The Oregon Court of Appeals updates analysis of diagnostic services compensability in recent *Garcia-Solis* decision

By Kelsey Fleharty ■ November 20, 2017

The Oregon Court of Appeals recently issued a new decision on September 27, 2017, that provides additional insight into whether diagnostic services are compensable if unrelated to the accepted conditions.

In G*arcia-Solis v. Farmers Insurance Company*[1], claimant was compensably injured when she was struck in the head by a tent pole due to windy weather. The employer accepted the following conditions: a concussion; a closed head injury; chronic headache syndrome; facial scarring; and right supraorbital nerve injury. Claimant's attending provider subsequently sought to refer her for a psychological evaluation due to her fear of windy weather and possible symptoms of post-traumatic stress disorder. The employer denied the authorization request for referral to a counselor or psychologist.

Claimant requested a hearing and the administrative law judge upheld the employer's authorization refusal as it was not necessitated in material part by the accepted conditions. However, the ALJ noted that the denied referral was definitively caused, in material part, by the workplace injury incident. This finding is key as the ALJ found that a diagnostic evaluation is not compensable if unrelated to an accepted condition, *even if* the need for the referral clearly stemmed from the injury incident. The Board affirmed the ALJ's denial of the psychological referral and interpreted ORS 656.245(1)(a) to require that diagnostic services must relate to an already accepted injury or condition in order to be compensable. The court of appeals confirmed the Board's interpretation of ORS 656.245(1)(a) and noted that the compensable injury "is the condition previously accepted."[2] Thus, the court concluded that diagnostic services in order to evaluate the compensability of a new or consequential condition are not compensable.

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The court further noted that claimant attempted to assert that, to be compensable, diagnostic services only need to relate to the work injury incident, rather than the accepted conditions. Claimant relied upon the recent decisions of *Easton v. SAIF*[3] and *SAIF v. Carlos-Macias*[4], in support of this contention. In both *Easton* and *Carlos-Macias*, the court of appeals noted that consideration of whether a diagnostic medical service is compensable is determined by the relationship of the proposed service to the claimant's compensable injury, and not by reference to the accepted condition(s).

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However, the court of appeals found that the opinions in *Easton* and *Carlos-Macias* were predicated upon the overruled opinion in *Brown v. SAIF*[5], and therefore lacked persuasive weight. The decisions of *Easton* and *Carlos-Macias* relied heavily upon the court of appeals' decision in *Brown* to support the conclusion that diagnostic services are compensable if they are simply relate to the injury incident, rather than only the accepted conditions. However, the Oregon Supreme Court overruled the court of appeals' determination in *Brown* and instead held that the compensability of a combined condition claim depends on its relationship to a previously accepted condition, instead of simply relating to the injury incident.[6] For a full analysis of the *Brown* decision, please see "Fifty shades of Brown: the saga of *Brown v. SAIF* in Oregon."

The court of appeals found that the supreme court's reversal of *Brown* implicitly reversed the prior decisions of *Carlos-Macias* and *Easton*. In that vein, the supreme court recently remanded *Carlos-Macias* back to the court of appeals for reconsideration in light of the *Brown* decision. The court of appeals determined that the supreme court decision in *Brown* instead served to renew the case law precedent of *SAIF v. Swartz*[7]. In *Swartz*, all medical opinions agreed that the accepted condition of a lower back contusion had resolved. However, claimant's attending provider requested authorization for lumbar facet injections to evaluate possible lumbar facet syndrome. The court of appeals in *Swartz* concluded that the injections were properly denied as they did not relate to the accepted condition of a lower back contusion. Per the recent decision of *Garcia-Solis*, the prior precedent of *Swartz* remains fully intact and establishes that diagnostic services for the purpose of establishing the compensability of a new or consequential condition are not compensable. The decisions of *Carlos-Macias* and *Easton* will likely be reconsidered to comport with the new supreme court precedent of *Brown* in the near future.

Garcia-Solis indicates that inquiries into the compensability of medical services will follow the precedent of *Brown*. Therefore, claimants cannot secure diagnostic services, and presumably medical services as a whole, based upon a mere connection to the injury incident. Instead, the burden is on the injured worker to file a new/omitted medical condition claim to reconcile any disagreement with the scope of acceptance.

Overall, the recent decision of *Garcia-Solis*, and the remand for reconsideration of the *Carlos-Macias* decision, represents good news for employers. The proper inquiry regarding the compensability of a proposed diagnostic service (and likely all proposed medical services) is, once again, whether it relates to the accepted conditions under the claim. Given the renewal of the prior precedent of *Swartz*, a two-step analysis applies. First, is the accepted condition the material cause of claimant's ongoing symptoms and second, is the proposed diagnostic service directed to those ongoing symptoms. The return to the clear precedent of *Swartz* is a welcome departure from any nebulous analysis of whether a proposed medical service is arguably

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connected to the injury-incident as a whole.

If the impact of these decisions on your current claims is equally nebulous, the attorneys at Reinisch Wilson Weier can help bring you back to earth for this or other claim questions you may have. ■

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[1] *Garcia-Solis v. Farmers Insurance Company*, 288 Or App 1 (2017)

[2] Id. (citing Sprague v. United States Bakery, 199 Or App 435)

[3] *Easton v. SAIF*, 265 Or App 147 (2014)

[4] *SAIF v. Carlos-Macias*, 262 Or App 629 (2014)

[5] *Brown v. SAIF*, 262 Or App 640 (2014)

[6] *Brown v. SAIF*, 361 Or 241 (2017)

[7] *SAIF v. Swartz*, 247 Or App 515 (2011)

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