

In the Matter of the Compensation of  
**MARGARET J. STEINKAMP, Claimant**  
WCB Case No. 14-03916  
ORDER ON REVIEW  
Alvey Law Group, Claimant Attorneys  
SAIF Legal Salem, Defense Attorneys

Reviewing Panel: Members Curey and Weddell.

Claimant requests review of Administrative Law Judge (ALJ) Jacobson's order that upheld the SAIF Corporation's denial of claimant's aggravation claim for left knee conditions. On review, the issue is aggravation.

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

In upholding SAIF's denial, the ALJ was not persuaded that claimant's compensable left knee conditions (*i.e.*, an accepted abrasion and contusion) had pathologically worsened since the last award/arrangement of compensation. *See* ORS 656.273(1); *Evelyn R. Crossman*, 56 Van Natta 1076 (2004). In doing so, the ALJ rejected claimant's contention that the "work-related injury incident" rationale of *Brown v. SAIF*, 262 Or App 640, 651, *rev allowed*, 356 Or 397 (2014), should be extended to aggravation claims.

On review, claimant renews her argument that the *Brown* holding is applicable when analyzing the compensability of an aggravation claim. Based on the following reasoning, we disagree with claimant's contention.

Subsequent to the ALJ's order and the filing of the parties' appellate briefs, the court issued its decision in *Nacoste v. Halton Co.*, 275 Or App 600 (2015). In *Nacoste*, the court reasoned that, by its text, ORS 656.273 applied to an "actual worsening of the compensable condition." *Id.* at 607. Moreover, citing *SAIF v. Walker*, 330 Or 102, 109 (2000), the court observed that the term "compensable condition" has been defined as "the medical condition for which a worker already has been compensated." *Nacoste*, 275 Or App at 607.

Consequently, the *Nacoste* court considered the definition of "compensable condition" in ORS 656.273(1) to be consistent with a conclusion that an aggravation may only occur upon a condition identified in a Notice of Acceptance. *Id.* In reaching its conclusion, the *Nacoste* court distinguished the *Brown* holding, reasoning that *Brown* did not address whether an aggravation claim must be based on an accepted condition. *Id.*

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Therefore, in accordance with the *Nacoste* rationale, we decline to apply the *Brown* holding in the context of an aggravation claim.

In the alternative, claimant contends that, even if *Crossman* applies, she has proven a compensable aggravation of her accepted left knee condition. She relies on the opinion of her treating physician, Dr. Harp. Based on the following reasoning, we disagree with claimant's contentions.

In July 2014, Dr. Harp noted that claimant's "original condition has worsened." (Ex. 27-2). In a concurrence letter, Dr. Harp also agreed that claimant "had suffered an *actual worsening* of her compensable (*i.e.*, work related) knee condition supported by objective findings (reduced and painful ROM in all directions)." (Ex. 31-6) (Emphasis in original). However, in her subsequent deposition testimony, Dr. Harp explained that she was not treating claimant for a left knee abrasion or a left knee contusion. (Ex. 32-6). At the conclusion of the deposition, Dr. Harp reaffirmed her opinion as stated in the concurrence letter. (Ex. 32-11).

After reviewing these observations in context, we consider Dr. Harp's opinion to support the proposition that claimant's left knee abrasion and contusion had resolved and that she was receiving treatment for her work injury, but not for her accepted conditions. Consequently, we do not consider such an opinion to persuasively establish a pathological worsening of claimant's accepted left knee abrasion or contusion. Accordingly, we affirm.

#### ORDER

The ALJ's order dated June 8, 2015 is affirmed.

Entered at Salem, Oregon on February 8, 2016