

In the Matter of the Compensation of
DEBORAH CHAMBERLAIN, Claimant
WCB Case No. 15-03700
ORDER ON REVIEW
Julene M. Quinn LLC, Claimant Attorneys
SAIF Legal, Defense Attorneys

Reviewing Panel: Members Curey and Lanning. Member Lanning specially concurs.

Claimant requests review of Administrative Law Judge (ALJ) Kekauoha's order that affirmed an Order on Reconsideration's award of 23 percent whole person impairment for a low back condition. On review, the issue is extent of permanent disability (impairment).

We adopt and affirm the ALJ's order.¹ *See Claudia S. Stryker, 67 Van Natta 1003, 1007 (2015)* (where the record supported the existence of a legally cognizable "preexisting condition," the application of the "apportionment" rule did not depend on the carrier's "pre-closure" acceptance/denial of a combined condition).

ORDER

The ALJ's order dated February 12, 2016 is affirmed.

Entered at Salem, Oregon on October 12, 2016

Member Lanning specially concurring.

For the reasons expressed in my dissent in *Claudia S. Stryker, 67 Van Natta 1003, 1008-1011 (2015)* (Members Lanning and Weddell dissenting), I do not agree that permanent impairment can be apportioned unless a combined condition has been accepted and denied. However, under the principles of *stare decisis*, I follow the holding in *Stryker* and concur with the outcome of this case.

¹ Claimant asserts that the "apportionment" rule exceeds the Director's statutory authority. *See OAR 436-035-0007(1)(b)* (WCD Admin. Order 15-053, eff. 3/1/15). Contending that claimant did not raise this issue at reconsideration or at hearing, SAIF objects to our consideration of the argument on review. *See ORS 656.268(9); ORS 656.283(6)*. Even if the issue arises out of the reconsideration order, we generally do not consider issues that were not raised at hearing. *See Fister v. South Hills Health Care, 149 Or App 214 (1997)* (absent adequate reason, Board should not deviate from its well-established practice of considering only those issues raised by the parties at hearing). In this case, we find no reason to deviate from our general rule. Accordingly, we do not address claimant's challenge to the rule.