

In the Matter of the Compensation of  
**MICHAEL HARRISON, Claimant**

WCB Case No. 15-01839

ORDER ON REVIEW

Ransom Gilbertson Martin et al, Claimant Attorneys  
SAIF Legal Salem, Defense Attorneys

Reviewing Panel: Members Curey and Weddell.

The SAIF Corporation requests review of Administrative Law Judge (ALJ) Crummé's order that set aside its denial of claimant's injury claim for a left knee condition. On review, the issue is compensability.

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

The ALJ relied on the opinion of Dr. Schwartz, claimant's treating surgeon, in finding claimant's combined left knee condition compensable. The ALJ discounted the contrary opinion of Dr. Dewing and concluded that SAIF did not meet its burden of proving that claimant's otherwise compensable injury was not the major contributing cause of the disability/need for treatment of his combined left knee condition. *See* ORS 656.005(7)(a)(B); ORS 656.266(2)(a).

On review, SAIF contends that Dr. Schwartz's opinion is based on an inaccurate history of the mechanism of injury, and is otherwise unpersuasive in comparison to the opinion of Dr. Dewing. Based on the following reasoning, we disagree.

With respect to the February 2015 initial injury claim, claimant must prove that his February 2015 work injury was a material contributing cause of the disability/need for treatment related to his left knee condition. ORS 656.005(7)(a); ORS 656.266(1); *Tricia A. Somers*, 55 Van Natta 462, 463 (2003). If he establishes an "otherwise compensable injury" and a "combined condition" is present, SAIF must prove that the otherwise compensable injury was not the major contributing cause of his disability or need for treatment of the combined left knee condition. ORS 656.266(2)(a); *SAIF v. Kollias*, 233 Or App 499, 505 (2010); *Jack G. Scoggins*, 56 Van Natta 2534, 2535 (2017). The "otherwise compensable injury" means the "work-related injury incident." *Brown v. SAIF*, 262 Or App 640, 652 (2014); *see also Jean M. Janvier*, 66 Van Natta 1827, 1832-33 (2014) (applying the *Brown* definition of an "otherwise compensable injury" to initial and new/omitted medical condition claims under ORS 656.266(2)(a)).

SAIF does not dispute that the work-related injury incident was a material contributing cause of claimant's combined left knee condition. Likewise, claimant does not dispute that the work-related injury incident combined with his preexisting left knee condition. Therefore, the compensability of claimant's combined left knee condition depends on whether SAIF establishes that the work-related injury incident was not the major contributing cause of the disability/need for treatment of the combined condition.

Considering the conflicting evidence regarding the major contributing cause of claimant's disability/need for treatment of his left knee condition, the compensability issue presents complex medical questions that must be resolved by expert medical evidence. *See Uris v. State Comp. Dep't*, 247 Or 420, 426 (1967); *Barnett v. SAIF*, 122 Or App 279, 283 (1993). When presented with disagreement among experts, 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).

SAIF contends that Dr. Schwartz based his opinion on an inaccurate description of the mechanism of injury. SAIF notes that Dr. Schwartz's October 19, 2015 concurrence letter describes a mechanism of injury that is not consistent with other portions of the record. Specifically, Dr. Schwartz stated that claimant "fell about five and a half feet" and then had immediate swelling of the left knee. (Ex. 29). However, in his testimony, claimant described sliding on his stomach from the top of a load of sheet rock to the truck bed, and feeling immediate pain after he pushed off and landed on his left leg. (Tr. 14-15). Claimant did not describe a five and one-half foot "fall." (*Id.*) Dr. Dewing described the same "sliding" mechanism of injury in his April 16, 2015 report, rather than a five and one-half foot "fall." (Ex. 24-2).

In his initial evaluation of claimant, Dr. Schwartz recorded that claimant had severe pain after he "stepped down off a load" and "twisted his knee." (Ex. 27). Finally, in a March 24, 2016 concurrence letter, Dr. Schwartz recorded that claimant "jump[ed] down out of his truck" and had a "twisting injury to the knee." (Ex. 32-2). We consider these descriptions of the mechanism of injury to be materially consistent with claimant's testimony and Dr. Dewing's description. *See Jackson County v. Wehren*, 186 Or App 555, 559 (2003). Given that Dr. Schwartz endorsed these descriptions both before and after the inconsistent description of claimant falling "five and half feet," we do not agree with SAIF's contention that Dr. Schwartz's medical opinion was based on an inaccurate understanding of the mechanism of injury.

Accordingly, based on the reasoning of the ALJ, with the abovementioned supplementation, we find Dr. Schwartz's opinion most persuasive. Consequently, we conclude that SAIF has not carried its burden to establish that the otherwise compensable injury was not the major contributing cause of the disability/need for treatment of the combined condition. Therefore, we affirm.

Claimant's attorney is entitled to an assessed fee for services on review. ORS 656.382(2). After considering the factors set forth in OAR 438-015-0010(4) and applying them to this case, we find that a reasonable fee for claimant's attorney's services on review is \$4,500, payable by SAIF. In reaching this conclusion, we have particularly considered the time devoted to the case (as represented by claimant's respondent's brief), the complexity of the issue, the value of the interest involved, the risk of going uncompensated, and the contingent nature of the practice of workers' compensation law.

Finally, claimant is entitled to reasonable expenses and costs for records, expert opinions, and witness fees, if any, incurred in finally prevailing over the denial, to be paid by SAIF. *See Nina Schmidt*, 60 Van Natta 169 (2008); *Barbara Lee*, 60 Van Natta 1, *recons*, 60 Van Natta 139 (2008). The procedure for recovering this award, if any, is prescribed in OAR 438-015-0019(3).

### ORDER

The ALJ's order dated August 1, 2016 is affirmed. For services on review, claimant's attorney is awarded an assessed fee of \$4,500, payable by SAIF. Claimant is awarded reasonable expenses and costs for records, expert opinions, and witness fees, if any, incurred in finally prevailing over the denial, to be paid by SAIF.

Entered at Salem, Oregon on March 29, 2017