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In the Matter of the Compensation of  
**DEBRA A. MANGINE, Claimant**  
WCB Case No. 13-02178  
ORDER ON REVIEW  
Preston Bunnell LLP, Claimant Attorneys  
SAIF Legal, Defense Attorneys

Reviewing Panel: Members Johnson and Weddell.

Claimant requests review of Administrative Law Judge (ALJ) Crummé's order that upheld the SAIF Corporation's denial of claimant's combined cervical condition. On review, the issue is compensability.

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

Claimant had a history of cervical spondylosis and cervical spine symptoms that necessitated a C5-7 fusion surgery in 2003. (Exs. 2, 28). The fusion procedure was performed by Dr. Bert, who also conducted examinations regarding claimant's cervical spine symptoms in 2007 and 2008. (Exs. 6, 7, 10). Claimant reported neck pain as late as March 2009. (Ex. 12).

On February 23, 2012, claimant sustained a compensable injury from a fall at work. (Ex. 18).

In March 2012, claimant was evaluated by Dr. Bert, the orthopedic surgeon who performed the 2003 C5-7 fusion procedure. (Ex. 25). He considered claimant to have a cervical strain and possible discogenic irritation at C4-5 and C3-4. (Ex. 25).

In April 2012, Dr. Bert interpreted a cervical MRI to show significant degenerative and bulging discs at C3-4 and C4-5 resulting in stenosis. (Ex. 27).

On April 19, 2012, claimant was examined by Drs. Frank and Staver at SAIF's request. (Ex. 28). They diagnosed preexisting cervical spondylosis, and a cervical strain due to the February 23, 2012 work injury. (Ex. 28-15). Drs. Frank and Staver additionally diagnosed C5-6 radiculopathy, which they considered to be caused by a combination of claimant's preexisting spondylosis and the work-related injury incident. (*Id.*) They concluded that, while claimant had a combined condition, the work incident continued to be the major contributing cause of claimant's disability and need for treatment at the time of their evaluation. (Ex. 28-18).

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Dr. Bert concurred with Drs. Frank and Staver's report. (Ex. 32). SAIF accepted a cervical strain, thoracic strain, and right shoulder strain. (Ex. 29).

In June 2012, noting that claimant's symptoms had not improved, Dr. Bert recommended surgery. (Ex. 41).

In August 2012, claimant was re-evaluated by Drs. Frank and Staver at SAIF's request. (Ex. 46). Their examination did not show objective signs of cervical radiculopathy, which were present in their first examination. (Ex. 46-15). Given the lack of objective findings of radiculopathy, Drs. Frank and Staver concluded that surgery was not necessary or appropriate. (*Id.*)

In December 2012, claimant's pain was noted to have significantly worsened. (Exs. 53, 54). She began using a wheelchair and requiring other accommodations to complete activities of daily living. (*Id.*)

In January 2013, Dr. Bert opined that claimant's February 2012 work-related cervical strain combined with her preexisting cervical spine disease to initially cause her disability and need for treatment. (Ex. 55-2). However, due to a chronic C5 nerve root lesion, stenosis, and spondylosis, Dr. Bert concluded that claimant's cervical strain was no longer the major contributing cause of her disability and need for medical treatment. (*Id.*)

In February 2013, Dr. Bert acknowledged that he had recommended surgery for claimant's C4-5 level in June 2012. (Ex. 55AA-1). He opined that claimant's work injury incident likely pathologically worsened the preexisting stenosis and spondylosis, and was the major contributing cause of claimant's combined condition. (*Id.*) However, due to the progressive nature of claimant's preexisting cervical spine disease, Dr. Bert considered the preexisting condition to be the major contributing cause after six to nine months following the work injury. (*Id.*)

On April 24, 2013, SAIF accepted the additional condition of "cervical strain combined with pre-existing, multi-level degenerative disk and joint disease effective February 23, 2012." (Ex. 55B). On April 26, 2013, SAIF issued a "ceases" denial, asserting that claimant's accepted injury was no longer the major contributing cause of the combined cervical condition. (Ex. 57).

In June 2013, claimant was evaluated by Dr. Noonan, a neurosurgeon. (Ex. 59). Because of claimant's significant decline in functional abilities, Dr. Noonan had claimant admitted to a hospital in preparation for immediate cervical spine surgery. (Ex. 59-3).

In January 2014, Dr. Bert opined that “the C4-5 level is compensable as it is related to [claimant’s] work injury.” (Ex. 66A). He considered the work injury to be the major contributing cause of claimant’s need for medical treatment, surgery, and disability at the C4-5 level. (*Id.*)

In May 2015, Dr. Bert opined that claimant’s otherwise compensable work injury combined with her preexisting multi-level degenerative disc and joint disease of the cervical spine, and was no longer the major contributing cause of disability and need for treatment six to nine months following the injury. (Ex. 67). In a September 2015 deposition, Dr. Bert reiterated that opinion. (Ex. 68-10).

The ALJ relied on Dr. Bert’s medical opinion and upheld SAIF’s “ceases” denial.<sup>1</sup>

On review, claimant contends that Dr. Bert’s medical opinion is not sufficiently persuasive to satisfy SAIF’s burden of proof to support its “ceases” denial.<sup>2</sup> Based on the following reasoning, we disagree.

ORS 656.262(6)(c) provides that, after acceptance of a combined condition, a carrier may deny the combined condition if the otherwise compensable injury “ceases” to be the major contributing cause of the combined condition. In *Brown v. SAIF*, 262 Or App 640, 656 (2014), the court held that the proper inquiry under ORS 656.262(6)(c) is whether the claimant’s “work-related injury incident,” not the accepted condition, ceased to be the major contributing cause of the need for treatment or disability for the combined condition. See *Shawn M. Smith*, 66 Van

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<sup>1</sup> Claimant objects to the ALJ’s conclusions regarding the medical opinions of Drs. Stowell, Frank, and Staver, asserting that those opinions are not sufficient to satisfy SAIF’s burden of proof regarding its “ceases” denial. Even if those opinions are not, by themselves, sufficient to satisfy SAIF’s burden of proof, they are consistent with the opinion of Dr. Bert, which was the basis for the ALJ’s decision.

<sup>2</sup> Additionally, claimant contends that SAIF’s closing arguments included an “admission of material fact” that undermined the basis of the “ceases” denial. In its closing arguments, SAIF stated that “we have basically conceded major cause through that period of time,” meaning up to the time of the April 26, 2013 denial. (II-Tr. 5). Based on the context of the comment, we do not interpret SAIF’s position as contesting benefits provided up to the time of its April 26, 2013 denial, even though the medical evidence may have supported an earlier denial. Furthermore, claimant’s contention that this statement amounted to a preclusive admission of fact conflicts with the record as a whole, and the primary point of SAIF’s closing arguments, *i.e.* its defense of its “ceases” denial. Finally, any adoption of claimant’s interpretation of SAIF’s counsel’s statement would be overlooking SAIF’s statement that it was “basically conced[ing] major cause through that period.” Consequently, for these reasons, we decline to interpret SAIF’s counsel’s comment in the manner proposed by claimant.

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Natta 1381, 1382 (2014) (a carrier may deny an accepted combined condition under ORS 656.262(6)(c) if the work-related injury incident ceases to be the major contributing cause of the combined condition).

To satisfy the “ceases” requirement in ORS 656.262(6)(c), the carrier must prove a change in the claimant’s condition or circumstances after the acceptance of the combined condition such that the work-related injury incident is no longer the major contributing cause of the disability or need for treatment for the combined condition. ORS 656.266(2)(a); *Wal-Mart Stores, Inc. v. Young*, 219 Or App 410, 419 (2008); *Brown*, 262 Or App at 656; *Smith*, 66 Van Natta at 1382. The effective date of the combined condition acceptance provides the baseline for determining whether there has been a change in the claimant’s condition or circumstances. *Oregon Drywall Sys. v. Bacon*, 208 Or App 205, 210 (2006).

Determination of this issue presents a complex medical question that must be resolved by expert medical opinion. See *Barnett v. SAIF*, 122 Or App 279 (1993).

We first address claimant’s contention that Dr. Bert’s medical opinion was inconsistent, and therefore, unpersuasive.

In January and February 2013, Dr. Bert opined that claimant’s work injury incident was initially the major contributing cause of claimant’s disability and need for medical treatment for a cervical strain, but that the injury had combined with claimant’s preexisting cervical disease. (Exs. 55-2, 55AA-1). He concluded that “at this time,” and six to nine months following the work-related injury incident, the cervical strain was no longer the major contributing cause. (Ex. 55-2, 55AA).

In January 2014, following a C3-5 fusion performed by Dr. Noonan, Dr. Bert was asked to comment on the procedure. (Ex. 66A-1). He opined that the C4-5 level was “compensable” because it was “related to her work injury.” (*Id.*) He considered the work injury to be the major contributing cause of claimant’s need for medical treatment, surgery, and disability at the C4-5 level.

Finally, in his September 2015 deposition, Dr. Bert explained that, after six to nine months following the work injury, he considered claimant’s preexisting cervical spine disease to be the major contributing cause of her combined condition and need for treatment, regardless of the level of the cervical spine. (Ex. 68-9, -10).

We do not consider Dr. Bert's January 2014 comments specifically addressing the disability and need for treatment at C4-5 to contradict his opinion that claimant's work injury was not the major contributing cause of her disability and need for treatment of her combined cervical condition. The determinative issue is whether the work-related injury incident was the major contributing cause of claimant's disability and need for treatment of the combined condition as of the effective date of SAIF's combined condition denial; *i.e.*, April 2013. (Ex. 57). *See Vigor Indus., LLC, v. Ayres*, 257 Or App 795, 802-03 (2013) (determining major contributing cause of an accepted combined condition requires weighing the otherwise compensable injury and statutory preexisting condition components of the accepted combined condition); *Donelle Applegate*, 67 Van Natta 1538, 1541 (2015). Dr. Bert's "compensable" comments were expressly directed at claimant's C4-5 disc level, not at her combined cervical multi-level degenerative condition. Regarding this "combined condition," Dr. Bert has consistently stated that the February 2012 work injury was no longer the major contributing cause after six to nine months following the injury. (Exs. 55, 55AA, 67, 68-9, -10, -19).

Dr. Bert's medical opinion is un rebutted by any other physician. Moreover, he performed claimant's 2003 cervical spine surgery for her preexisting degenerative cervical condition, provided periodic cervical spine evaluation following that procedure, and resumed treatment within a month of her 2012 work injury. Dr. Bert's longitudinal history of treatment concerning claimant's cervical spine, including her preexisting degenerative spine disease, leads us to grant significant weight to his ultimate opinion. *See Weiland v. SAIF*, 64 Or App 810 (1983) (in some situations, a treating physician's opinion is entitled to greater weight because of a better opportunity to observe and evaluate a claimant's condition over an extended period of time).

Finally, citing *Vigor*, 257 Or App at 806, claimant contends that Dr. Bert's consideration of claimant's 2003 fusion surgery in determining the major cause of her combined condition was improper because the procedure was not a component of the combined condition. We disagree.

Dr. Bert opined that claimant's 2003 cervical spine fusion procedure and subsequent "transition syndrome" were the major contributing cause of the combined condition. (Ex. 55AA). However, Dr. Bert also clarified that the "transition syndrome" is a description of the worsening of claimant's degenerative disc disease following the 2003 fusion surgery. (Ex. 66A).

Based on our review of the record, it appears that Dr. Bert's comments regarding the 2003 surgery described the surgery's impact on the progression of claimant's preexisting multi-level degenerative cervical disease. Therefore, we are persuaded that Dr. Bert's opinion properly weighed the component parts of the combined condition, which consisted of the work injury and claimant's multi-level disk and joint disease of the cervical spine.

Accordingly, based on the aforementioned reasoning, as well as that expressed in the ALJ's order, we conclude that SAIF has met its statutory burden to establish that the work injury was no longer the major contributing cause of the combined condition. *See* ORS 656.262(6)(c). Consequently, we affirm the ALJ's decision to uphold SAIF's "ceases" denial.

#### ORDER

The ALJ's order dated January 19, 2016 is affirmed.

Entered at Salem, Oregon on September 9, 2016