
In the Matter of the Compensation of
VICTORIA GOLLYHORN, Claimant
WCB Case No. 15-00004
ORDER ON REVIEW
Mark Thesing, Claimant Attorneys
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Reviewing Panel: Members Curey and Lanning.

Claimant requests review of that portion of Administrative Law Judge (ALJ) Bethlahmy's order that upheld the self-insured employer's denial of her new/omitted medical condition claim for a C6-7 disc herniation. On review, the issue is compensability.

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

For the reasons expressed in the ALJ's order, we agree that the opinion of Dr. Sales, the only physician to support the compensability of the claimed C6-7 disc herniation, does not persuasively establish claimant's burden of proving that her June 8, 2014 work injury was a material contributing cause of the disability/need for treatment of her C6-7 disc herniation condition. ORS 656.005(7)(a); ORS 656.266(1); *Somers v. SAIF*, 77 Or App 259 (1986) (medical opinion based on inaccurate and incomplete information is not persuasive); *Betty J. King*, 58 Van Natta 977, 977 (2006). Because claimant has not established that the work injury was a material cause of her disability/need for treatment, it is unnecessary to address the employer's argument regarding the claimed new/omitted medical condition is a "combined condition." See *Kristie F. Ritchey*, 68 Van Natta 46, 50 n 2 (2016) (if the claimant did not establish an "otherwise compensable injury," it was unnecessary to address whether the carrier met its burden of proof pertaining to a "combined condition" under ORS 656.266(2)(a)); *Hollis L. Strickland*, 62 Van Natta 2790, 2792 n 1 (2010) (a "combined condition" analysis is not necessary in the absence of an "otherwise compensable injury").¹ Consequently, we affirm.

¹ The "otherwise compensable injury" means the "work-related injury incident." *Brown v. SAIF*, 262 Or App 640, 652, *rev allowed*, 356 Or 397 (2014); *see also Jean M. Janvier*, 66 Van Natta 1827, 1832-33 (2014), *aff'd without opinion*, 278 Or App 447 (2016) (applying the *Brown* definition of an "otherwise compensable injury" to new/omitted medical condition claims under ORS 656.266(2)(a)). The employer's burden under ORS 656.266(2)(a) encompasses proof that: (1) claimant suffers from a statutory "preexisting condition;" (2) claimant's condition is a combined condition; and (3) the "otherwise compensable injury" is not the major contributing cause of the disability/need for treatment of the combined condition. ORS 656.005(7)(a)(B); *SAIF v. Kollias*, 233 Or App 499, 505 (2010); *Randi P. Ayres*, 63 Van Natta 1821, 1822 (2011), *aff'd, Vigor Indus., LLC v. Ayres*, 257 Or App 795 (2013).

ORDER

The ALJ's order dated January 4, 2016 is affirmed.

Entered at Salem, Oregon on July 7, 2016