

In the Matter of the Compensation of
ROBERT J. MARSH, Claimant
WCB Case No. 15-02112
ORDER ON REVIEW
Alana C Diccio Law, Claimant Attorneys
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Reviewing Panel: Members Curey and Lanning.

Claimant requests review 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 an L4-5 annular injury and disc protrusion; (2) found that SAIF had correctly calculated claimant's rate of temporary disability benefits; and (3) declined to award penalties and attorney fees for allegedly unreasonable claim processing. On review, the issues are scope of issues, temporary disability rate, compensability, penalties, and attorney fees.

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

Claimant, a journeyman welder, worked for the employer from July 2013 until October 9, 2014, when he left to pursue other employment. (Ex. 73). On November 20, 2014, he agreed to return to work for the employer, at an hourly rate of \$24.19. (Ex. 74). His first day of work was November 21, 2014, a Friday. (Tr. 5, 6). On January 1, 2015, his hourly rate increased to \$24.67. (Ex. 27-3).

On March 23, 2015, claimant injured his low back while working on a heavy piece of steel. (Tr. 9). On March 24, 2015, he saw Dr. Rebollido, a chiropractor, who assessed a disc injury. (Ex. 2-3). Dr. Rebollido authorized claimant to be off work from March 25, 2015 through April 6, 2015. (Ex. 3).

On March 27, 2015, claimant was seen by Dr. Smith, an urgent care physician, who arranged for a lumbar MRI on the same day. (Ex. 11-3). The MRI showed L1-2 through L5-S1 disc bulging, a tiny L4-5 disc protrusion, and a small L5-S1 disc protrusion. (Ex. 12). From his discussion with the radiologist, Dr. Smith understood that the MRI showed a number of bulging disc sites, with some indentation of the thecal sac and cord, but "nothing that appeared to be surgical or emergent." (Ex. 11-3). Further noting that there were "several disc protrusions and disc bulges with some indentations and flattening of the thecal sac but no outright displacement of the nerve," Dr. Smith stated that "what appears to be interpreted is largely degenerative findings." (Ex. 16-1).

On April 1, 2015, SAIF accepted a lumbar strain. (Ex. 17). On April 6, 2015, SAIF paid temporary disability benefits from March 28, 2015, based on an average weekly wage of \$986.80. (Ex. 26). SAIF's average weekly wage calculation was based on a Monday through Friday work week. (*Id.*)

On April 6, 2015, claimant consulted Dr. Brett, a neurosurgeon, who diagnosed a severe lumbar strain and/or annular injury on the left at L3-4/L4-5. (Exs. 22, 23). Dr. Brett authorized claimant to remain off work. (Ex. 24). Claimant and Dr. Brett signed an 827 form, requesting acceptance of a "lumbar disc injury L3-4 or L4-5 [left]" and changing the attending physician to Dr. Brett. (Ex. 25).

On April 20, 2015, SAIF notified claimant that, based on the employer's payroll records from November 16, 2014 through March 23 2015, his average weekly wage was recalculated to be \$863.46. (Ex. 30).

Claimant requested a hearing, contesting the temporary disability rate and seeking "procedural temporary disability" benefits from March 23, 2015 to May 12, 2015, penalties, and attorney fees. (Hearing File). In response, SAIF asserted that: (1) claimant was not entitled to additional temporary disability benefits; (2) his temporary disability benefits had been paid at the correct rate; and (3) penalties/attorney fees were not warranted. (*Id.*)

On May 19, 2015, Dr. Carr, an orthopedic surgeon, performed an examination at SAIF's request. Dr. Carr opined that the March 27, 2015 MRI did not show an L3-4 or L4-5 disc injury. (Ex. 34-8, -9).

On June 5, 2015, SAIF denied a "lumbar disc injury L3-4 or L4-5 [left]." (Ex. 37). Claimant requested a hearing.

On June 17, 2015, a "post-myelogram" lumbar CT scan showed L2-3 and L3-4 disc bulges, L4-5 bilateral facet arthropathy, and L5-S1 bilateral neural foraminal narrowing and facet arthropathy. (Ex. 39).

On June 24, 2015, Dr. Brett opined that the June 17 CT scan showed "significant" L4-5 and L5-S1 disc bulges, but no significant nerve impingement. (Ex. 40). He diagnosed discogenic pain and opined that the work injury was the major contributing factor to claimant's condition and need for treatment. (*Id.*)

On June 30, 2015, claimant initiated a new/omitted medical condition claim for L4-5 annular injury, L4-5 disc protrusion, and L4-5 bilateral nerve root impingement. (Ex. 43).

On August 7, 2015, Dr. Carr opined that the June 17 CT scan did not show any disc bulges or protrusions. (Ex. 50-3). He further concluded that claimant did not have an L4-5 annular injury, an L4-5 disc protrusion, or L4-5 bilateral nerve root impingement. (Ex. 50-3, -5, -7).

On August 20, 2015, SAIF denied that the claimed L4-5 annular injury, disc protrusion, and bilateral nerve root impingement were compensably related to the work injury. (Ex. 54). Claimant requested a hearing.

On September 3, 2015, Dr. Brett opined that claimant had a left L4-5 annular injury that had possibly herniated, causing left L5 radiculopathy and pain. (Ex. 56).

On October 19, 2015, Dr. Carr opined that claimant's March 27 MRI and June 17 CT scan showed only minimal degenerative disc bulging that was not significant enough to be considered a disc protrusion and was unrelated to the work injury. (Ex. 68-2).

On October 20, 2015, Dr. Brett noted that claimant had a "known annular injury on the left at L4-5 and L5-S1, but there [was] no significant nerve impingement on repeat lumbar MRI." (Ex. 69). On November 5, 2015, he opined that the L4-5 annular injury and disc protrusion were evident on the March 27 lumbar MRI, corroborated by clinical findings, and consistent with the mechanism of injury. (Ex. 71-1, -2). He did not believe that claimant had a significant or contributing preexisting condition, but, if claimant had such a condition, Dr. Brett concluded that the work injury would be the major contributing cause of claimant's disability and need for treatment. (Ex. 71-2)

On November 18, 2015, Dr. Brett viewed a video of the work incident, which reinforced his opinion that the injury was the "direct" cause of claimant's low back disability and need for treatment. (Ex. 72-1). Dr. Brett also opined that the October 19, 2015 lumbar MRI showed the L4-5 disc protrusion and annular injury.¹ (*Id.*)

¹ The October 19, 2015 lumbar MRI report is not included in the record.

At the hearing, the ALJ described the issues as: (1) a new/omitted medical condition claim for an L4-5 annular injury and disc protrusion, and attorney fees and costs; and (2) the rate of time loss and related penalties and attorney fees. (Tr. I-1). Claimant's counsel confirmed that those were the issues. (Tr. I -1, 2). SAIF's counsel agreed that those were the issues, raised a "combined condition" defense, and moved for a continuance to obtain rebuttal evidence. (Tr. I-2). The ALJ granted SAIF's motion over claimant's objection.

On February 22, 2016, Dr. Carr opined that the October 19 lumbar MRI did not show any different findings when compared to the March 27 MRI; *i.e.*, did not show an L4-5 disc protrusion or an L4-5 annular injury. (Ex. 76-1, -3).

In his closing argument, claimant contended that his average weekly wage calculation should be based on his earnings from November 21, 2014 through March 23, 2015. (Tr. II-3). He also asserted that he should have been paid \$15,230 for the period from March 30, 2015 to September 21, 2015, whereas he only had been paid \$6,941.48, due in part to the average weekly wage dispute, but also "just due to an underpayment." (Tr. II-3, -4).

The ALJ concluded that Dr. Brett's opinion was unpersuasive in light of the contrary medical evidence from Dr. Carr and upheld SAIF's August 20, 2015 denial. Furthermore, the ALJ was not persuaded that SAIF had miscalculated claimant's average weekly wage.

Thereafter, claimant requested reconsideration of the ALJ's order, asserting that he was entitled to additional temporary disability benefits for the period from March 25, 2015 to September 21, 2015. (Hearing File). He argued that the temporary disability benefit payment records that had been admitted into the evidentiary record showed that he had been paid \$10,019.34, when he should have been paid \$14,794.72 in temporary disability benefits.² (*Id.*)

In response, SAIF asserted that claimant was inaccurately representing what he had been paid. (*Id.*) SAIF also submitted documents showing temporary disability benefit payments from April 28, 2015 through June 8, 2015. (*Id.*) Claimant objected to SAIF's submissions as "untimely." (*Id.*)

² On November 10, 2015, SAIF submitted a "Master Exhibit List," which included temporary disability benefit payment records for the periods from March 28, 2015 through April 27, 2015 and from June 9, 2015 through September 21, 2015. (Exs. 26, 28, 33, 42, 44, 47, 51, 55, 58, 64, 67). The ALJ admitted these documents into the evidentiary record at the November 20, 2015 hearing.

On May 20, 2016, within 30 days of the ALJ's April 22, 2016 order, claimant requested Board review.³ On review, he renews his argument that his average weekly wage rate was incorrectly calculated. He also contends that, even if the rate is correct, he is entitled to additional temporary disability benefits for the period from March 24, 2015 to September 21, 2015. Lastly, he contests the ALJ's evaluation of the medical evidence, contending that Dr. Brett's opinion is most persuasive. For the following reasons, we affirm the ALJ's order.

Scope of Issues

Based on the temporary disability benefit payment records that were admitted at hearing, claimant contends that he was paid only \$10,019.34, whereas, based on SAIF's average weekly wage calculation of \$863.46, he should have been paid \$15,227.42. SAIF asserts that claimant did not raise this issue until his closing argument and, therefore, his request for increased temporary disability benefits should not be considered. Alternatively, SAIF seeks remand to the ALJ to reopen the record for the admission of additional evidence on this issue. We do not address these issues for the following reasons.

Issues raised in a hearing request are generally ripe for resolution, even where they are not raised or argued at hearing. *See Liberty Northwest Ins. Corp. v. Alonzo*, 105 Or App 458, 460 (1991). However, an issue raised by a hearing request may be waived, if it is not included in a subsequent statement of the issues agreed to by the parties. *See Clifford D. Cornett*, 51 Van Natta 1430, 1432 (1999).

Here, claimant's May 12, 2015 hearing request identified as an issue, "procedural temporary disability" benefits from March 23, 2015 to May 12, 2015. (Hearing File). At the start of the hearing, however, claimant agreed with the ALJ's description of the issues, which included only the "time loss rate" issue, not a "procedural temporary disability" issue. (Tr. I-1, 2). Based on this record, we conclude that claimant relinquished the "procedural temporary disability" issue (identified in his hearing request for the period from March 23, 2015 to May 12, 2015).⁴ *Cornett*, 51 Van Natta at 1432 (where the claimant raised penalties as an issue in his hearing request, but did not raise penalties as an issue when asked by the ALJ at hearing, the penalty issue was waived).

³ There is no indication that claimant's reconsideration motion and SAIF's response were brought to the ALJ's attention. Consequently, the ALJ did not abate, reconsider, or otherwise reply to the parties' submissions.

⁴ Even if claimant did not waive the issue raised in his hearing request, he did not assert at the hearing level, or on review, that he is entitled to additional temporary disability benefits for the period identified in his hearing request (*i.e.*, from March 23, 2015 to May 12, 2015).

Subsequently, in closing argument, claimant asserted that he had been underpaid temporary disability benefits from March 30, 2015 through September 21, 2015. (Tr. II-3). On review, he contends that he was underpaid temporary disability benefits from March 24, 2015 through September 21, 2015. Notwithstanding these contentions, claimant had not previously raised the issue of a temporary disability benefit underpayment for these periods.

We have consistently held that we do not consider an issue raised for the first time during closing argument or on review. *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); *Richard G. Boyce*, 63 Van Natta 2024, 2027 (2011) (Board generally does not consider issues raised for the first time in closing argument). Consequently, we do not address claimant's contentions concerning the "procedural temporary disability" issue.⁵

Temporary Disability Rate

Claimant's work week was Monday through Friday. (Tr. 6, 17). His first day of work was Friday, November 21, 2014. (Tr. 6). He was injured on Monday, March 23, 2015.

SAIF calculated claimant's average weekly wage based on his weekly earnings starting November 16, 2014 (the beginning of the work week in which he started working) through March 28, 2015 (the end of the work week in which he was injured). (Exs. 27-3, 30). At hearing, claimant argued that his average weekly wage should be based on his earnings, starting from his first day of work.

The ALJ applied OAR 436-060-0025(5), stating: "The rule looks back from the date of the injury to the previous weeks of employment. The rule does not count the weeks forward from the first day a worker worked for an employer[.]" Based on the language of the rule, the ALJ disagreed with claimant's argument. Instead, the ALJ concluded that SAIF's calculation was not unreasonable and that penalties and attorney fees were not warranted.

On review, citing *Saber Rom*, 58 Van Natta 1195 (2006), claimant contends that his average weekly wage must be based on his actual earnings from November 21, 2014, his first day of work, through March 23, 2015, the date of his injury. We disagree for the following reasons.

⁵ Given our decision, we need not address SAIF's alternative remand request.

Claimant has the burden of proving the extent of his temporary disability. ORS 656.266(1); *Rodolfo Arevalo*, 68 Van Natta 1142, 1144 (2016).

OAR 436-060-0025(5)(a)(A) (WCD Admin. Order 11-52, eff. April 1, 2011) provides the method of calculating TTD rates for employees who, like claimant, were paid on an hourly basis.⁶ Under that provision, “[i]nsurers must use the worker’s average weekly earnings with the employer at injury for the 52 weeks prior to the date of injury.” OAR 436-060-0025(5)(a)(A) (emphasis supplied). However, “[f]or workers employed less than 52 weeks or where extended gaps exist, insurers must use the actual *weeks of employment*[.]” *Id.* (emphasis supplied). Moreover, “[w]here there was a change in the wage earning agreement due only to a pay increase or decrease during the 52 weeks prior to the date of injury, insurers must use the worker’s average weekly hours worked for the 52 week period, or lesser period as required in (5)(a)(A) of this section, multiplied by the wage at injury to determine the worker’s current average weekly earnings.” OAR 436-060-0025(5)(a)(B)(i) (emphasis supplied).

Here, claimant was paid \$24.67 per hour under the wage earning agreement in effect at the time of his injury. (Ex. 27-3; Tr. 7). When he was injured, he had been employed less than 52 weeks. (Exs. 27-3, 73, 74). Therefore, under OAR 436-060-0025(5)(a)(A) and (B)(i), SAIF was required to apply claimant’s hourly wage at injury to the actual *weeks* of employment prior to the date of injury. Thus, claimant’s actual weeks of employment prior to the date of injury include both the work week in which he was injured and the work week in which he started working. (Ex. 27-3).

The rule’s reference to “weeks prior to the date of injury” does not support claimant’s contention that his average weekly wage calculation must *begin* with his first *day* of employment and end with the *day* of his injury. His reliance on *Rom* is misplaced. In *Rom*, we rejected the carrier’s position that the claimant’s employment continued without extended gaps after he left to pursue other opportunities. Rather, we determined that a new employment relationship began when the claimant returned to work for the employer. *Rom*, 58 Van Natta at 1198. Here, there is no disagreement that there was a new employment relationship when claimant returned to work for the employer. (Ex. 74). *Rom* did not address the issue that is presented in this case.

⁶ We apply the version of the rule in effect at the time that claimant was injured on March 23, 2015. *Tye v. McFetridge*, 342 Or App 61, 67 n 5 (2006).

In sum, based on the aforementioned reasoning, as well as that explained in the ALJ's order, we are persuaded that SAIF's calculation of claimant's temporary disability benefits was correct. Accordingly, we affirm that portion of the ALJ's order that denied claimant's request for additional temporary disability benefits and related penalties and attorney fees.

New/Omitted Medical Condition Claim

In upholding SAIF's August 20, 2015 denial of claimant's new/omitted medical condition claim for L4-5 annular injury, disc protrusion, and bilateral nerve root impingement, the ALJ concluded that Dr. Brett's opinion was not well reasoned or explained in light of the contrary medical evidence from Dr. Carr. On review, claimant contends that Dr. Brett's opinion was more persuasive because he was claimant's attending neurosurgeon, had a more complete history, and effectively rebutted the opinion of Dr. Carr. For the following reasons, we affirm.

To prevail on his new/omitted medical condition claim, claimant must prove that the claimed conditions exist and that the March 2015 work injury was a material contributing cause of his disability or need for treatment for those conditions.⁷ ORS 656.005(7)(a); ORS 656.266(1); *Betty J. King*, 58 Van Natta 977 (2006); *Maureen Y. Graves*, 57 Van Natta 2380, 2381 (2005). If claimant meets that burden and the medical evidence establishes that the "otherwise compensable injury" combined with a "preexisting condition" to cause or prolong disability or a need for treatment, SAIF has the burden to prove that the "otherwise compensable injury" was not the major contributing cause of the disability or need for treatment of the combined conditions. ORS 656.005(7)(a)(B); ORS 656.266(2)(a); *Brown v. SAIF*, 262 Or App 640, 652 (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).

Because of the disagreement between medical experts regarding the existence and cause of the disability/need for treatment, the claim presents a complex medical question that must be resolved by expert medical opinion. *Barnett v. SAIF*, 122 Or App 279, 282 (1993). We rely on those medical opinions that are well reasoned and based on complete information. *Somers v. SAIF*, 77 Or App 259, 263 (1986).

⁷ On review, the disputed conditions are "L4-5 annular injury" and "L4-5 disc protrusion." Neither Dr. Brett nor Dr. Carr supported the existence of the claimed "L4-5 bilateral nerve root impingement." (Exs. 50-7, 71-1).

Here, Dr. Brett's opinion supported the existence of an L4-5 annular injury, whereas Dr. Carr's did not. (Exs. 50-3, -5, 71-1). Both physicians personally viewed the lumbar MRIs and CT scan, performed an examination(s), and had an accurate understanding of the March 23, 2015 work injury incident. (Exs. 12, 22-3, 34-6, 39, 40, 50-3, 72-1, 76-1).

Dr. Carr opined that there was no objective evidence to support the diagnosis of "annular injury," which he stated was "pure conjecture and is not based on any objective findings." (Ex. 50-4). He diagnosed a lumbar strain resulting from the work injury and preexisting degenerative disc disease, mild at L1-2 through L4-5 and moderate to advanced at L5-S1. (Ex. 34-7). He reasoned that the MRI findings were not acute or suggestive of an injury; rather, they were compatible with mild early degenerative disc disease.⁸ (Ex. 34-9). He compared the March 27 and October 19, lumbar MRIs, found no differences, and explained that the MRIs did not show a "high intensity zone" (*i.e.*, an annular tear), or any acute pathology, at L4-5, or in any of the discs. (Exs. 50-3, -4, 76-3). He concluded that the claimed L4-5 annular injury condition did not exist. (*Id.*)

Dr. Brett disagreed. (Ex. 71-2). He stated that the March 27 MRI "clearly revealed" an L4-5 annular injury. (*Id.*) He also stated that the October 19 MRI "continued to show" the L4-5 annular injury. (Ex. 72-1). Yet, he did not assert that there was a "high intensity zone" or otherwise describe any observations that supported his conclusion. He also relied on clinical findings, including "nearly nonexistent" lumbar range of motion and referred leg pain, to corroborate the existence of an L4-5 annular injury. (Ex. 72-2). Yet, for several months after the injury, Dr. Brett observed that claimant's lumbar range of motion was only moderately reduced. (Exs. 22-1, 40, 48). He did not observe "almost nonexistent" lumbar motion until September 2015. (Ex. 56). At that time he described increasing low back pain and new "radiating" left lower extremity pain in an L5 distribution and "dyesthesia" extending to the foot. (Exs. 56, 65). He did not explain how these developments, occurring several months after the injury and after claimant had returned to modified work, proved the existence of an L4-5 annular injury in relation to the March 27, 2015 work incident.

Furthermore, in addressing Dr. Carr's opinion that claimant has preexisting degenerative disc disease, Dr. Brett stated that "it is certainly possible that some of the annular pathology in [claimant's] spine is degenerative, but it is medically

⁸ Dr. Carr's opinion is supported by Dr. Smith's note that the March 27 MRI "was what appears to be interpreted is largely degenerative findings." (Ex. 16-1).

probable that [his] L4-5 annular injury was caused by the work injury.” (Ex. 72-2). He stated that his opinion was based on “considering the ‘whole picture’ of [claimant’s] case,” which he described as claimant’s history, objective examination findings, the mechanism of injury, and subsequent level of pain and disability. (*Id.*) He did not explain how these factors supported his compensability opinion.

Having considered Dr. Carr’s opinion, and in the absence of Dr. Brett’s further explanation, we conclude that the medical evidence does not persuasively establish the compensability of the claimed L4-5 annular injury. *See Moe v. Ceiling Sys.*, 44 Or App 429, 433 (1980) (rejecting unexplained or conclusory opinion); *Jonathan L. Lopez*, 60 Van Natta 1137, 1139 (2008) (no special deference to the attending physician where the dispute concerned differing interpretations of MRI scan and correlative symptoms of right radiculopathy); *Janet Benedict*, 59 Van Natta 2406, 2409 (2007), *aff’d without opinion*, 227 Or App 289 (2009) (medical opinion found less persuasive when it did not address contrary evidence).

We turn to the L4-5 disc protrusion. As with the L4-5 annular injury, Dr. Brett’s opinion supported the existence of an L4-5 disc protrusion, whereas Dr. Carr’s did not. (Exs. 50-5, 68-2, 72-2). We need not resolve that dispute because, even assuming the “existence” of an L4-5 disc protrusion, we are not persuaded that the work injury was a material contributing cause of claimant’s disability or need for treatment of the L4-5 disc protrusion. We reason as follows.

Dr. Carr acknowledged that the work injury would have imparted a significant amount of strain to claimant’s back. (Ex. 34-7). Nonetheless, he opined that the acceptance of a lumbar strain was appropriate. (*Id.*) He further concluded that there was no objective evidence that an L4-5 disc injury had occurred. (Ex. 34-9). He opined that the MRI findings were not acute, or suggestive of an injury; rather, they were compatible with mild early degenerative disc disease. (Ex. 34-9).

Dr. Carr’s opinion is supported by that of Dr. Smith, who noted that the March 27 MRI showed “what appears to be interpreted is largely degenerative findings.” (Ex. 16-1).

In contrast, Dr. Brett opined that claimant “has much more than a lumbar strain in view of his referred leg complaints and the duration of time he has suffered with discomfort following his work injury[.]” (Ex. 69). He concluded that the work injury was at least a material contributing cause of the L4-5 disc

protrusion. (Ex. 72-1). Yet, on April 6, 2015, he opined that claimant had a disc injury at left L3-4 or L4-5, while on June 4, 2015, he reported that claimant had L4-5 and L5-S1 disc bulges. (Exs. 25, 40). Thereafter, on September 21, 2015, he diagnosed an L4-5 and/or L5-S1 disc herniation. (Ex. 65).

Dr. Brett did not explain these seemingly inconsistent diagnoses nor does the record suggest an explanation. Moreover, in disputing Dr. Carr's opinion, Dr. Brett acknowledged that claimant had degenerative disc disease, consistent with claimant's relatively young age. (Ex. 71-2). He also stated that claimant had a normal spine before the work injury. (*Id.*) He did not indicate that he had seen claimant before the work injury, explain how he knew that claimant previously had a normal spine, or describe any acute findings that would indicate a disc injury. Considering these inconsistencies and the lack of explanation, we find Dr. Brett's opinion to be insufficient to persuasively establish that claimant's work injury was a material contributing cause of disability/need for treatment for an L4-5 disc protrusion.⁹ *See Moe*, 44 Or App at 433; *Howard L. Allen*, 60 Van Natta 1423, 1424-25 (2008) (internally inconsistent medical opinion, without explanation for the inconsistencies, was unpersuasive).

In sum, the record does not persuasively establish that the claimed conditions are compensable. Therefore, we affirm the ALJ's decision to uphold SAIF's denial.

ORDER

The ALJ's order dated April 22, 2016 is affirmed.

Entered at Salem, Oregon on March 7, 2017

⁹ We further note that, notwithstanding Dr. Brett's review of the "work incident" video and his opinion that the mechanism of claimant's work injury was consistent with a disc protrusion, Dr. Brett did not persuasively explain how that injury materially caused the claimed L4-5 disc protrusion or its need for treatment.