

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

<b>DIANE SANDERS</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,005,761
<b>WAL-MART</b>	)	
Respondent	)	
AND	)	
	)	
<b>AMERICAN HOME ASSURANCE COMPANY</b>	)	
Insurance Carrier	)	

**ORDER**

Respondent and its insurance carrier appealed the August 10, 2006, preliminary hearing Order entered by Administrative Law Judge Thomas Klein.

**ISSUES**

Claimant injured her right knee working for respondent on or about August 18, 2000. In May 2002 claimant underwent a total right knee replacement as a result of that injury. Claimant's treating physician, Dr. James A. Bell, now recommends a Bregg brace to stabilize her right knee.

At the July 26, 2006, preliminary hearing before Judge Klein, respondent and its insurance carrier argued they should not be held responsible for treating claimant's present right knee problems as those problems were more likely than not caused by overcompensating for a subsequent unrelated left knee injury. Conversely, claimant argued she has had problems with her right knee since the right knee joint was replaced.

By Order dated August 10, 2006, Judge Klein ordered respondent to provide the Bregg brace and any necessary follow-up visits.

The only issue on this appeal is whether claimant has proven her present right knee problems are a natural consequence of, or directly related to, her August 18, 2000, accident.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record compiled to date, the Board finds and concludes:

The parties agree claimant initially injured her right knee on August 18, 2000, while working for respondent. On that date, claimant caught her right foot and fell. After a May 2001 arthroscopic procedure failed to relieve her right knee pain, claimant eventually underwent a total right knee replacement. That surgery was performed in May 2002. The right knee replacement was followed by a third right knee surgery, which was performed by Dr. James A. Bell in June 2003 to remove scar tissue.

Dr. Bell determined claimant had reached maximum medical improvement in June 2004. Claimant was then evaluated in September 2004 by Dr. Edward J. Prostic and Dr. Philip R. Mills, who both rated claimant's permanent impairment.

Claimant, who had moved to California and had obtained employment with another employer, fell at work in late October 2004 and injured her left knee. On November 15, 2004, claimant saw Dr. Sohail Ahmad, who diagnosed a fractured patella. The doctor noted claimant had been favoring the left knee, which was causing her to experience *more* pain in her right knee. Dr. Ahmad also noted claimant had pain with flexing and extending the right leg and that claimant stated she was experiencing swelling in soft tissue along the lateral aspect of the right knee and cracking and snapping in her right knee. Dr. Ahmad's November 15, 2004, notes read in pertinent part:

The subject [claimant] states her right knee replacement is starting to hurt her *more* as she favors the broken left kneecap. She states she gets snapping and cracking in the right knee. She states there is some soft tissue swelling along the lateral aspect of the right knee.

.....

The subject should be careful that she does not overuse the right knee as she recovers from her left knee patella fracture.

.....

Multiple records from her previous right knee replacement and right knee work related injury in the past were reviewed. It was necessary to review these records because of the subject's *new* onset of right knee pain secondary to compensating for the left knee fracture.<sup>1</sup> (Emphasis added.)

In March 2006, claimant received a total left knee replacement.

In late February 2006, however, claimant returned to Dr. Bell for additional evaluation of her right knee. The doctor noted claimant's primary complaint was locking in the right knee. The doctor found claimant had significant anterior posterior instability that suggested

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<sup>1</sup> P.H. Trans. (July 26, 2006), Resp. Ex. 2.

the posterior cruciate ligament was no longer functioning. Consequently, the doctor recommended a Bregg brace to stabilize the right knee.

In short, the medical evidence introduced thus far establishes claimant had right knee symptoms that increased following her left knee injury. And claimant's testimony is consistent with that evidence. Unfortunately, at this juncture the evidence fails to establish claimant's present need for medical treatment is a natural consequence of her August 2000 accident and resulting right knee replacement or the consequence of the subsequent left knee injury and resulting joint replacement.

In a July 21, 2006, letter to respondent's claims examiner, Dr. Bell wrote that he was unaware of claimant's left knee injury and fracture when he examined claimant in February 2006. Moreover, the doctor indicated he did not know when claimant's right knee instability arose and, therefore, he did not know whether it occurred at the time of the left knee injury or whether it had occurred over time. There was no other medical evidence introduced that addressed this critical issue.

The Board finds claimant has failed to satisfy her burden of proof. Consequently, the August 10, 2006, Order should be reversed.

As provided by the Workers Compensation Act, preliminary hearing findings are not final but, instead, those findings may be modified upon a full hearing of the claim.<sup>2</sup>

**WHEREFORE**, the Board reverses the August 10, 2006, Order entered by Judge Klein.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of October, 2006.

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BOARD MEMBER

c: M. Doug Bell, Attorney for Claimant  
James B. Biggs, Attorney for Respondent and its Insurance Carrier  
Thomas Klein, Administrative Law Judge

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<sup>2</sup> K.S.A. 44-534a.