

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

In the Matter of the Compensation of
Robin M. Zinser-Rankin, Claimant.

Robin M. ZINSER-RANKIN,
Petitioner,

v.

SAIF CORPORATION
and Pathfinders of Oregon,
Respondents.

Worker's Compensation Board
15-01070, 1406276, 1403969, 1402776
A164821

On petitioner's petition for reconsideration filed April 26, 2018. Opinion filed April 25, 2018. 291 Or App 495, 415 P3d 1151.

Theodore P. Heus and Preston Bunnell, LLC, for petition.

Before Lagesen, Presiding Judge, and Egan, Chief Judge,
and James, Judge.

PER CURIAM

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

PER CURIAM

Claimant has petitioned for reconsideration of our per curiam opinion in *Zinser-Rankin v. SAIF*, 291 Or App 495, 415 P3d 1151 (2018). We allow reconsideration to clarify our previous opinion and adhere to that opinion as clarified.

In his briefs in this matter, claimant argues that the Workers' Compensation Board erred in upholding SAIF's "ceases" denial of petitioner's combined condition in two different respects: (1) by applying the wrong legal standard in determining whether SAIF demonstrated the requisite change in petitioner's combined condition; and (2) by erroneously determining that substantial evidence supported the finding of the requisite change in condition. On the first point, claimant argues that, to show the requisite change, SAIF had to make a two-part showing that petitioner's condition had changed and that the cause of his need for treatment had changed. On the second point, claimant argues that the evidence on which the board relied is insufficient to support a finding that claimant's accepted condition was no longer the major contributing cause of the combined condition or need for treatment. We affirmed in our per curiam opinion, citing *Fillinger v. The Boeing Co.*, 290 Or App 187, 413 P3d 989 (2018).

In the petition for reconsideration, claimant argues that, for two reasons, *Fillinger* does not control or otherwise affect the outcome of this case, and that it was "clearly erroneous" for us to rely on it to resolve this case. He first argues that *Fillinger* is consistent with his argument that SAIF had to make a two-part showing of a change in causation and a change in condition to demonstrate that his condition had changed in a manner sufficient to support a ceases denial and, thus, does not resolve that issue. That argument is contrary to the express statement in *Fillinger* that, under *Brown v. SAIF*, 361 Or 241, 391 P3d 773 (2017), "to support the denial of a previously accepted combined condition claim, the required 'change' in the worker's condition or circumstances is that 'the otherwise compensable condition is no longer the major contributing cause of the combined condition.'" *Fillinger*, 290 Or App at 192-93.

In his second argument, claimant points out that *Fillinger* does not control the substantial evidence question in this case because this case involves different evidence than that at issue in *Fillinger*. Claimant is correct on that point. To the extent that our per curiam opinion can be read to indicate otherwise, we clarify that we have reviewed the record in this case and have rejected claimant's substantial evidence arguments based on that review.

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