

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DAVID A. ROLLINS)	
Claimant)	
VS.)	
)	Docket No. 1,001,515
NORTHERN PIPELINE CONSTRUCTION)	
Respondent)	
AND)	
)	
ZURICH U.S.)	
Insurance Carrier)	

ORDER

Claimant appeals the July 24, 2003 Award of Administrative Law Judge Bruce E. Moore. Claimant was awarded a 2 percent functional impairment to the right lower extremity as a result of the injuries suffered on October 16, 2001, while employed by respondent. Claimant argues he should be entitled to an 11 percent general body impairment for injuries suffered to both the right knee and his low back.

Respondent contends the Award of the Administrative Law Judge should be affirmed, arguing claimant has failed to meet his burden to prove a claimed back injury either on the date of injury or as the result of an altered gait. The Appeals Board (Board) heard oral argument on January 20, 2004.

APPEARANCES

Claimant appeared by his attorney, David H. Farris of Wichita, Kansas. Respondent and its insurance carrier appeared by their attorney, Richard A. Boeckman of Great Bend, Kansas.

RECORD AND STIPULATIONS

The Board has considered the record and adopts the stipulations contained in the Award of the Administrative Law Judge.

ISSUES

What is the nature and extent of claimant's injury? More particularly, is claimant entitled to a whole body disability as a result of injuries to both his right knee and his low back, or is claimant limited to a scheduled injury to the right lower extremity for the injuries to his right knee?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary file contained herein, the Board finds the Award of the Administrative Law Judge should be affirmed.

The Award sets out findings of fact and conclusions of law in some detail and it is not necessary to repeat those herein. The Board adopts those findings and conclusions as its own.

Claimant suffered accidental injury on October 16, 2001, when, while entering a ditch, the ditch collapsed, folding claimant's right knee in front of his head and injuring the knee. Claimant notified his supervisor, an accident report was created and he was referred to the Salina Regional Health Center for treatment of the right knee.

Claimant came under the care of Jeryl G. Fullen, M.D., in Salina, Kansas, who treated him on several occasions. Claimant later became disillusioned with Dr. Fullen's treatment, asked for a transfer and was referred to board certified orthopedic surgeon Daniel J. Prohaska, M.D. Dr. Prohaska first examined claimant on December 3, 2001, for the injury to the knee. Claimant was diagnosed with a partial anterior cruciate ligament tear and underwent a medial femoral chondroplasty on January 9, 2002, under the hand of Dr. Prohaska. He continued with treatment, including physical therapy thereafter, and was ultimately released to his regular duties on April 18, 2002. Dr. Prohaska assessed claimant a 2 percent impairment to the lower extremity pursuant to the American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (4th ed.), finding claimant's ligament to be stable, with a full range of motion in the knee. During the entire course of treatment from December through April, claimant at no time represented to Dr. Prohaska that he had any low back problems.

Claimant also failed to advise Dr. Fullen or the physical therapist of any ongoing low back problems.

However, on December 7, 2001, shortly after going to Dr. Prohaska, claimant presented himself to Rodney L. Hancock, D.C., a local chiropractor. At that time, claimant was complaining of low back, mid back and upper back problems, and received

chiropractic treatments for his lumbar, thoracic and cervical spine. Dr. Hancock treated claimant on several occasions, with his last treatment being in June of 2002.

Claimant was referred to physical medicine and rehabilitation specialist Pedro A. Murati, M.D., for an examination at claimant's attorney's request. Dr. Murati examined claimant on June 3, 2002, diagnosing mid to low back pain as a result of limping and as a result of the initial injury of October 16, 2001. Dr. Murati assessed claimant a 10 percent impairment to the right lower extremity post chondroplasty and a 5 percent impairment to the right lower extremity for the patellofemoral syndrome, which combine to a 15 percent impairment to the extremity, converting to a 6 percent whole person impairment. He also assessed claimant a 5 percent impairment to the whole body for the mid back strain, which all combined equals an 11 percent whole person impairment, which Dr. Murati opined was provided pursuant to the *AMA Guides* (4th ed.). However, at regular hearing in December 2002, six months after Dr. Murati's examination, claimant testified that his condition had improved considerably since his examination with Dr. Murati. He testified that he had no low back pain, with just a little bit of stiffness in his low back.

Additionally, the initial history provided to Dr. Murati indicated that claimant suffered injury to his right knee and his back at the time of the October 16, 2001 injury. This history is contradicted by the emergency room records contemporaneous with claimant's injuries, the records of Dr. Fullen, the records of Dr. Prohaska and the physical therapy records created after claimant's surgery. None of those records contain any mention of a low back condition.

The chiropractic records of Dr. Hancock indicate that claimant suffered back problems as the result of an altered gait causing internal stress and strain to his low back. While several doctors acknowledged that claimant did, for a time, limp, Dr. Prohaska testified as of his last examination in April 2002, claimant was no longer limping. Additionally, Dr. Murati, who examined claimant in June of 2002, failed to observe any limp at the time of the examination.

Finally, the Board notes that claimant denied, during regular hearing, that he suffered any prior back pain or back problems, or had received any prior treatment for back pain. However, Dr. Hancock's records indicated that claimant had received chiropractic treatments for low back pain prior to the date of accident. While those records are very inconclusive, this does cast some doubt on the accuracy of claimant's histories.

In workers' compensation litigation, it is claimant's burden to prove his entitlement to benefits by a preponderance of the credible evidence.¹

¹ K.S.A. 44-501 and K.S.A. 2001 Supp. 44-508(g).

It is the function of the trier of fact to decide which testimony is more accurate and/or credible and to adjust the medical testimony along with the testimony of the claimant and any other testimony that may be relevant to the question of disability. The trier of fact is not bound by medical evidence presented in the case and has the responsibility of making its own determination.²

When a primary injury under the Workers Compensation Act is shown to arise out of and in the course of employment, every natural consequence that flows from that injury, including a new and distinct injury, is compensable if it is a direct and natural result of the primary injury.³

In this instance, the Board acknowledges claimant suffered accidental injury to his right knee on the date of accident. In assessing the various impairment ratings, the Board finds the opinion of the treating physician, Dr. Prohaska, to be the most credible and awards claimant a 2 percent impairment to the right lower extremity for that injury.

With regard to claimant's back, the Board finds that while claimant may have suffered a temporary aggravation of that condition, there is no indication in the record that claimant's aggravation of that condition was, in any way, permanent. Whether claimant's injury occurred on the date of accident or as the result of an altered gait, the record is clear that claimant went through several months of treatment, with multiple health care providers and physical therapists, without uttering a single word regarding ongoing back complaints. The only times claimant's back complaints surfaced were when he was going to a chiropractor, who was provided a questionable history of injury, and when claimant was referred to Dr. Murati by his attorney for a functional impairment rating. Even the history provided Dr. Murati is somewhat suspect, as it conflicts with the history contained in the medical records created contemporaneous with claimant's October 16, 2001 injury.

And finally, the Board notes that while claimant argues that an altered gait in some fashion affected his back, neither Dr. Prohaska, in his last examination in April of 2002, nor Dr. Murati, during his examination of June 2002, was able to document a limp. The Board finds that claimant has suffered no permanent impairment to his low back as the result of the injuries suffered October 16, 2001, and is limited to the 2 percent functional disability to his right lower extremity. Therefore, the Award of the Administrative Law Judge granting claimant a 2 percent impairment of function to the right lower extremity should be affirmed.

² *Tovar v. IBP, Inc.*, 15 Kan. App. 2d 782, 817 P.2d 212, rev. denied 249 Kan. 778 (1991).

³ *Jackson v. Stevens Well Service*, 208 Kan. 637, 493 P.2d 264 (1972).

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Bruce E. Moore dated July 24, 2003, should be, and is hereby, affirmed in all regards.

IT IS SO ORDERED.

Dated this ____ day of February 2004.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: David H. Farris, Attorney for Claimant
Richard A. Boeckman, Attorney for Respondent
Bruce E. Moore, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director