

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

PAUL KOZMA)	
Claimant)	
)	
VS.)	
)	
EDWARD KRAEMER & SONS)	
Respondent)	Docket No. 1,014,222
)	
AND)	
)	
RISK ENTERPRISE MANAGEMENT)	
Insurance Carrier)	

ORDER

Claimant requested review of the August 3, 2005 Award by Administrative Law Judge (ALJ) Kenneth J. Hursh. The Board heard oral argument on November 29, 2005.

APPEARANCES

Davy C. Walker, of Kansas City, Kansas, appeared for the claimant. Anton C. Anderson, of Kansas City, Kansas, appeared for respondent and its insurance carrier.

RECORD AND STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

The ALJ concluded claimant had no additional permanent impairment as a result of his compensable work-related injury. The ALJ specifically concluded claimant had suffered no increased impairment to his cervical spine as a result of his injury and that claimant had failed to prove any permanent impairment to his lumbar spine. Thus, claimant was entitled to only the 32 weeks of temporary total disability benefits already paid by respondent and past and future medical benefits.

The claimant requests review of the nature and extent of his impairment, arguing that he suffered permanent impairment to both his neck and low back as a result of his October 31, 2003 work injury. Claimant also maintains that he had no pre-existing permanent impairment to his neck and therefore he is entitled to the entirety of his 15 percent permanent impairment to the neck as assessed by Dr. Koprivica.

Respondent argues that the ALJ's Award should be affirmed in all respects.

The only issue to be addressed by this appeal is the nature and extent of claimant's permanent functional impairment.¹

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board finds the ALJ's Award should be affirmed.

There is no dispute as to the compensability of this claim. The ALJ adequately set forth the relevant facts and the Board adopts that recitation as its' own. The ALJ correctly framed the parties' contentions in his Award as follows:

There was a two-fold dispute about the claimant's permanent impairment—first, whether the claimant injured his low back in the October 31, 2003 event, and second, whether the claimant's impairment for the neck injury was pre-existing.²

Given the parties' dispute and difference in the parties' medical opinions as to the nature and extent of the claimant's impairment, the ALJ exercised his right, under K.S.A. 44-510e(a) to appoint an independent medical examiner. Dr. Vito J. Carabetta was appointed to examine claimant "and provide an independent medical opinion about the claimant's impairment, and specifically if the claimant had impairment to the lumbar spine from the work accident, and if the claimant had pre-existing impairment to the cervical spine."³

That examination was performed on November 29, 2004. Dr. Carabetta not only reviewed the claimant's medical records and the actual MRI films from his treatment for his most recent injury, but he also reviewed claimant's medical records from a neck injury he

¹ The parties are in agreement that claimant has returned to work at a comparable wage and there is presently no claim for work disability under K.S.A. 44-510e(a).

² ALJ Award (Aug. 3, 2005) at 3.

³ *Id.*

sustained in 2000. This review included the actual cervical MRI film which was taken following his 2000 injury.

Claimant was also examined, at his lawyer's request, by Dr. P. Brent Koprivica. Dr. Koprivica also reviewed claimant's medical records, but he did not have the benefit of the actual MRI scans from the 2000 injury. Rather, he relied upon the reports of that scan along with claimant's recitation of his complaints and his own examination.

Both physicians rated claimant's permanent impairment to the neck at 15 percent (DRE III) and to the lumbar spine at 10 percent (DRE III). However, their opinions as to the relationship of the permanency to claimant's October 31, 2003 accident are entirely opposite.

Dr. Carabetta does not attribute claimant's low back complaints to his work-related injury principally because the medical records do not reflect any low back complaints until December 1, 2003, over a month after the accident. Thus, based upon the lack of history of contemporaneous complaints, Dr. Carabetta was unwilling to attribute the 10 percent permanent impairment to claimant's accident. Conversely, Dr. Koprivica wholly attributed claimant's low back complaints and the 10 percent permanent impairment to claimant's accident. Although, as noted by the ALJ, Dr. Koprivica did not really explain why he attributed that aspect of claimant's impairment to the accident at issue.

Likewise, the physicians have diverging views on the claimant's cervical complaints. Dr. Carabetta compared the earlier MRI films with the most recent ones and concluded there were no marked differences between the 2000 films and those from 2003 and 2004. While there were subtle changes in the cervical area, he explained those changes were nearly impossible to delineate or attribute to the October 2003 accident. Based upon the 2000 MRI film, he concluded claimant fell within the DRE III category, which translates to a 15 percent permanent impairment. And based upon the 2003 and 2004 films, along with his examination and the other test results, claimant still fell within that same category and had no further permanent impairment. Thus, while the symptoms may have increased following his October 2003 accident, his impairment rating did not.

Dr. Koprivica, on the other hand, did not have the benefit of the earlier 2000 scan itself, instead reviewing only the written report of another physician's review of the film. Although he assigned a "new" 15 percent, he was aware of claimant's 2000 injury and did not explain how much, if any, of this neck impairment might have pre-dated the claimant's most recent injury.

The ALJ was persuaded by the opinions of Dr. Carabetta over those expressed by Dr. Koprivica and concluded claimant had failed to establish any permanent impairment to his lumbar spine attributable to this accident, nor any additional permanent impairment to his cervical spine. Thus, his recovery was limited to his temporary total disability benefits and past and future medical treatment.

The Board has considered the ALJ's Award, his reasoning, and the evidence offered by both parties and has concluded the ALJ's Award is well reasoned and supported by the evidence. Not only do the medical records lack any contemporaneous complaints of low back pain following his accident, but the claimant likewise failed to note any low back pain when he was completing his patient registration form at the occupational health facility on November 3, 2003.⁴ Moreover, Dr. Carabetta, as the independent medical examiner, had the benefit of the MRI films and was able to compare the condition of claimant's neck both before and after his accident. While claimant's complaints of pain increased following his accident, his permanency has not. Thus, the Board affirms the ALJ's Award in its entirety.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Kenneth J. Hursh dated August 3, 2005, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of December, 2005.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Davy C. Walker, Attorney for Claimant
- Anton C. Anderson, Attorney for Respondent and its Insurance Carrier
- Kenneth J. Hursh, Administrative Law Judge
- Paula S. Greathouse, Workers Compensation Director

⁴ R.H. Trans., Resp. Ex. A.