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In the Matter of the Compensation of  
**ROBIN M. ZINSER-RANKIN**, Claimant  
WCB Case Nos. 15-01070, 14-06276, 14-03969, 14-02776  
ORDER ON REVIEW  
Preston Bunnell LLP, Claimant Attorneys  
SAIF Legal, Defense Attorneys

Reviewing Panel: Members Lanning and Curey.

Claimant requests review of those portions of Administrative Law Judge (ALJ) Naugle's order that: (1) upheld the SAIF Corporation's denial of claimant's new/omitted medical condition claim for a bilateral C5-6 radiculopathy condition; and (2) upheld SAIF's denial of claimant's combined cervical spine condition. On review, the issue is compensability. We affirm.

FINDINGS OF FACT

We adopt the ALJ's "Findings of Fact."

CONCLUSIONS OF LAW AND OPINION

The ALJ, applying the then-applicable "work-related injury incident" standard of *Brown v. SAIF*, 262 Or App 640, 656 (2014), found that SAIF established that the work-related injury incident was not the major contributing cause of the disability/need for treatment of the combined C5-6 radiculopathy. Addressing SAIF's "ceases" denial of the previously accepted combined cervical spine conditions, the ALJ reasoned that Dr. Hook's opinion persuasively established that the work-related injury incident was no longer the major contributing cause of claimant's disability/need for treatment for the combined cervical spine condition.

Claimant contends that Dr. Hook's opinion is neither persuasive, nor adequate, to support SAIF's burden of proof regarding its "ceases" denial. Further, she argues that SAIF's denial of C5-6 radiculopathy as a new/omitted medical condition should be set aside on a procedural basis. Alternatively, regarding the merits of the claim, claimant argues that the opinion of Dr. Yoo, her treating surgeon, persuasively supports the compensability of the claimed condition. Based on the following reasoning, we disagree with claimant's contentions.

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“Ceases” Denial

ORS 656.262(6)(c) authorizes a carrier to deny an accepted combined condition if the “otherwise compensable injury” ceases to be the major contributing cause of the combined condition. Subsequent to the ALJ’s order, in *Brown v. SAIF*, 361 Or 241, 282 (2017), the court established that the correct inquiry under ORS 656.262(6)(c) was whether the previously accepted condition (rather than the work-related injury incident) remained the major contributing cause of claimant’s disability or need for treatment of the combined condition. The court reasoned that a carrier may deny the accepted combined condition if the “otherwise compensable injury” (*i.e.*, the medical condition that the carrier previously accepted) ceases to be the major contributing cause of the combined condition. *Id.*

The word “ceases” presumes a change in the worker’s condition or circumstances such that the “otherwise compensable injury” is no longer the major contributing cause of the disability or need for treatment of the combined condition. *Wal-Mart Stores, Inc. v. Young*, 219 Or App 410, 419 (2008). Here, the effective date of SAIF’s combined condition acceptance was October 8, 2013, and its “ceases” denial was effective July 16, 2014. (Ex. 85). Thus, in accordance with the *Brown* rationale, to support its denial under ORS 656.262(6)(c), SAIF must prove a change in claimant’s condition or circumstances between October 8, 2013 and July 16, 2014 such that the previously accepted condition ceased to be the major contributing cause of the disability or need for treatment for the combined condition. ORS 656.262(6)(c); ORS 656.266(2)(a); *Brown*, 361 Or at 282.

Based on the opinion of Dr. Hook, we are persuaded that SAIF met its requisite burden of proof. Specifically, on September 11, 2014, Dr. Hook commented that claimant’s remaining pain symptoms could no longer be attributed to her accepted cervical and thoracic strains. (Ex. 76-1). Further, he considered the accepted conditions to be medically stationary, and unrelated to any permanent impairment. (Ex. 76-2). Dr. Hook reasoned that it was “difficult” to reconcile claimant’s “severe decline” with a fall from a chair. (*Id.*) Dr. Hook further noted that the available diagnostic imaging did not show any acute findings that would explain claimant’s current condition. (*Id.*)<sup>1</sup> Dr. Hook ultimately concluded that

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<sup>1</sup> Claimant contends that Dr. Hook’s opinion is unpersuasive because Dr. Hook changed his opinion regarding the major cause of her need for treatment of her cervical condition. However, Dr. Hook persuasively explained his change in opinion, stating that it occurred after he reviewed additional information. (Ex. 96-6). Under the circumstances, we consider Dr. Hook’s change of opinion to have been persuasively explained. *Kelso v. City of Salem*, 87 Or App 630, 633 (1987)

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claimant's "arthritic, degenerative changes in her \* \* \* cervical spine were the major contributing cause for her need to treat[.]" (Ex. 99-2).

Given Dr. Hook's explanation that the accepted conditions resolved, and that claimant's ongoing pain symptoms were not attributable to those conditions, we conclude that SAIF established the requisite change in claimant's condition. *See, e.g., Judd Blackwell*, 68 Van Natta 813, 815-16 (2016) (finding that the claimant's soft tissue injury resolved with conservative treatment such that the preexisting condition became the major contributing cause of the combined condition).<sup>2</sup> Therefore, we conclude that SAIF met its burden of proving that the otherwise compensable injury (*i.e.*, the accepted cervical strain condition) had ceased to be the major contributing cause of claimant's cervical combined condition. *Brown*, 361 Or. at 282. Accordingly, we affirm the ALJ's decision to uphold SAIF's "ceases" denial.

#### New/Omitted Medical Condition

Claimant also contends that SAIF's denial of her new/omitted medical condition claim for C5-6 radiculopathy should be set aside based on the opinion of Dr. Yoo.<sup>3</sup> We disagree.

To establish the compensability of her new/omitted medical condition claim, claimant must prove that the claimed condition exists and that the work event was a material contributing cause of the disability or need for treatment for the claimed condition. ORS 656.005(7)(a); ORS 656.266(1); *Betty J. King*, 58 Van Natta 977

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(changed opinion found persuasive where there was a reasonable explanation for the change); *Daniel Webb*, 69 Van Natta 334, 335 (2017) (a reasonable explanation for a changed opinion may be based on new information, but may also be based on a reevaluation of the record).

<sup>2</sup> Claimant contends that the opinion of Dr. Yoo (*i.e.*, that claimant had C5-6 radiculopathy symptoms that required, and were eventually alleviated, by surgery) establishes that her condition did not "change" as alleged by SAIF's "ceases" denial. (Ex. 98-14-16). However, in the absence of a persuasive medical opinion supporting such a proposition, we do not consider the persistence of claimant's radiculopathy symptoms to rebut a conclusion that her accepted cervical strain ceased to be the major contributing cause of her disability/need for treatment for her combined condition. *Brown*, 361 Or. at 282.

<sup>3</sup> Claimant additionally contends that SAIF's denial of C5-6 radiculopathy as a new/omitted medical condition should be set aside because that condition was encompassed within the accepted combined condition as a result of the "work injury incident." However, based on the *Brown* rationale, the "otherwise compensable injury" component of the accepted combined condition refers specifically to the accepted conditions. *Brown*, 361 Or. at 272. Here, SAIF accepted cervical and thoracic strains combined with preexisting C5-6 and C6-7 degenerative disc disease. (Ex. 89). Therefore, SAIF's "combined condition" acceptance did not include the claimed C5-6 radiculopathy.

(2006); *Maureen Y. Graves*, 57 Van Natta 2381 (2005). However, when an “otherwise compensable injury” combines with a statutory “preexisting condition,” the employer has the burden of establishing that the “otherwise compensable injury” is not the major contributing cause of claimant’s disability or need for treatment of the combined condition. ORS 656.005(7)(a)(B); ORS 656.266(2)(a); *SAIF v. Kollias*, 233 Or App 499, 505 (2010); *Jack G. Scoggins*, 56 Van Natta 2534, 2535 (2004). Under *Brown*, “the ‘injury’ component of the phrase ‘otherwise compensable injury’ in ORS 656.005(7)(a)(B) refers to a medical condition, not an accident.” 361 Or at 272.

Dr. Yoo opined that, when he began treating claimant in October 2014, she had symptoms of cervical radiculopathy. (Ex. 97). He noted that her hand and arm symptoms were not documented in the medical record until a few weeks after the work injury, but he did not consider it unusual for such symptoms to “increase in the months that follow an injury.” (*Id.*) In his deposition, Dr. Yoo explained that, if radiculopathy symptoms occurred three months after an injury, he would not consider them to be related to the injury. (Ex. 98-20). He further reasoned that, if the symptoms appeared within three or four weeks, he would consider them to be part of progressing symptoms from the injury. (*Id.*) Based on his understanding that claimant’s radicular symptoms occurred within a “few weeks,” Dr. Yoo considered the work injury to be the major contributing cause of claimant’s radiculopathy symptoms requiring surgical treatment. (Ex. 98-20, -21, -22).

Dr. Hook disagreed with Dr. Yoo’s assessment, noting that claimant’s radiculopathy symptoms did not occur until some six weeks after the work injury. (Ex. 99-3).<sup>4</sup> He explained that, in the context of claimant’s preexisting C5-6 cervical condition, six weeks was too long of an interval to consider the work incident to be the major contributing cause of those symptoms.

Our review of the record supports Dr. Hook’s understanding concerning the onset of claimant’s radiculopathy symptoms. On December 2, 2013, claimant was evaluated by Ms. Marik, who noted that she reported upper extremity symptoms since November 26, 2013 following the October 8, 2013 work incident. (Ex. 35). This report confirms that claimant’s radiculopathy symptoms occurred about six weeks after the work injury, which is consistent with the basis for Dr. Hook’s opinion.

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<sup>4</sup> In an earlier concurrence letter, Dr. Hook did not consider claimant’s C5-6 radiculopathy to be related to her work. (Ex. 95).

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Moreover, given that claimant's upper extremity symptoms appeared later than the three to four weeks that Dr. Yoo would have expected, we discount his opinion. (Ex. 98-20). Because Dr. Yoo's medical opinion was based on inaccurate information, we do not consider his opinion relating claimant's C5-6 radiculopathy to the work incident to be persuasive. *See Jackson County v. Wehren*, 186 Or App 555, 559 (2003) (a history is complete if it includes sufficient information on which to base the physician's opinion and does not exclude information that would make the opinion less credible); *Miller v. Granite Constr. Co.*, 28 Or App 473, 478 (1977) (medical evidence that was based on inaccurate information was not persuasive); *Sean Remington*, 67 Van Natta 1732, 1740 (2015).

Because there are no other medical opinions attributing claimant's radiculopathy symptoms to her work incident, we affirm the ALJ's decision to uphold SAIF's denial of her C5-6 radiculopathy condition.<sup>5</sup>

#### ORDER

The ALJ's order dated July 28, 2016 is affirmed.

Entered at Salem, Oregon on May 2, 2017

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<sup>5</sup> It is unnecessary to address the parties' arguments regarding a "combined condition" analysis of claimant's new/omitted medical condition claim for C5-6 radiculopathy. *See Kristie F. Ritchey*, 68 Van Natta 46, 50 n 2 (2016) (if the claimant did not establish an "otherwise compensable injury," it was unnecessary to address whether the carrier met its burden of proof pertaining to a "combined condition" under ORS 656.266(2)(a)); *Hollis L. Strickland*, 62 Van Natta 2790, 2792 n 1 (2010) (a "combined condition" analysis is not necessary in the absence of an "otherwise compensable injury").