

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

NATHAN M. QUINT)	
Claimant)	
VS.)	
)	Docket No. 1,019,184
DOUGLASS HEATING & AC)	
Respondent)	
AND)	
)	
LIBERTY MUTUAL INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Claimant appealed the April 21, 2005, preliminary hearing Order entered by Administrative Law Judge Kenneth J. Hursh.

ISSUES

Claimant requests medical treatment for a left knee injury he allegedly sustained on August 30, 2004, while working for respondent. But in the April 21, 2005, Order, Judge Hursh denied claimant's request for benefits after finding claimant's need for medical treatment preexisted the alleged accident. Accordingly, the Judge concluded claimant failed to prove he injured his knee working for respondent. The Judge held, in pertinent part:

The circumstances raise a lot of doubt about whether the August 30, 2004 incident occurred, or was invented by the claimant as a way to have his already-contemplated knee surgery paid for. Even if there was an August 30, 2004 accident, the claimant's need for medical treatment already existed, and would not be due to the accident. The claimant failed to prove by a preponderance of the credible evidence that he injured his left knee arising out of an[d] in the course of employment with the respondent. The claimant's request for medical treatment is denied.¹

Claimant contends Judge Hursh erred. Claimant argues he did not contemplate he would undergo left knee surgery before the alleged August 30, 2004, accident as no doctor

¹ ALJ Order (Apr. 21, 2005) at 2.

had ever recommended surgery and he did not have any health insurance to pay for such an operation. In addition, claimant argues the testimony provided by respondent's witnesses was contrived. Claimant argues his work injury aggravated whatever left knee condition existed before the alleged August 2004 accident. Accordingly, claimant requests this Board to reverse the preliminary hearing Order.

Conversely, respondent and its insurance carrier contend the Order should be affirmed. They argue that before the alleged accident occurred claimant spoke of having left knee surgery as he wanted to play baseball in college. They argue the Order should be affirmed as claimant's testimony was not credible and the weight of the evidence established that claimant did not sustain an accidental injury at work.

The only issue before the Board on this appeal is whether claimant's present need for medical treatment is due to an injury or aggravation to his left knee that he sustained at work.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Board finds and concludes the preliminary hearing Order should be affirmed.

In short, claimant alleges he presently needs medical treatment for his left knee due to an August 30, 2004, accident at work. Claimant, however, also testified that before August 30, 2004, he was contemplating left knee surgery as he had injured the knee playing basketball. A doctor referred claimant to a knee specialist in 2003 but claimant was not able to consult with the specialist due to the expense.

In June or July 2004, claimant experienced more problems with his left knee that he attributed to a softball game. It was after that incident that claimant spoke of having surgery as he planned to play college baseball. Again, claimant did not receive medical treatment following that 2004 left knee flare-up due to the lack of medical insurance. But within a week or so before August 30, 2004, claimant learned respondent had workers compensation insurance.

According to respondent's owner, Cass Douglass, during July and August 2004 claimant repeatedly stated he was planning to have left knee surgery that September. Moreover, according to the owner's son, Cass Douglass, II, claimant admitted to him sometime after August 30, 2004, that the alleged accident did not occur.

The only medical opinion presented was from Dr. Michael J. Poppa. Dr. Poppa examined claimant in October 2004 and determined claimant probably permanently aggravated his left knee in the alleged accident at work. The doctor, however, was given

a history that claimant's left knee was fine after a 2003 injury and gave him no problems. That history, however, is suspect as claimant admitted he was considering left knee surgery at least one or two months before the alleged August 2004 accident at work.

As indicated above, the Judge concluded claimant failed to prove he injured his left knee working for respondent. Consequently, the Judge denied claimant's request for benefits. The Board reaches the same result as it finds claimant has failed to prove the medical treatment he now requests is related to an accident that he sustained at work as opposed to the injury and aggravation to the left knee he sustained playing basketball and softball. Consequently, the Order denying benefits should be affirmed.

As provided by the Workers Compensation Act, preliminary hearing findings are not binding but subject to modification upon a full hearing on the claim.²

WHEREFORE, the Board affirms the April 21, 2005, Order entered by Judge Hursh.

IT IS SO ORDERED.

Dated this ____ day of June, 2005.

BOARD MEMBER

c: Michael H. Stang, Attorney for Claimant
John M. Graham, Jr., Attorney for Respondent and its Insurance Carrier
Kenneth J. Hursh, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

² K.S.A. 44-534a(a)(2).