



General or specific Oregon denials: that is the question!

By Ned A. Arenberg ■ March 10, 2017

In a 2016 decision, *Dan M. Morgan*¹, the Oregon Workers' Compensation Board ruled that a carrier's initial claim denial was too specific to bar a subsequent claim for wrist tendonitis. The *Morgan* case poses a very important reminder to claims processors to carefully craft an initial claim denial. We can expect that an administrative law judge (ALJ) will scrutinize the specific language used. This case again reminds us that the language and condition listed in a denial are not only important, but also can be later construed against us.

In *Morgan*, SAIF Corporation denied bilateral carpal tunnel syndrome (as an occupational disease) on the basis that it was the responsibility of a prior SAIF claim. Claimant failed to timely appeal the denial within 60 days, but did appeal the denial within 180 days.² The ALJ ultimately held that while claimant did not establish good cause for the late appeal, the denial only specifically pertained to a bilateral carpal tunnel syndrome condition. Claimant's subsequent claim for bilateral wrist tendonitis, which was made within the deferral period during the initial investigation of the claim, was *de facto* denied. The ALJ awarded penalties and a penalty-related attorney fee.

SAIF appealed the ALJ's order, arguing that its specific denial was a "complete claim denial" that encompassed the bilateral wrist tendonitis claim. As such, SAIF argued that claimant did not timely appeal the initial claim denial and his wrist tendonitis claim was precluded.

The Board affirmed the ALJ's order, reasoning that SAIF was bound by the expressed language of its own denial.³ Important to the Board's rationale was the fact that claimant had been diagnosed with bilateral wrist tendonitis prior to the denial, such that SAIF knew of the additional diagnosis prior to its specific denial. Therefore, the Board ruled that claimant's failure to timely appeal SAIF's denial did not preclude the bilateral wrist tendonitis claim, and the Board set aside the *de facto* denial of that condition.

If your denial is intended to bar all potential conditions attributable to an injury or disease, the Board has made it clear that your denial should not only deny a specific medical condition, but also be broad enough to encompass all diagnoses the carrier is aware of at the time. One option is to deny all

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Ned Arenberg is an attorney at Reinisch Wilson Weier PC. He may be reached at 503.452.7289 or NedA@rwwcomplaw.com.

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conditions attributable to the injured body part (ex: “bilateral wrist condition”). Of course, there are situations where a specific denial would be preferable, so a denial should be tailored to the specific facts of the case.

The wording of a denial is a highly fact specific endeavor. If you have any questions about the impact of this case, or need assistance with crafting a denial, please do not hesitate to contact Ned or any of the attorneys in the Reinisch Wilson Weier PC Oregon practice group. ■

¹ 68 Van Natta 1196 (2016).

² See ORS 656.319(1)(b).

³ See *Tattoo v. Barrett Bus. Serv.*, 118 Or App 348, 351-52 (1993).

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