
In the Matter of the Compensation of
WCB Case No. 15-01077, 14-06139, 14-04801

BRIAN J. GALL, Claimant

ORDER ON REVIEW

Hollander & Lebenbaum et al, Claimant Attorneys

Mark P Bronstein, Defense Attorneys

Reviewing Panel: Members Lanning and Johnson.

Claimant requests review of those portions of Administrative Law Judge (ALJ) Fisher's order that: (1) upheld the self-insured employer's "ceases" denial of a combined low back condition; and (2) upheld the employer's denial of his "new injury" claim for a low back condition. On review, the issue is compensability.

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

The ALJ concluded that the employer met its burden of proof to establish that claimant's "otherwise compensable injury" was no longer the major contributing cause of the need for treatment/disability for his combined low back condition, which had resulted from a December 2010 work incident. *See* ORS 656.262(6)(c); *Oregon Drywall Sys. v. Bacon*, 208 Or App 205, 210 (2006). Moreover, the ALJ determined that claimant's August 2014 low back "new injury" claim was not compensable because the employer established that claimant's "otherwise compensable injury" (his work activities in August 2014) was not the major contributing cause of his need for treatment/disability for the combined low back condition. *See* ORS 656.005(7)(a)(B); ORS 656.266(2)(a); *Jack G. Scoggins*, 56 Van Natta 2534, 2535 (2004). In reaching these conclusions, the ALJ relied on the opinions of Drs. Carr and Farris, and discounted Dr. Braddock's opinion.

On review, claimant contends that Dr. Braddock's medical opinion persuasively establishes the compensability of his December 2010 combined low back condition and his August 2014 low back injury claim. We disagree with claimant's contentions for the following reasons.

With respect to the December 2010 combined low back condition, 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. *Bacon*, 208 Or App at 210.

With respect to the August 2014 initial injury claim, claimant must prove that his August 2014 work injury was a material contributing cause of the disability/need for treatment related to his low back condition. ORS 656.005(7)(a); ORS 656.266(1); *Tricia A. Somers*, 55 Van Natta 462, 463(2003). If he establishes an "otherwise compensable injury," and a "combined condition" is present, the employer must prove that the otherwise compensable injury was not the major contributing cause of his disability or need for treatment of the combined low back condition. ORS 656.266(2)(a); *SAIF v. Kollias*, 233 Or App 499, 505 (2010); *Jack G. Scoggins*, 56 Van Natta at 2535. The "otherwise compensable injury" means the "work-related injury incident." *See Brown*, 262 Or App at 652; *see also Jean M. Janvier*, 66 Van Natta 1827, 1832-33 (2014) (applying the *Brown* definition of an "otherwise compensable injury" to initial and new/omitted medical condition claims under ORS 656.266(2)(a)).

Considering the conflicting evidence regarding the nature and cause of claimant's low back conditions, the compensability issues present complex medical questions that must be resolved by expert medical evidence. *See Uris v. State Comp. Dep't*, 247 Or 420, 426 (1967); *Barnett v. SAIF*, 122 Or App 279, 283 (1993). When presented with disagreement among 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).

Addressing his August 2014 injury claim, claimant contends that the ALJ incorrectly discounted Dr. Braddock's opinion due to uncertainty as to whether he sustained a new injury or an aggravation. Specifically, he argues that Dr. Braddock should receive deference, regardless of his indecisiveness, because

he treated claimant for years and was in the best position to assess the contribution of claimant's August 2014 work activities. For the following reasons, we do not consider Dr. Braddock's opinion to be persuasive.

We acknowledge that, absent persuasive reasons not to do so, we tend to give more weight to the opinion of the treating physician because of a greater opportunity to evaluate the injured worker over time. *See Weiland v. SAIF*, 64 Or App 810, 814 (1983); *Kevin G. Gagnon*, 64 Van Natta 1498, 1500 (2012) (physician's longitudinal history with the claimant rendered opinion persuasive). However, whether we give greater weight to the opinion of the treating physician depends on the record in each case. *Dillon v. Whirlpool Corp.*, 172 Or App 484, 489 (2001).

In August 2014, Dr. Braddock initially opined that claimant "clearly [had] an exacerbation of underlying back disease." (Ex. 65). On that same date, Dr. Braddock diagnosed an acute lumbar strain, but then signed an 827 form indicating an aggravation. (Exs. 65, 66). Subsequently, he determined that claimant's new episode of back pain constituted a new injury, rather than an aggravation. (Ex. 70-1). By January 2015, Dr. Braddock concluded that claimant's work activities in August 2014 constituted either an aggravation of his December 2010 injury or a new injury. (Ex. 80A-2).

Considering these inconsistencies, we conclude that Dr. Braddock's opinion does not persuasively establish that claimant's August 2014 work activities were a material contributing cause of his need for treatment/disability for his low back condition. *See, e.g., Howard L. Allen*, 60 Van Natta 1423, 1424-25 (2008) (internally inconsistent medical opinion, without sufficient explanation, found unpersuasive). Alternatively, even if an "otherwise compensable injury" has been established, the employer has met its burden of proof under ORS 656.266(2)(a) for the reasons that follow.

Claimant argues that Dr. Braddock's was the only physician to weigh the effect of claimant's August 2014 work activities. However, Drs. Farris and Carr considered the impact of claimant's August 2014 work activities. (Exs. 76, 81). They determined that, while his August 2014 work activities caused some symptomatology, his preexisting degenerative disc disease was the major contributing cause of the need for treatment/disability. (*Id.*) Therefore, the opinions of Drs. Farris and Carr persuasively weighed the contribution of the

otherwise compensable injury and claimant's preexisting condition in determining that his preexisting condition was the major cause of his need for treatment/disability.

In addition, claimant contends that Dr. Farris relied on an inaccurate or incomplete history. Specifically, he argues that Dr. Farris limited his opinion to medical documentation instead of claimant's unrebutted testimony that his August 2014 work activities caused his subsequent low back spasms while on vacation. (Tr. 15). To support this proposition, he cites Dr. Farris's opinion, which indicated that there was no documentation in the medical record of any specific injury that brought about claimant's low back symptoms. (Ex. 73-10). However, as previously explained, Dr. Farris considered those symptoms attributable to preexisting conditions, and not to claimant's work activities. Moreover, whether claimant's work activities or his underlying, preexisting condition were the primary cause of his need for treatment/disability, is a complex medical question and must be resolved by expert medical evidence. *See Uris*, 247 Or at 426; *Barnett*, 122 Or App at 283. Thus, we do not discount the Dr. Farris's opinion for not adopting claimant's lay "causation" opinion.

Finally, turning to the combined condition "ceases" denial, claimant contends that the employer did not meet its burden to establish a change in his condition to support its "ceases" denial related to the December 2010 work injury. Specifically, he argues that the employer based the "ceases" denial "change" on claim closure. However, our review of the opinions from Drs. Braddock, Carr and Farris establishes that the effects of the December 2010 injury had resolved before the July 2014 claim closure. (Exs. 61, 76, 81). In particular, based on the resolution of claimant's condition as compared with his preexisting condition, Drs. Carr and Farris persuasively explained that claimant's work injury (which was described as a lumbar strain) was no longer the major contributing cause of his need for treatment/disability. (Exs. 76, 81). We interpret their opinions to support a conclusion that the "ceases" denial "change" was based on the "resolution" of claimant's condition, rather than on claim closure.

After considering this record, we conclude that the opinions of Drs. Carr and Farris persuasively 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).

In sum, based on the aforementioned reasoning, as well as the reasons expressed in the ALJ’s order, we conclude that the August 2014 work injury claim is not compensable and that the employer met its burden of proof to support its combined low back condition denial. Accordingly, we affirm.

ORDER

The ALJ’s order dated July 13, 2015 is affirmed.

Entered at Salem, Oregon on March 10, 2016