

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

JAMES YUNGHANS)	
Claimant)	
VS.)	
)	Docket No. 1,003,658
EARP DISTRIBUTION)	
Respondent)	
AND)	
)	
LIBERTY MUTUAL INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Respondent appeals the December 24, 2002 Award of Administrative Law Judge Bryce D. Benedict. Claimant was awarded a 45 percent permanent partial impairment to the right upper extremity at the shoulder after the Administrative Law Judge determined that injuries to both claimant's right shoulder and right wrist were either aggravated or caused by claimant's fall on February 8, 2002.

Respondent contends that claimant has failed to prove that the wrist injury is related to this accident, as claimant has had prior injuries to the wrist and undergone surgeries, including fusions, on two separate occasions. The Appeals Board (Board) heard oral argument on June 20, 2003. Stacy Parkinson was appointed as Board Member Pro Tem for the purposes of this appeal.

APPEARANCES

Claimant appeared by his attorney, Roger D. Fincher of Topeka, Kansas. Respondent and its insurance carrier appeared by their attorney, James K. Blickhan of Kansas City, Missouri.

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? Respondent stipulated at oral argument that the 17 percent upper extremity rating to the shoulder by Dr. Zimmerman was appropriate, but disputes any involvement to claimant's right wrist from this injury, arguing the 34 percent impairment to the upper extremity at the wrist stems from injuries suffered by claimant nearly two years before this date of accident. That is the only issue in dispute before the Board.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary file contained herein, the Board finds that the Award of the Administrative Law Judge should be modified to grant claimant a 17 percent impairment to the right upper extremity at the shoulder.

The parties acknowledge claimant suffered accidental injury on February 8, 2002, when he fell, injuring his right shoulder. The dispute centers around whether claimant also suffered an aggravation to his right wrist. Claimant earlier suffered injury to his right wrist in May of 2000, for which claimant underwent two separate surgeries, including fusions of the right wrist.

The only medical evidence in the record dealing with claimant's upper extremity is that of Daniel D. Zimmerman, M.D. Dr. Zimmerman examined claimant at claimant's attorney's request on July 8, 2002. Dr. Zimmerman diagnosed injuries affecting both claimant's right shoulder and right wrist. With regards to the shoulder, Dr. Zimmerman assessed claimant the stipulated 17 percent impairment to the upper extremity. Dr. Zimmerman also, however, assessed claimant a 34 percent impairment to the upper extremity as a result of the injuries suffered to claimant's wrist.

In May 2000, claimant underwent a limited fusion to the right wrist with E. Bruce Toby, M.D., at the University of Kansas Medical Center. He did not have good results with this procedure and was seen in a consultative assessment by Gary Baker, M.D. Dr. Baker then performed a second procedure involving a partial fusion, leaving claimant with a reduced range of motion, although not a total loss of motion, at the wrist level.

Dr. Zimmerman testified that in his opinion, claimant "may have aggravated the right wrist condition with what happened in February of 2002 as well." When Dr. Zimmerman was asked to define what part of the 34 percent impairment applied to the February 2002 accident versus the May 2000 accident, he was unable to do so. He did testify that the

entire 17 percent impairment to the upper extremity at the shoulder was related to claimant's fall of February 8, 2002.

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

Here, it is claimant's burden to prove that the fall of February 8, 2002, in some way aggravated or injured the right upper extremity at the wrist. Claimant has failed in this burden. While Dr. Zimmerman does speculate that there may have been some injury, he was unable to say within a reasonable degree of medical probability that claimant's wrist was aggravated by the more recent fall. The Board, therefore, finds that claimant's award in this matter should be limited to the impairment associated with his injury to the shoulder, that being the stipulated 17 percent impairment to the right upper extremity at the shoulder level.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Bryce D. Benedict dated December 24, 2002, should be, and is hereby, modified, and claimant is granted an award for a 17 percent permanent partial disability to the right upper extremity based upon an average weekly wage of \$600 per week.

Claimant is entitled to 8 weeks temporary total disability compensation at the rate of \$400 per week totaling \$3,200, followed thereafter by 36.89 weeks permanent partial disability at the rate of \$400 per week totaling \$14,756, for a total award of \$17,956.

As of the date of this award, the entire amount is due and owing and ordered paid in one lump sum minus any amounts previously paid.

In all other regards, the Award of the Administrative Law Judge is affirmed insofar as it does not contradict the findings and conclusions contained herein.

IT IS SO ORDERED.

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

Dated this ____ day of July 2003.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Roger D. Fincher, Attorney for Claimant
James K. Blickhan, Attorney for Respondent
Bryce D. Benedict, Administrative Law Judge
Paula S. Greathouse, Director