



## A divided Oregon Board limits the application of *Brown v. SAIF*

By Courtney C. Kreutz ■ July 20, 2015

In a decision that is sure to cause repercussions in the months ahead, the Oregon Workers' Compensation Board, by a 3-2 decision, limited the application of *Brown v. SAIF*<sup>1</sup> when rating permanent partial disability in its recent decision *Stuart C. Yekel*.<sup>2</sup>

The Board's decision in *Stuart C. Yekel* involved an appeal of an Opinion & Order awarding the injured worker permanent impairment for his compensable left shoulder injury, regardless of the scope of acceptance. In so doing, the Administrative Law Judge relied on the Court's decision in *Brown v. SAIF* to find the medical arbiter addressed the wrong legal standard when he assessed impairment because he limited his focus to the accepted conditions and their direct medical sequelae rather than impairment stemming from the "compensable injury." Relying on the findings of the attending physician, who focused on the "compensable injury," the Administrative Law Judge awarded 15 percent whole person impairment.

Based on its review of the statutory and then-administrative authority, the Board reversed the ALJ's decision and nullified the permanent impairment award. It held permanent impairment is based on the accepted conditions and the direct medical *sequelae* of the accepted conditions *only*. The majority explicitly refused to apply the *Brown* rationale with its emphasis on the "work-related injury incident" when rating permanent impairment instead limiting its application to compensability disputes.

The Board decision is in direct conflict with the Workers' Compensation Division's recent adoption of modified rules for rating permanent impairment. Those rules became effective March 1, 2015, for any closure issued on or after March 1, 2015 regardless of the date of injury, and were made in response to the *Brown* decision by requiring impairment ratings include "any condition directly resulting from the work injury." The new rules have dramatically increased claim exposure given its expansive views of what may be considered when rating permanent impairment at claim closure.

The Board decision in *Stuart C. Yekel* addressed a closure issued pre-rule modification; there is no reference to the modified rules in either the majority or dissenting opinions. Thus, it is yet to be seen how the Division and the Board will reconcile the conflicting analyses.

***The Board held permanent impairment is based on the accepted conditions and the direct medical sequelae of the accepted conditions only***

*Continued*



*Courtney C. Kreutz is an attorney at Reinisch Wilson Weier PC. She may be reached at 503.452.7254 or CourtneyK@rwwcomplaw.com.*

## Board limits the application of *Brown v. SAIF* (continued)

Ultimately, the whole issue may be moot if the Oregon Supreme Court, which is currently reviewing *Brown v. SAIF*, reverses the Court of Appeals' decision. In the meantime, we can expect employers, insurers *and this firm* will continue to push for the limited application of *Brown v. SAIF*, given the Board's recent favorable ruling. ■

---

<sup>1</sup> 262 Or App 640, *rev allowed*, 365 Or 397 (2014)

<sup>2</sup> 67 Van Natta 1279 (2015).

Online and printed firm materials are for educational purposes only. Please consult your attorney for legal advice on a specific claim, case or issue.