

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

In the Matter of the Compensation of
Kevin J. Siegrist, Claimant.

SAIF CORPORATION
and CAF Enterprises, Inc.,
Petitioners,

v.

Kevin J. SIEGRIST,
Respondent.

Workers' Compensation Board
1502147; A164226

On respondent's petition for reconsideration filed May 8, 2019 and petitioners' response filed June 5, 2019. Opinion filed April 24, 2019. 297 Or App 284.

Julene M. Quinn for petition.

David L. Runner for response.

Before Hadlock, Presiding Judge, and DeHoog, Judge, and Aoyagi, Judge.

PER CURIAM

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

PER CURIAM

Claimant requests reconsideration of our opinion in *SAIF v. Siegrist*, 297 Or App 284, 441 P3d 655 (2019). We allow reconsideration, modify our prior opinion as described below, and adhere to the opinion as modified.¹

In his petition for reconsideration, claimant calls attention to two places in the opinion where we refer to a statement by the ALJ. Specifically, at one point we noted that “[t]he ALJ stated, and the board does not seem to have disagreed,” that the issue presented in this case is one of “average complexity.” *Id.* at 296. At another point, we noted that the ALJ stated that expert opinions from medical specialists are “fairly common” in the forum and that “the board did not indicate any disagreement with that statement.” *Id.* at 297. Claimant asserts that, because we are reviewing the board’s order, not the ALJ’s order, it is improper to refer to the ALJ’s statements, unless we view them as factual findings adopted by the board. *See id.* at 297 n 10 (declining to resolve the parties’ disagreement as to whether the board adopted those statements).

We disagree with claimant that our brief mention of the ALJ’s statements, to highlight certain issues that do not appear to have factored into the board’s decision, is improper. Our only point in referencing those statements is that the board never said that this case was of *greater* than average complexity or that it is *uncommon* in the forum for parties to obtain expert opinions from medical specialists—which one would expect to see in the board’s opinion if that was part of its analysis, with or without the ALJ’s statements, but especially given the ALJ’s statements. It is irrelevant to our review of the board’s order whether the board actually agreed with the ALJ’s statements or merely did not consider those issues necessary to its analysis.

Nonetheless, to avoid any risk of the opinion being misread, we allow reconsideration and modify footnote 10 to read as follows:

¹ Claimant requests reconsideration as to two aspects of the opinion. We address one in the text. As to the other, we would only be repeating what we have already said and therefore decline to address that issue further.

“Insurer asserts, and claimant disputes, that the ALJ’s statements about the ‘average complexity’ of this case and the ‘fairly common’ circumstance of parties obtaining expert opinions from specialists are findings that the board adopted. The ALJ made those statements in the conclusions-of-law section of his order, and they appear to be based on the ALJ’s own experience as an ALJ, rather than evidence. In any event, resolving that point of disagreement between the parties is irrelevant to our disposition. If the board’s reasoning depended on this case being of above average complexity, or on it being uncommon in the forum to obtain an expert opinion from a medical specialist, it needed to say so. Conversely, if the board (like the ALJ) viewed this case as one of average complexity, and if it is not uncommon in the forum to obtain an expert opinion from a medical specialist, the board needed to better explain why the circumstances were nonetheless extraordinary. Either way, the board’s existing opinion falls short on substantial reason.”

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