

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

MARANDA SANTOS)	
Claimant)	
)	
VS.)	
)	
BURGER KING)	
Respondent)	Docket No. 1,009,215
)	
AND)	
)	
CONTINENTAL WESTERN INS. CO.)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier request review of the February 20, 2004 preliminary hearing Order entered by Administrative Law Judge Bryce D. Benedict.

ISSUES

The Administrative Law Judge (ALJ) determined claimant suffered a series of accidents which arose out of and in the course of her employment with respondent. The ALJ further determined that the claimant's current condition is the natural progression of her original accident with the respondent instead of the result of any intervening accident suffered during claimant's subsequent employment with a different employer. Consequently, the ALJ awarded claimant temporary total disability compensation and authorized medical treatment with Dr. Glenn M. Amundson.

The respondent requests review of whether the claimant's accidental injury arose out of and in the course of employment with the respondent. Respondent's brief also includes the issue of whether the claimant suffered a subsequent intervening accident after leaving respondent's employment.

The claimant requests the Board to affirm the ALJ's Order. Claimant argues that her testimony, that she suffered back injuries while working for respondent and has not suffered additional injury, is uncontradicted. And the medical evidence confirms her current medical condition is a natural and probable consequence of her injuries suffered working for respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the Board finds the ALJ's Order should be affirmed.

The claimant testified her work activities, which included repetitive bending and lifting of supplies, caused an onset of back pain which radiated into her left leg. Claimant initially sought treatment on April 6, 2001, and merely indicated that her job required a lot of heavy lifting but she could not identify a specific incident that caused the onset of her pain. On May 4, 2001, while lifting a box of syrup at work claimant felt a pulling sensation on the left side of her lower back. The next morning claimant sought emergency room treatment. This lifting incident on May 4, 2001, was reported to respondent.

On June 6, 2001, Dr. Holiday performed surgery on claimant which consisted of an L4-5 discectomy. Claimant later returned to work for respondent but noted that her back pain remained the same. Claimant left her employment with respondent in April 2002. Claimant then went to work for Wendy's in May 2002, but she noted that employment was within her physical restrictions and she did not suffer any accidents or injuries while employed by Wendy's.

Claimant's pain increased and she sought additional treatment. Ultimately, on July 31, 2003, Dr. Amundson performed a second surgery on claimant which the doctor described as a left L4-5 redo discectomy. Although claimant initially did well she has unfortunately suffered a recurrence of back and leg pain and Dr. Amundson recommended surgical fusion at the L4-5 level. Dr. Amundson offered the opinion that claimant's injury to her low back was related to her repetitive lifting and bending activities working for respondent.

The ALJ further noted that in a letter dated April 3, 2003, Dr. Allan D. Holiday Jr. offered the opinion that claimant's symptoms are a natural progression of the disease process that claimant suffered working for respondent.

The Board affirms the ALJ's determination that claimant suffered accidental injury arising out of and in the course of her employment. Claimant's testimony was essentially uncontradicted regarding the onset of her back problems and its relation to her employment with respondent.

Respondent further argues claimant suffered a subsequent disk herniation that occurred after claimant had left her employment with respondent. Consequently, respondent argues that claimant's condition was caused by an intervening accident with her subsequent employer.

When the 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 the injury

including a new and distinct injury, is compensable if it is a direct and natural result of the primary injury.¹ It is not compensable, however, where the worsening or new injury would have occurred even absent the primary injury or where it is shown to have been produced by an independent intervening cause.² Under those circumstances the current injury would constitute a new accidental injury and would not be compensable as a direct and natural consequence of the original injury.

In general, however, the question of whether the worsening of claimant's preexisting condition is compensable as a new, separate and distinct accidental injury under workers compensation turns on whether claimant's subsequent work activity aggravated, accelerated or intensified the underlying disease or affliction.³

The claimant testified that her subsequent employer was aware of her restrictions and her work did not exceed those restrictions. Claimant further testified that she never suffered an additional accident or injury during that employment. Dr. Amundson concluded that his surgery was a redo of claimant's initial surgery and was the result of claimant's work-related injuries suffered while she was working for respondent. Finally, Dr. Holiday concluded claimant's condition was a natural progression from the injuries claimant suffered while working for respondent. The Board affirms the ALJ's determination that, based upon the evidence presented to date, the claimant did not suffer an intervening accident and instead claimant's current condition is the result of the natural consequence and progression of her accidental injuries suffered working for respondent.

WHEREFORE, it is the finding of the Board that the Order of Administrative Law Judge Bryce D. Benedict dated February 20, 2004, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of April 2004.

BOARD MEMBER

c: James C. Wright, Attorney for Claimant
James B. Biggs, Attorney for Respondent and its Insurance Carrier
Bryce D. Benedict, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

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).

³ *Boutwell v. Domino's Pizza*, 25 Kan. App. 2d 110, 959 P.2d 469, *rev. denied* 265 Kan. 884 (1998).