
In the Matter of the Compensation of
THERESA M. ROBINETTE, Claimant
WCB Case No. 18-01420
ORDER ON REVIEW
Jodie Phillips Polich, Claimant Attorneys
SAIF Legal Salem, Defense Attorneys

Reviewing Panel: Members Woodford and Lanning.

Claimant requests review of that portion of Administrative Law Judge (ALJ) Fulsher's order that awarded 5 percent whole person permanent impairment for a right knee condition, whereas an Order on Reconsideration had awarded 2 percent. On review, the issue is extent of permanent disability (impairment).

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

Claimant seeks a permanent impairment award for her range of motion (ROM) loss and stability findings, which the arbiter did not attribute, in whole or in part, to her accepted right knee strain and tear of the posterior horn of the medial meniscus. In doing so, claimant argues that the medical arbiter's opinion attributed the impairment findings to nonlegally cognizable preexisting conditions, and that in the absence of evidence of prior injury and disability, the impairment findings should be attributed to her accepted right knee conditions. Based on the following reasoning, we disagree with claimant's contention.

Impairment is awarded based on the accepted conditions and the direct medical sequelae of the accepted conditions. *See Stuart C. Yekel*, 67 Van Natta 1279, 1286 (2015), *aff'd per curiam*, *Yekel v. SAIF*, 286 Or App 837 (2017). If impairment is entirely due to causes that are not related to the compensable injury, a permanent impairment award is not appropriate. *Paula Magana-Marquez*, 66 Van Natta 1300, 1302 (2014), *aff'd*, *Magana-Marquez v. SAIF*, 276 Or App 32, 37 (2016).

Here, Dr. DiPaola, the medical arbiter, attributed claimant's loss of ROM and instability in her right knee as 100 percent due to preexisting, nonwork-related degenerative changes, body habitus, or osteoarthritis. (Ex. 32-3, -4). Therefore, because Dr. DiPaola did not attribute claimant's right knee ROM and stability findings to the accepted right knee conditions, claimant is not entitled to an increased permanent impairment award. *See, e.g., Donald L. Midkiff*, 68 Van Natta 1272, 1275 (2016). Accordingly, the ALJ's order is affirmed.

ORDER

The ALJ's order dated September 12, 2018 is affirmed.

Entered at Salem, Oregon on March 7, 2019