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In the Matter of the Compensation of  
**TIM PIFHER, Claimant**  
WCB Case No. 12-01624, 11-06358, 11-00331, 10-00788  
**ORDER ON REVIEW**  
Alvey Law Group, Claimant Attorneys  
SAIF Legal, Defense Attorneys

Reviewing Panel: Members Lanning and Johnson.

Claimant requests review of those portions of Administrative Law Judge (ALJ) Fulsher's order that: (1) upheld the SAIF Corporation's denial of claimant's new/omitted medical condition claim for L3-4, L4-5, and L5-S1 disc protrusions; (2) upheld SAIF's denial of claimant's occupational disease claim for a low back condition; (3) upheld SAIF's denial of claimant's injury claim for a low back condition; and (4) found that claimant's chiropractic treatment was not causally related to his accepted lumbar strain. On review, the issues are compensability and medical services.

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

Claimant has worked as a public works wastewater collection operator since 1991. His work activities included installation of wastewater collection system pipelines, water service renewals, repair valves, pipeline connections repair of utility street cuts, and construction duties. In performing these activities, claimant operated and maintained equipment including dump trucks, loader/backhoe, front end loaders, air compressors, jackhammers, compactors, high pressure jet rodders, flexible steel rodders, cranes, pipe locate equipment, and power tools.

In October 2010, claimant filed a claim for an occupational disease for his low back condition, which included the diagnoses of L3-4, L4-5, and L5-S1 disc protrusions, lumbar strain, and lumbar spondylosis. (Ex. 111). After SAIF denied the claim, claimant requested a hearing.

In upholding SAIF's denial of claimant's occupational disease claim for his low back condition, the ALJ reasoned that the medical evidence did not persuasively establish that claimant's work activities were the major contributing cause of his disease, or the major contributing cause of both a pathological worsening of the preexisting disease and a combined condition. ORS 656.802(2)(a), (b).

On review, claimant contests the ALJ's evaluation of the medical evidence. For the following reasons, we affirm.

To establish a compensable occupational disease, claimant must prove that employment conditions were the major contributing cause of his low back condition. ORS 656.266(1); ORS 656.802(2)(a); *Lori M. Lawrence*, 60 Van Natta 727, 728 (2008). If the occupational disease claim is based on the worsening of a preexisting disease or condition, claimant must also establish that employment conditions were both the major contributing cause of the combined condition and pathological worsening of the disease, not merely the cause of the symptoms of the disease. ORS 656.802(2)(b); *Weller v. Union Carbide*, 288 Or 27, 35 (1979) (symptomatic worsening is not sufficient under ORS 656.802(2)(b); there must be proof of a pathological worsening of the disease).

The determination of major contributing cause involves the evaluation of the relative contribution of the different causes of claimant's diseases and a decision as to which is the primary cause. *Dietz v. Ramuda*, 130 Or App 397, 401 (1994), *rev dismissed*, 321 Or 416 (1995); *Linda E. Patton*, 60 Van Natta 579, 581 (2008). Because of the possible alternative causes of claimant's conditions, expert medical opinion must be used to resolve the question of causation. *Uris v. Comp. Dep't*, 247 Or 420 (1967); *Barnett v. SAIF*, 122 Or App 279 (1993). 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); *Patton*, 60 Van Natta at 582.

Here, it is undisputed that claimant's occupational disease claim involves his preexisting spondylosis condition. Therefore, he must prove that employment conditions were both the major contributing cause of the combined condition and pathological worsening of the disease, not merely the cause of the symptoms of the disease. ORS 656.266(1); ORS 656.802(2)(b); *Weller*, 288 Or at 35.

Claimant contends that the opinions of Drs. Sacamano, Akita, Bolstad, and Puziss persuasively establish the compensability of his occupational disease claim. However, none of those opinions support a finding that claimant's employment conditions were the major contributing cause of a pathological worsening of the preexisting spondylosis. (Exs. 81, 88, 126, 165).

Moreover, like the ALJ, we find the opinions of Drs. Rosenbaum, Rabie, Vessely, and Fuller persuasive. Dr. Rosenbaum opined that there was no pathological worsening. (Exs. 87-11, 89-2). Likewise, Dr. Rabie and Dr. Vessely

opined that claimant's work activities may have contributed to the symptoms of his spondylosis, but did not cause a pathological worsening of the spondylosis disease. (Exs. 118-11, 124-17, 151, 163). Similarly, Dr. Fuller opined that claimant's work activities did not cause a pathological worsening of his preexisting spondylosis. (Exs. 153-26, 157).

Under these circumstances, the record does not persuasively establish that claimant's employment conditions were the major contributing cause of both a pathological worsening of his claimed occupational disease and the combined condition. Consequently, the statutory requirements for compensability of his claimed occupational disease under ORS 656.802(2)(b) have not been satisfied. *See* ORS 656.802(2)(b); *Lorraine A. Papenfus*, 68 Van Natta 1497, 1499-1500 (2016). Thus, we affirm the ALJ's order upholding SAIF's denial of claimant's occupational disease claim.

Claimant also contends that his disc protrusions are new/omitted medical condition claims related to his 2005 accepted "lumbar strain" injury claim. In support of that contention, claimant relies on Dr. Bolstad's opinion. Dr. Bolstad, however, stated that there was no way to tell when the disc protrusions occurred. (Ex. 74-2). Furthermore, although Dr. Bolstad indicated that the 2005 injury "could have" resulted in the disc protrusions, such an opinion represents a mere possibility and is insufficient to meet claimant's burden of proof. *Gormley v. SAIF*, 52 Or App 1055 (1981) (persuasive medical opinions must be based on medical probability, rather than possibility); *Kyle G. Anderson*, 61 Van Natta 2117, 2117-18 (2009) (the words "can be" and "may be" indicate only possibility, not medical probability).

Furthermore, even assuming that claimant has shown that these claimed conditions exist and that the 2005 work injury was a material cause of his need for treatment/disability for those conditions, Dr. Rosenbaum persuasively explained that the major contributing cause of claimant's disc protrusions was his underlying preexisting spondylosis. (Ex. 87). In reaching this conclusion, we agree with the ALJ's reasoning that SAIF has met its burden to prove the existence of a combined condition and that the "otherwise compensable injury" (the work-related injury incident) was not the major cause of the disability/need for treatment of that combined condition. ORS 656.005(7)(a)(B); ORS 656.266(2)(a); *Brown v. SAIF*, 262 Or App 640, 652, *rev allowed*, 356 Or 397 (2014); *SAIF v. Kollias*, 233 Or App 499, 505 (2010); *Jean M. Janvier*, 66 Van Natta 1827, 1832-33 (2014), *aff'd without opinion*, 278 Or App 447 (2016).

Claimant next argues that he sustained a new compensable injury in January 2012 when he lifted a 50 pound camera from inside a manhole. He asserts that Dr. Akita's chart notes establish an otherwise compensable injury. (Exs. 144, 145, 146, 148, 150). Based on the following reasoning, we disagree.

We agree with the ALJ's reasoning that Dr. Rabie's opinion persuasively established that claimant's complaints and need for treatment represented a waxing and waning of his preexisting spondylosis and that any work-related injury incident was not the major contributing cause of any combined condition. (Exs. 151, 157). ORS 656.005(7)(a)(B); ORS 656.266(2)(a); *Brown*, 262 Or App at 652; *Kollias*, 233 Or App 499 at 505 (2010); *Janvier*, 66 Van Natta at 1832-33.

Finally, regarding claimant's medical services claim for chiropractic treatments from July 5, 2011 through January 5, 2012, we agree with the ALJ's determination that the evidence is insufficient to establish that such treatments were caused in material part by the June 8, 2010 injury. We reason as follows.

ORS 656.245(1)(a) provides:

“For every compensable injury, the insurer or the self-insured employer shall cause to be provided medical services for conditions caused in material part by the injury for such period as the nature of the injury or the process of the recovery requires, subject to the limitations in ORS 656.225, including such medical services as may be required after a determination of permanent disability.

In addition, for consequential and combined conditions described in ORS 656.005(7), the insurer or the self-insured employer shall cause to be provided only those medical services directed to medical conditions caused in major part by the injury.”

The phrase “in material part” means a “fact of consequence.” *SAIF v. Swartz*, 247 Or App 515, 525 (2011); *Mize v. Comcast Corp-AT&T Broadband*, 208 Or App 563, 569-71 (2006). The “compensable injury” is not limited to the accepted condition, but is defined by the work-related injury incident. *See SAIF v. Carlos-Macias*, 262 Or App 629, 637 (2014); *Brown v. SAIF*, 262 Or App at 652. Thus, the medical services need not relate to an accepted condition, but the requisite causal relationship must be shown between the work-related injury

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incident and the condition that the disputed medical service is “for” or “directed to.” *Fernando Javier-Flores*, 67 Van Natta 2245, 2248 (2015); *Barbara A. Easton*, 67 Van Natta 526, 529 (2015).

The ALJ determined that the claimed medical service was not compensable even under the “material cause in part” standard of the first sentence of ORS 656.245(1)(a). The parties have not disputed that characterization of the issue. Thus, we must determine whether the disputed chiropractic treatment is “for conditions caused in material part by the injury.” ORS 656.245(1)(a); *SAIF v. Sprague*, 346 Or 661, 672 (2009).

After conducting our review of the record, we agree with the ALJ’s determination that the disputed chiropractic treatments were not related in material part (or major part) to the June 2010 work-related injury incident. We reason as follows.

In November 2010, Dr. Bolstad opined that claimant’s June 2010 accepted lumbar strain would likely be medically stationary by December 2010. (Ex. 116). Dr. Bolstad released claimant to regular work. (*Id.*) In December 2010, Dr. Bolstad indicated that she would request “palliative care” in the next six months for chiropractic treatment. (Ex. 117-3).

In December 2010, Dr. Rabie, an occupational medicine physician who examined claimant at the insurer’s request, opined that claimant’s ongoing treatment was not materially related to the 2010 lumbar strain, which had resolved. (Ex. 118-9-10).

Based on the aforementioned opinions, the record does not persuasively establish that claimant’s disputed chiropractic treatments were materially related to his 2010 work-related injury incident. Moreover, to the extent that claimant’s 2010 compensable injury combined with his preexisting spondylosis, we are not persuaded that the otherwise compensable injury (work-related injury incident) was the major contributing cause of a need for the disputed chiropractic treatments. Like the ALJ, we consider the opinions of Drs. Rabie and Vessely (*i.e.*, that the major contributing cause of the need for the disputed treatment was claimant’s preexisting spondylosis) to be persuasive. (Exs. 118, 124).

In summary, based on the aforementioned reasoning, as well as that expressed in the ALJ’s order, we are not persuaded that the disputed claims are compensable. Accordingly, we affirm.

ORDER

The ALJ's order dated September 21, 2015, as republished on September 23, 2015, is affirmed.

Entered at Salem, Oregon on October 11, 2016