

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

DELMER CORBER)	
Claimant)	
VS.)	
)	Docket No. 1,005,294
NPC INTERNATIONAL)	
Respondent)	
AND)	
)	
CUNNINGHAM LINDSEY CLAIMS MANAGEMENT, INC.)	
Insurance Carrier)	

ORDER

Respondent appeals the preliminary hearing Order of Administrative Law Judge Brad E. Avery dated May 29, 2003. Claimant was awarded benefits in the form of ongoing medical treatment with Joseph G. Sankoorikal, M.D., who was authorized to perform any necessary tests, including an MRI and surgery, if the doctor believes it appropriate. The Administrative Law Judge found that claimant had suffered an intervening accident, but that the effects of that accident were temporary.

ISSUES

Did claimant suffer an intervening accidental injury at his home which would negate his entitlement to benefits for the injury to his low back suffered on May 1, 2002?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

For the purpose of preliminary hearing, the Appeals Board (Board) finds the Order of the Administrative Law Judge should be affirmed.

Claimant initially suffered accidental injury on May 1, 2002, when he fell off a roof of a Pizza Hut, injuring his low back. He was awarded medical treatment for a substantial period of time through various health care providers.

Respondent contends, however, that in February of 2003, while moving a 3- to 5-pound bamboo chair in claimant's living room, he suffered an intervening injury which should negate respondent's responsibility for providing ongoing medical care for this injury.

This additional injury came to light at St. Francis Health Center when claimant was undergoing an FCE. Claimant advised the health care professional that he was lifting a 4- to 5-pound bamboo chair when he stepped backwards and twisted with the chair. He reported it felt like an ice pick jabbing his low back. The pain was so severe claimant almost collapsed to the floor.

Claimant testified consistently with that description in his preliminary hearing testimony on May 27, 2003. He advised that the increased pain from the chair-lifting incident lasted approximately three days and then returned to his normal level of 24 hours-a-day, 7-days-a-week pain.

The fact that this type of minimal activity could cause claimant problems should be no surprise to any of the parties. Claimant was examined by orthopedic surgeon Brett E. Wallace, M.D., on May 29, 2002. In that medical report, Dr. Wallace noted that claimant's back condition waxed and waned, sometimes better, sometime worse, but "seems to be aggravated particularly by twisting activities."

In workers' compensation litigation, 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.¹

It is acknowledged that where the worsening or a new injury would have occurred absent the primary injury or where it is shown to have been produced by an independent intervening cause, it is not compensable.²

However, in this instance, the activity required to produce the sudden onset of pain was a minimal twisting activity involving a chair which weighed 5 pounds or less. The Board does not find that this activity on claimant's part constituted an independent intervening cause. Instead, it is but one of many activities which causes claimant's condition to wax and wane, with relatively little physical trauma required. The Board finds based upon the evidence in this record, that claimant's incident while lifting a chair in February 2003 was of a temporary nature only and will not work to deprive claimant of

¹ *Jackson v. Stevens Well Service*, 208 Kan. 637, 493 P.2d 264 (1972).

² *Nance v. Harvey County*, 263 Kan. 542, 952 P.2d 411 (1997).

ongoing medical care for the injury suffered to his back in May of 2002. Therefore, the Order of the Administrative Law Judge granting claimant benefits should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Brad E. Avery dated May 29, 2003, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of July 2003.

BOARD MEMBER

c: Roger D. Fincher, Attorney for Claimant
David F. Menghini, Attorney for Respondent
Brad E. Avery, Administrative Law Judge
Paula S. Greathouse, Director