
In the Matter of the Compensation of
KATHERINE A DECRISTOFORO, Claimant
WCB Case No. 14-03095
ORDER ON REVIEW
Jodie Phillips Polich, Claimant Attorneys
SAIF Legal, Defense Attorneys

Reviewing Panel: Members Curey and Lanning.

Claimant requests review of Administrative Law Judge (ALJ) Fisher's order that upheld the SAIF Corporation's "ceases" denial of claimant's combined low back condition. On review, the issues are scope of acceptance, claim processing, and compensability.

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

At hearing, claimant challenged the validity of SAIF's combined condition acceptance and denial, arguing that the acceptance was insufficiently specific or too vague to constitute a valid combined condition acceptance/denial. Further, she asserted that SAIF had not established the existence of the preexisting condition or evidence of the work injury "combining" with multi-level degenerative disc disease. Finally, claimant contended that the medical evidence was insufficient to sustain SAIF's burden of proof to establish a change in circumstances to support its "ceases" denial.

Addressing claimant's "vagueness" argument concerning SAIF's acceptance and denial, the ALJ reviewed the contemporaneous medical evidence to determine the scope of acceptance. After doing so, the ALJ determined that SAIF accepted a lumbar strain combined with degenerative disc disease as L3-4, L4-5, and L5-S1. Turning to the merits of SAIF's acceptance/denial, the ALJ concluded that the medical evidence established that claimant had a legally cognizable preexisting condition, which combined with the work injury-incident, and that the work injury-incident was no longer the major contributing cause of the disability/need for treatment of the combined condition.

On review, claimant challenges the ALJ's reasoning regarding the scope of SAIF's acceptance, *i.e.*, what was meant by "preexisting degenerative disc disease." Further, she contends that the medical evidence is insufficient to establish a change in circumstances to support SAIF's "ceases" denial on the particular date of June 13, 2014.

In response, SAIF argues that claimant may not raise an objection to its “combined condition” acceptance without first communicating that objection before requesting a hearing. Yet, such an argument is contrary to Board case precedent. *See Dezi Meza*, 63 Van Natta 67, 70 (2011) (where the claimant requested a hearing challenging the validity of a combined condition acceptance and denial, the Board addressed the scope of acceptance without first determining whether an objection to the acceptance was raised to the carrier before requesting a hearing). Consequently, we consider claimant’s objection to SAIF’s acceptance and denial.

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 word “ceases” presumes a change in the worker’s condition or circumstances such that the otherwise compensable injury is no longer the major contributing cause of the combined condition. *See WalMart Stores, Inc. v. Young*, 219 Or App 410, 417-18 (2008).

Under ORS 656.262(6)(c), the carrier bears the burden to show a change in the worker’s condition or circumstances such that the “work-related injury incident” ceased to be the major contributing cause of the disability/need for treatment of the combined condition. *See Brown v. SAIF*, 262 Or App 640 (2014). In determining whether such cessation has occurred, we examine only the otherwise compensable injury and the statutory preexisting condition or its components. *Vigor Indus., LLC v. Ayres*, 257 Or App 795, 803 (2013).

Claimant asserts that SAIF’s acceptance and “ceases” denial were improper because the designated preexisting condition of “multi-level degenerative disc disease” is vague. In effect, claimant is challenging the scope of SAIF’s acceptance, which is a question of fact. *See SAIF v. Tull*, 113 Or App 449, 454 (1992). If the acceptance is ambiguous or vague, as claimant contends, we examine the contemporaneous medical evidence to determine what was accepted. *See Gilbert v. Cavenham Forest Indus. Div.*, 179 Or App 341, 344 (2002); *Alan W. Morley*, 66 Van Natta 1061, 1064 (2014). Moreover, the scope of the acceptance or denial does not depend solely on the words it uses, but also on the context in which it was made. *See Hutchings v. Amerigas Propane*, 275 Or App 579, 592 n4 (2015) (citing *SAIF v. Allen*, 193 Or App 742, 749 (2004)). Therefore, we look to the contemporaneous medical record to determine the scope of the acceptance and denial.

Examination of that record confirms the existence of arthritic conditions at L3-4, L4-5, and L5-S1 disc levels (as found by the ALJ). (Exs. 25, 26). *See Hopkins v. SAIF*, 349 Or 348, 364 (2010) (for purposes of determining a “preexisting condition” under ORS 656.005(24)(a)(A), the Supreme Court has concluded that the legislature intended the term “arthritis” to mean the “inflammation of one or more joints, due to infectious, metabolic, or constitutional causes, and resulting in breakdown, degeneration, or structural change”). Dr. Wimmer, orthopedic surgeon, who examined claimant at the employer’s request, opined that she had preexisting, multilevel degenerative disc disease at L3-4, L4-5, and L5-S1, confirmed on MRI. (Ex. 25-8, -9). Moreover, he clarified that the condition was arthritic and involved inflammation of the lumbar intervertebral joints with proinflammatory cytokines, which changed the underlying structure of the discs.¹ (Ex. 25-9). Finally, there is no contrary opinion contradicting the aforementioned description (which satisfies the definition of an “arthritic condition”) or opposing the proposition that such a condition combined with the work-injury incident, and that the work injury-incident ceased to be the major contributing cause of the need for treatment/disability for the combined condition (as of February 20, 2014).

In addition, claimant challenges the “ceases” denial because SAIF denied the combined condition as of June 13, 2014, and there was no medical evidence supporting a change in circumstance/condition effective as of that specific date. Yet, the record persuasively establishes a change in claimant’s condition effective as of an earlier date (February 20, 2014).² (Exs. 25, 31). Thus, although SAIF likely could have denied the combined condition as of February 20, 2014, it chose to extend the acceptance by approximately four months. In any event, for the reasons expressed above, the record supports SAIF’s contention that, by June 13, 2014, claimant’s work-related injury incident had ceased to be the major contributing cause of her need for treatment/disability for her combined condition. Consequently, SAIF’s acceptance of a combined condition, as well as its “ceases” denial, are procedurally valid.

¹ Dr. Anderson, claimant’s attending physician, concurred with Dr. Wimmer’s opinion with the exception of the medically stationary date. (Ex. 26).

² Dr. Wimmer initially opined that, based on his review of the medical records, the lumbar strain had resolved by February 20, 2014. (Ex. 25-10). Subsequently, he clarified that the “effects of the injury” resulted in a lumbar strain, and that the injury and the strain were synonymous. (Ex. 31-1). He concluded that the effects of the injury resolved with treatment and the passage of time such that, by February 20, 2014, the preexisting condition was the major contributing cause of the need for treatment/disability for the combined condition. (*Id.*)

In conclusion, based on the foregoing reasons, in addition to those expressed in the ALJ's order, the medical record is sufficient to support SAIF's "ceases" denial under ORS 656.262(6)(c). Accordingly, we affirm.

ORDER

The ALJ's order dated November 25, 2015 is affirmed.

Entered at Salem, Oregon on May 5, 2016