

Claimant suffered accidental injury to his bilateral upper extremities over a period of years while working for respondent. Claimant's upper extremity injuries resulted in a diagnosis of bilateral carpal tunnel syndrome and cubital tunnel syndrome. Claimant underwent surgery to his right upper extremity on May 6, 2003, and to his left upper extremity on May 20, 2003.

Claimant was released to go back to work light duty on May 21, 2003, by his treating physician, J. Mark Melhorn, M.D. Claimant testified that while in bed on the morning of May 23, 2003, he was resting his right elbow on a pillow. When getting out of bed, his elbow slipped. He then, in some fashion, landed on the same pillow with his left elbow. This caused him pain in his elbows, which caused him to jerk in order to get off his elbows. Claimant testified he felt a sharp pain in his back at that time. This back pain progressively worsened during the day to the point where, when claimant went to work that morning, he was having difficulties walking. His supervisor observed his problems and advised claimant he was no good to him in that condition and sent him home.

Claimant was examined by his personal physician, Terry D. Klein, M.D., on May 23, 2003, complaining of bilateral hand and elbow pain. Claimant's request with Dr. Klein was to obtain additional time off work because claimant did not feel he was ready to return to work from the elbow and wrist surgeries. Claimant made no mention to Dr. Klein of a back injury at that time, even though the alleged back injury occurred that morning. Claimant also telephoned J. Mark Melhorn, M.D., on May 23, requesting additional time off work. Again, there was no mention in Dr. Melhorn's records of any allegations of a back injury.

Claimant returned to Dr. Klein on May 30, 2003, with low back complaints, but made no mention of any fall at home or any connection to his upper extremity surgeries. Claimant had been treated by Dr. Klein for several years for osteoarthritis and rheumatoid arthritis in his hip and back.

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

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.²

¹ See K.S.A. 44-501 and K.S.A. 2002 Supp. 44-508(g).

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

However, 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.³

In this instance, claimant has a long history of hip and back problems for which he was being treated by Dr. Klein. When claimant contacted Dr. Klein on both May 23 and May 30, 2003, claimant failed to mention any involvement between his upper extremities or any fall which may have occurred on May 23. Claimant also failed to mention any involvement between the back and the upper extremities when he telephoned Dr. Melhorn on May 23.

The Administrative Law Judge denied claimant's request for benefits. Apparently, after hearing claimant's testimony, the Administrative Law Judge determined that claimant's description of the incident was not credible. When dealing with questions of credibility, the Board, at times, gives deference to the findings of the administrative law judge as he or she does have the opportunity to view a claimant's testimony live.

For the above reasons, the Board finds that claimant has failed to prove that he suffered accidental injury arising out of and in the course of his employment with respondent or that there was a connection between his ongoing back complaints and the upper extremity injuries suffered while employed with respondent. The Board, therefore, affirms the Administrative Law Judge's denial of benefits in this matter.

The Board also draws attention to the medical records which were submitted by the various parties in this matter. This preliminary hearing, in some way, managed to generate almost 140 pages of medical records, much of which is irrelevant to this matter. The Board was provided the opportunity to review medical records dealing with claimant's broken left toe, cardiopulmonary disease tests, testicular sonogram, bronchitis, pneumonia, pharyngitis, eczema, insomnia, anxiety, irritable bowel syndrome, sinusitis, benign prostrate hypertrophy, elevated blood pressure and a shin injury suffered at home. None of this information was related to claimant's alleged injuries with respondent.

The parties should be aware that K.S.A. 44-515 does eliminate the doctor-patient privilege when dealing with medical reports that involve a work-related injury. Additionally, K.A.R. 51-9-10 states:

(3) The patient privilege preventing the furnishing of medical information by doctors and hospitals is waived by a worker seeking workers compensation benefits, and all reports, records, or other data concerning examinations or treatment shall be furnished to the employer or insurance carrier or the director that individual's request without the necessity of a release by the worker.

³ *Nance v. Harvey County*, 263 Kan. 542, 952 P.2d 411 (1997).

As noted, the doctor-patient privilege is waived when dealing with workers' compensation medical records. However, the doctor-patient waiver does not apply to medical records dealing with non-work-related injuries. By placing the entire medical file in the record, the attorneys have, in effect, subjected claimant's entire medical history to review by whomsoever elects to review the preliminary hearing file, with its attached medical documentation. In the future, the parties should consider what medical reports are relevant and include only those in the record for review. To arbitrarily waive claimant's doctor-patient privilege involving numerous medical conditions not related to claimant's injury could potentially subject a claimant to unwanted scrutiny and perhaps an attorney to undesired legal action. The parties should, in the future, consider only those medical records which apply to the litigated conditions.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark dated July 8, 2003, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of August 2003.

BOARD MEMBER

c: Michael L. Snider, Attorney for Claimant
Eric K. Kuhn, Attorney for Respondent
John D. Clark, Administrative Law Judge
Paula S. Greathouse, Director