



A simple equation complicates combined condition processing

By Courtney C. Kreutz and David E. Wilson • April 29, 2014

In *Vigor Industrial, LLC v. Ayres*,¹ the Court boiled down the components of a combined condition to a simple mathematical formula:

Combined Condition = Otherwise Compensable Injury + Pre-Existing Condition

Simple, yes, but the equation creates a potentially significant hurdle when attempting to deny an injured worker's combined condition. This is because, in *Ayres*, the Court held only the otherwise compensable injury and the *legally cognizable pre-existing condition(s)* may be considered in determining whether the otherwise compensable injury is, or remains, the major contributing cause of an injured worker's disability or need for treatment. A legally cognizable pre-existing condition is limited to either (1) a condition for which an injured worker has been previously diagnosed or obtained medical treatment for the symptoms of the condition and/or (2) a condition that constitutes arthritis or an arthritic condition.²

The following scenario highlights the difficulties created by this "simple" equation. Imagine you have a claim for a hernia allegedly occurring as a result of a distinct work injury. In the process of investigating the claim, all of the medical experts agree the hernia combined with the injured worker's pre-existing obesity, a congenital defect in his abdominal wall and a weakened area at the site of the hernia to cause his disability and need for treatment. Assume the medical experts further agree the injured worker's pre-existing obesity, congenital defect, and weakened area constitute the major contributing cause of his disability and need for treatment. However, the only pre-existing condition for which the injured worker previously sought treatment was obesity; neither the congenital defect nor the weakened area required treatment nor constituted arthritis or an arthritic condition. Under this scenario, the *Ayres* equation would look like this:

Combined Condition = Otherwise Compensable Injury (Hernia) + Obesity

The question would then be whether the hernia or the pre-existing obesity constituted the major contributing cause of the injured worker's disability or need for treatment. His congenital defect and weakened abdominal wall would play no role in the analysis. Under the scenario discussed above, the employer would not have met its burden of proof because its medical experts

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did not limit their analysis to the legally cognizable pre-existing condition, ie, obesity. Moreover, unless the injured worker's pre-existing obesity, on its own, constituted the major contributing cause of the injured worker's disability or need for treatment, the employer could not have met its burden of proof.³

Practicing Tip: The formula highlighted by the Court is a vital factor to remember when asking medical experts to weigh in on a combined condition. You must emphasize the fact their analysis can only consider legally cognizable pre-existing condition(s) and the work injury. The consideration or inclusion of other factors in their analysis will be fatal to their opinions. ■

¹ *Vigor Industrial, LLC v. Ayres*, 257 Or App 705 (2013)

² ORS 656.005(24)(a)

³ See: *Mark G. Hanks*, 66 Van Natta 669 (2014).

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