial of a combined condition under ORS 656.262(6)(c) was supported by medical evidence indicating that the "work injury" was the strain and that the strain had resolved). Accordingly, we affirm.

ORDER

The ALJ's order dated January 9, 2015 is affirmed.

Entered at Salem, Oregon on September 10, 2015

Member Weddell dissenting.

The majority finds the opinions of Dr. Weinstein and Dr. Rosenbaum persuasive, despite their reliance on statistical generalizations regarding the duration of healing for a strain and their inability to explain any change in claimant's condition or circumstances separate from such generalizations. Because I would find such opinions to be inadequate to satisfy the employer's burden of proof, I respectfully dissent.

The employer must prove a change in 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. ORS 656.266(2)(a); *Wal-Mart Stores, Inc. v. Young*, 219 Or App 410, 419 (2008); *Brown v. SAIF*, 262 Or App 640, (2014), *rev allowed*, 356 Or 397 (2014); *Smith*, 66 Van Natta at 1382. Opinions stated in terms that are general in nature and not addressed to the claimant's particular situation, or presume a change in the claimant's condition within certain timeframes are not persuasive. *See Sherman v. Western Employer's Ins.*, 87 Or App 602, 606 (1987); *Judi Whitney*, 61 Van Natta 392 (2009).

Both Drs. Weinstein and Rosenbaum commented that they were unable to point to findings in the medical record establishing a change in claimant's condition. (Exs. 34-12, -15, 36-9, -10). While Dr. Rosenbaum stated in a concurrence letter that "acute findings" such as muscle spasm had resolved, he later stated in his deposition that he could not identify a change in objective findings because he did not consider claimant to have exhibited any objective findings. (Exs. 33-2, 36-18). Accordingly, his opinion regarding a change in claimant's condition is predicated on the sufficient passage of time for the lumbar strain to heal. (*See Ex. 36-9-10*).

Similarly, Dr. Weinstein acknowledged that his opinion that the lumbar strain had resolved was based on the expected course of healing over time. (Ex. 35-13). Asked whether he could identify any change in claimant's symptoms to support his opinion regarding the resolution of the lumbar strain, Dr. Weinstein stated that claimant's treating physician would be in the best position to address that question. (*Id.* at 15).

I agree that claimant's attending physician, Dr. Matheson, was in the best position to comment on any change in his condition. Dr. Matheson stated that there had been no change in symptoms that would cause him to believe that

claimant's condition was no longer work-related. (Ex. 34-2). Because of Dr. Matheson's more informed position, after numerous examinations beginning at the outset of claimant's injury, I would defer to his opinion and find that the employer has not met its burden to show the necessary change in condition or circumstances sufficient to support its "ceases" denial. *See Weiland v. SAIF*, 64 Or App 810 (1983) (in some situations, a treating physician's opinion is entitled to greater weight because of a better opportunity to observe and evaluate a claimant's condition over an extended period of time).

Because the majority concludes otherwise, I respectfully dissent.