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In the Matter of the Compensation of  
**BRIGIDA H. PENALOZA, Claimant**  
WCB Case Nos. 16-02730, 15-05334  
ORDER ON REVIEW  
Alvey Law Group, Claimant Attorneys  
Sather Byerly & Holloway, Defense Attorneys

Reviewing Panel: Members Lanning and Curey.

Claimant requests review of Administrative Law Judge (ALJ) Pardington's order that: (1) upheld the self-insured employer's denial of claimant's new/omitted medical condition for a right shoulder condition; and (2) determined that a proposed right shoulder surgery was not related to claimant's accepted right shoulder condition. On review, the issues are compensability and medical services.<sup>1</sup>

We adopt and affirm the ALJ's order with the following supplementation regarding the medical services issue.

The ALJ analyzed whether the proposed right shoulder surgery was materially related to the "work-related injury incident" under the method described in *SAIF v. Carlos-Macias*, 262 Or App 629, 637 (2014). After doing so, the ALJ determined that Dr. Hanley's opinion relating the need for right shoulder surgery to the work injury incident contained inconsistencies rendering his opinion unpersuasive.

Subsequent to the ALJ's order, however, the *Carlos-Macias* analysis has been superseded by the analysis expressed in *Garcia-Solis v. Farmers Ins. Co.*, 288 Or App 1, 5 (2017). Under *Garcia-Solis*, the phrase "compensable injury" as used in ORS 656.245(1) refers to an "accepted condition." 288 Or App at 5. Therefore, consistent with the *Garcia-Solis* rationale, we determine whether claimant's proposed rotator cuff surgery was for a condition caused in material part by her accepted right shoulder infraspinatus tear.<sup>2</sup> (Ex. 68). Based on the following reasoning, the record does not satisfy that requisite standard.

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<sup>1</sup> The employer moves to strike a surgery report that was submitted with claimant's reply brief. In response, claimant agrees that the surgery report and related arguments should not be considered.

<sup>2</sup> The parties do not dispute that the first sentence of ORS 656.245(1)(a) applies.

Dr. Hanley opined that claimant had the “same tear” despite the interpretation of Dr. Brenneke and the radiologist, who concluded that claimant had a new supraspinatus tear based on comparison of the July 2013 MRI with the results of an April 2015 MRI. (Exs. 15, 46, 65-3). Yet, Dr. Hanley had previously stated that the proposed surgery was specifically for the supraspinatus tear shown in the later MRI. (Exs. 15, 46, 54, 65-3). In the absence of an explanation regarding the abovementioned inconsistency, we discount Dr. Hanley’s opinion.<sup>3</sup> *See Franklin D. Jantzen*, 68 Van Natta 534, 539 (2016); *Howard L. Allen*, 60 Van Natta 1423, 1424 (2008) (internally inconsistent medical opinion, without explanation for the inconsistencies, was found unpersuasive).

Accordingly, based on the aforementioned reasoning, in addition to that expressed in the ALJ’s order, the record does not persuasively establish that the proposed right shoulder surgery is materially related to claimant’s accepted right shoulder infraspinatus tear. ORS 656.245(1)(a); ORS 656.266(1); *Charles C. Davis*, 64 Van Natta 2173, 2178 (2012). Consequently, we affirm.

#### ORDER

The ALJ’s order dated May 11, 2017 is affirmed.

Entered at Salem, Oregon on December 7, 2017

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<sup>3</sup> Moreover, in contrast to Dr. Hanley’s opinion, Dr. Brenneke explained that the infraspinatus tear was only one millimeter in dimension, which was not considered clinically significant. (Ex. 72-36).