Oregon employers, insurers must now accept/deny a combined condition to apportion impairment

By Trisha D. Hole ■ August 9, 2019

In a very disappointing decision for employers and insurers issued on August 8, 2019, the Oregon Supreme Court held that the presence of a legally cognizable preexisting condition is no longer sufficient to apportion permanent impairment in the absence of combined condition processing.

In *Caren v. Providence Health System Oregon,*[1] the injured worker sustained a low back injury accepted for a lumbar strain. A few months later, claimant underwent surgery to address a lumbar disc herniation. Claimant's attending physician apportioned 50 percent of claimant's lumbar impairment to preexisting arthritis upon declaring her medically stationary. The claim was closed, with one-half of the impairment segregated from the compensable claim. Claimant appealed the Notice of Closure. On reconsideration, the medical arbiters estimated claimant's arthritis was responsible for 70 percent of her current impairment. The Order on Reconsideration reduced permanent partial disability (PPD) accordingly. The Board and Oregon Court of Appeals affirmed the Order on Reconsideration, finding claimant had a legally cognizable preexisting condition that had been apportioned correctly.

The Oregon Supreme Court disagreed. Focusing on prior case law precedent regarding calculation of permanent impairment and subsequent statutory changes involving combined conditions, the court determined that, in the absence of a combined condition denial, an employer must pay compensation "for the full measure of the workers' permanent impairment if the impairment as a whole is caused in material part by the compensable injury."[2]

The holding in *Caren* will have far-reaching implications, from early claim processing decisions through claim closure. The trend in recent Supreme Court cases signals the court's intent to make limited claim acceptance for strain or contusion type injuries more onerous. Claim exposure cannot be contained simply by narrowing the scope of acceptance. Initial compensability decisions must be carefully weighed in light of *Caren* and *Garcia-Solis v. Farmers Ins. Co.,* 365 Or 26 (2019). (Click here to read our blog about the Garcia-Solis decision.) Where any part of impairment is attributed to an accepted condition, combined condition processing may be recommended more frequently to mitigate PPD exposure.

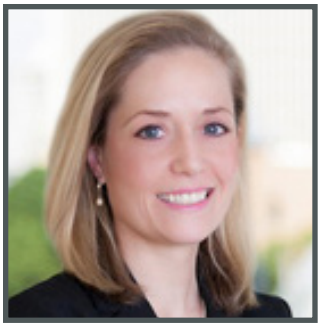
According to the court, the worker's impairment as a* whole *must be caused in material part by the compensable injury

There may also be a decline in expansion requests from claimants' attorneys.

Continued

Reinisch Wilson Weier PC
LAW OFFICES

OREGON: 10260 SW Greenburg Rd., Suite 1250, Portland, OR 97223 ● T 503-245-1846 / F 503-452-8066
WASHINGTON: 15395 SE 30th Place, Suite 230, Bellevue, WA 98007 ● T 206-622-7940 / F 206-622-5902
www.rwwcomplaw.com



Trisha D. Hole is an attorney at Reinisch Wilson Weier PC. She may be reached at 503.452.7286 or TrishaH@rwwcomplaw.com.

Caren v. Providence Health Systems Oregon (continued)

Had a pre-closure partial denial issued for the disc herniation in *Caren*, PPD apportionment would likely have been permissible. Claimants' attorneys will surely take note of this and may hold off on expansion requests in the hopes of an increased PPD award at closure. Claim closure questions to attending physicians and independent medical providers will now need to be even more closely scrutinized and extremely detailed.

Of note, according to the court in *Caren*, the worker's impairment as a *whole* must be caused in material part by the compensable injury. This language suggests there is room for creative maneuvering if the compensable injury does not impact the whole of impairment. One thing is for certain, it is now more important than ever for employers and insurers to carefully weigh their claim processing options in order to mitigate claim exposure.

The attorneys at Reinisch Wilson Weier PC are happy to assist with any questions you may have about the *Caren* case. (Click here to read the Supreme Court decision.) ■

---

[1] Caren v. Providence Health System Oregon, 365 Or 466 (2019).

[2] Caren, 365 Or at 487.