

FILED: March 14, 2012

IN THE COURT OF APPEALS OF THE STATE OF OREGON

In the Matter of the Compensation of
Floyd A. Owens, Claimant.

SAIF CORPORATION
and SWANSON GROUP MFG LLG,
Petitioners,

v.

FLOYD A. OWENS,
Respondent.

Workers' Compensation Board
0807105

A145552

On petitioners' petition for reconsideration filed January 12, 2012. Opinion filed December 29, 2011. 247 Or App 402, ___ P3d ___.

Julie Masters, Appellate Counsel, for petition.

Before Haselton, Presiding Judge, and Armstrong, Judge, and Duncan, Judge.

PER CURIAM

Reconsideration allowed; former opinion clarified and adhered to as clarified.

1 PER CURIAM

2 In our original opinion in this case, we held that, in applying the
3 "preponderance of the medical evidence" standard of ORS 656.726(4)(f)(B) to determine
4 a claimant's impairment rating, "the entire universe of medical evidence that may be
5 considered consists of the medical arbiter's report, * * * the opinion of the attending
6 physician, * * * and any physicians' report in which the attending physician concurs."
7 [SAIF v. Owens](#), 247 Or App 402, 409, ___ P3d ___ (2011). We explicitly rejected
8 SAIF's contention that the pertinent statutes merely limit the physicians who may provide
9 impairment findings, but do not otherwise limit the medical evidence that may be
10 considered in determining a claimant's impairment. SAIF contends that we were wrong
11 in so narrowing the scope of the record that may be considered for purposes of rating
12 impairment and that, even if other physicians' findings of impairment may not be
13 considered, other physicians' opinions may be considered in evaluating the findings of
14 those who are authorized by statute to make findings. SAIF has not presented any
15 argument in its petition that leads us to conclude that we were incorrect in our conclusion
16 that no additional medical evidence may be considered, even if only for the purpose of
17 evaluating the attending physician's findings of impairment.

18 SAIF also contends that our original opinion failed to make clear that our
19 holding related only to the evidence *that may be considered* for purposes of rating
20 impairment and erroneously suggested that additional evidence should not be a part of the
21 record. *See* 247 Or App at 407. SAIF is correct. Our opinion relates only to the extent
22 to which other medical evidence may be considered for purposes of rating impairment

1 and should not be understood to require exclusion of any evidence from the record.

2 Reconsideration allowed; former opinion clarified and adhered to as

3 clarified.