

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

<b>EDDIE ROGERS</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,003,955
<b>FARMERS COOPERATIVE</b>	)	
Respondent	)	
AND	)	
	)	
<b>NATIONWIDE AGRIBUSINESS INS. CO.</b>	)	
Insurance Carrier	)	

**ORDER**

Claimant appeals the July 5, 2002 preliminary hearing Order of Administrative Law Judge Bryce D. Benedict. Claimant contends that his left shoulder problems are a direct and natural consequence of the right shoulder injury suffered on August 31, 2000. Respondent, on the other hand, contends that the left shoulder problems have no relation to claimant's employment and the treatment recommended for the left shoulder is not due to an accidental injury arising out of and in the course of his employment.

**ISSUES**

- (1) What is the nature and extent of claimant's injury? More particularly, are claimant's left upper extremity symptoms a natural and probable consequence of claimant's earlier injury, therefore, arising out of and in the course of claimant's employment with respondent?
- (2) Is medical evidence required to prove whether additional medical treatment is needed or may additional medical treatment be awarded at a preliminary hearing based solely upon lay testimony?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board (Board) finds the Order of the Administrative Law Judge should be affirmed.

It is stipulated claimant suffered accidental injury to his right shoulder on August 31, 2000, when a chain that he was holding yanked his shoulder down, injuring his rotator cuff. Claimant underwent surgery to repair the rotator cuff on October 5, 2000, under the treatment of Michael T. McCoy, M.D., a board certified orthopedic surgeon. Claimant was referred for physical therapy after the surgery, but never obtained complete relief of his pain and had continued crepitus. As a result of claimant's ongoing problems, he underwent a second surgery to repair the rotator cuff on June 1, 2001, with Robert H. Cofield, M.D., an orthopedic surgeon. Claimant's arm was in a sling for 420 days, with very restrictive use of the upper extremity. He was found to be at maximum medical improvement by Dr. McCoy on November 5, 2001, and released with restrictions that he not lift over 15 pounds above his shoulder level, with no limitation to his lifting from floor to waist level.

Claimant currently contends that the ongoing problems he has with his left shoulder are a direct and natural consequence of the compensable right shoulder injury, as he had to overcompensate with his left upper extremity while his right arm was in a sling.

Claimant provides no medical support for his contention that he is having ongoing left upper extremity problems as a direct and natural consequence of his right shoulder problems. In fact, the medical reports from Dr. Cofield of May 31, 2001, indicate no problems with the opposite shoulder. A follow-up examination on June 4, 2001, by Dr. Cofield found normal muscle strength in all the muscle groups on the left side. The September 10, 2001 report from Dr. McCoy indicates claimant's left upper extremity is unrestricted.

In workers' compensation litigation, it is claimant's burden to prove his entitlement to benefits by a preponderance of the credible evidence. See K.S.A. 44-501 and K.S.A. 44-508(g). Claimant correctly notes that uncontradicted evidence which is not improbable or unreasonable may not be disregarded unless it is shown to be untrustworthy. Anderson v. Kinsley Sand & Gravel, Inc., 221 Kan. 191, 558 P.2d 146 (1976). However, in this instance, claimant's contentions about his left upper extremity problems are not uncontradicted. The medical reports of Dr. Cofield and Dr. McCoy indicate that claimant's left shoulder and left upper extremity experienced no problems, no loss of strength and no restrictions. Claimant testified that he told both Dr. McCoy and Dr. Cofield of his left shoulder problems. Even if this was the case, their examinations failed to uncover any difficulties or limitations associated with that extremity.

The Board finds, based upon a preponderance of the credible evidence, that claimant has failed to prove any connection between his left shoulder condition and the injuries suffered on August 31, 2000, even as a natural and probable consequence of the original injury.

Claimant's contention that he is in need of additional treatment for his right shoulder is not an issue which can be addressed by the Board at this time. K.S.A. 44-534a and K.S.A. 44-551 limit the issues the Board may address on appeal from a preliminary hearing to those dealing with whether claimant suffered accidental injury, whether the injury arose out of and in the course of employment, whether notice is given or claim timely made, or whether certain defenses apply. The Board can further consider an issue dealing with whether the Administrative Law Judge exceeded his or her jurisdiction in granting or denying the benefits requested. However, under K.S.A. 44-534a, it is the Administrative Law Judge's obligation to determine whether a claimant is in need of additional medical care. That issue is not appealable to the Board from a preliminary hearing.

The Board, therefore, finds that claimant should be denied benefits as a result of his allegations regarding the left shoulder. The issue dealing with claimant's need for additional medical care to his right shoulder, being non-jurisdictional, should be dismissed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Bryce D. Benedict dated July 5, 2002, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of September 2002.

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BOARD MEMBER

c: John J. Bryan, Attorney for Claimant  
Jeffrey E. King, Attorney for Respondent  
Bryce D. Benedict, Administrative Law Judge  
Director, Division of Workers Compensation