

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

<b>TERESA BEAUCLAIR</b>	)	
Claimant	)	
	)	
VS.	)	
	)	
<b>COF TRAINING SERVICES, INC.</b>	)	
Respondent	)	Docket Nos. <b>1,020,600</b>
	)	<b>&amp; 1,021,181</b>
AND	)	
	)	
<b>CONTINENTAL WESTERN INS. CO.</b>	)	
Insurance Carrier	)	

**ORDER**

Claimant requests review of the March 11, 2009 Post Award Medical Order by Administrative Law Judge Brad E. Avery. This is a post-award proceeding for medical benefits. The Board set this for oral argument on June 9, 2009, as claimant's application for review had specifically requested oral argument. However, on June 8, 2009, the claimant withdrew the request for oral argument and the parties agreed to submit the case for disposition without oral argument.

**APPEARANCES**

Michael G. Patton of Emporia, Kansas, appeared for the claimant. Eric T. Lanham of Kansas City, Kansas, appeared for respondent and its insurance carrier.

**RECORD AND STIPULATIONS**

The Board has considered the post award record which consists of the following: (1) preliminary hearing transcript dated May 20, 2005; (2) regular hearing transcript dated February 3, 2006; (3) deposition of Peter V. Bieri, M.D., dated March 16, 2006; (4) deposition of Eden Wheeler, M.D., dated March 22, 2006; (5) post award hearing transcript dated September 5, 2008; (6) deposition of Glenn M. Amundson, M.D., dated October 29, 2008; (7) deposition of Donald N. Braun, M.D., dated November 5, 2008; (8) deposition of Vicki Delatorre dated January 19, 2009; (9) settlement hearing transcript dated June 20, 2006.

**ISSUES**

The claimant had filed two separate claims against respondent for work-related injuries suffered as a result of a slip and fall incident on March 4, 2003, and an automobile accident on September 23, 2003. The two claims were consolidated and resolved at a settlement hearing on June 20, 2006. The settlement hearing provided that claimant could continue to receive treatment from Dr. Satterlee. But when Dr. Satterlee refused to treat claimant, Dr. Stechschulte was designated to provide claimant with continued treatment.

At the post-award hearing on September 5, 2008, the claimant sought medical treatment with Dr. Joseph Sankoorikal. Respondent argued that claimant had reached maximum medical improvement with regard to the neck and shoulder injuries suffered in her accidents. Respondent further argued that the claimant's low back complaints were not related to the underlying accidents.

The Administrative Law Judge (ALJ) found claimant was entitled to medical treatment with Dr. Sankoorikal for her left trapezius area. The ALJ denied claimant's request for medical treatment for her low back finding that condition was due to a subsequent non-work-related incident. And the ALJ denied claimant's request for payment of medical bills as they appeared related to treatment for her low back condition.

Claimant requests review and argues her current low back complaints are due to the two accidental injuries she suffered while working for respondent.

Respondent argues the medical evidence indicates that claimant's low back complaints are not due to the underlying accidents and, instead, are due to a non-work related incident. Consequently, respondent requests the Board affirm the ALJ's Post Award Medical Order.

**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 makes the following findings of fact and conclusions of law:

After the initial slip and fall injury claimant received medical treatment from Dr. Donald N. Braun. Dr. Braun examined claimant on March 19, 2003, and x-rays were taken of claimant's cervical spine, neck and shoulder. She was provided medications and referred for physical therapy. Dr. Braun next saw claimant in July 2003 with continued complaints of shoulder pain. An MRI of the shoulder was scheduled and claimant was again provided medications and referred for physical therapy. The doctor then referred her to Dr. Cordell.

On September 23, 2003, claimant was in a vehicle that was struck from behind. Dr. Braun saw claimant on September 26, 2003, and she complained of neck and mid-thoracic back pain. Upon examination the doctor detected palpable spasms in the mid-thoracic back and mild spasms in the low back. Claimant was again provided medications and referred for physical therapy. When Dr. Braun next examined claimant on October 10, 2003, her complaints were to her mid-thoracic spine. Claimant was provided anti-inflammatory medications.

Dr. Braun saw claimant on October 16, 2004, in connection with a regular employment physical. At that time he noted that claimant had recently been hospitalized with lumbar back pain after doing some raking in her yard.

As the claim progressed the parties obtained ratings and ultimately the claim was resolved at a June 20, 2006, settlement hearing. Dr. Eden Wheeler and Dr. Peter Bieri's ratings were attached to the settlement hearing. Dr. Wheeler provided claimant a rating from the DRE Cervicothoracic Category and Dr. Bieri provided claimant a rating from the DRE Cervicothoracic Category as well as ratings to the upper extremity. It is significant that Dr. Bieri's letter report of his examination of claimant contained the comment that she had recently experienced an acute lumbar strain, not work-related.

Vicki L. DeLaTorre, respondent's associate director, testified that claimant did not report any injuries regarding her low back and she did not request any medical treatment for her low back.

Claimant later returned to see Dr. Braun on September 1, 2006, with complaints of low back pain. Dr. Braun referred claimant to Dr. Amundson for treatment for the lumbar spine complaints as a result of the raking incident. Dr. Braun testified:

Q. Okay. All right. I want to make sure I understand your testimony and I know that you talked about some of her conditions and, and what caused those and you mentioned her, her neck and her shoulder, that you felt that those were related to her work.

A. Uh-huh.

Q. I want to specifically reference the low back that you referred her to Dr. Amundson for.

A. Right, right.

Q. And it looks like you, you saw her in November of 2004 when she was hospitalized after the raking in the yard, correct?

A. Right.

Q. And that was the first time an MRI was done that showed the lumbar spondylolisthesis?

A. To the best of my knowledge, when she presented in November of '04, that was for a general employee physical and that's when she made the comment to me that she was hospitalized for that low back pain and was based on the reports that she showed us, yes.

Q. Okay. And that condition that was diagnosed after that hospitalization, the raking in the yard, raking, I'm sorry, after the hospitalization for the problems she suffered while raking in the yard, that's the same condition that you referred her to Dr. Amundson for?

A. I referred her to Dr. Amundson for complaints of low back pain and a possible radicular problem to Dr. Amundson. I would, based on her complaints, it's the same low back pain, yes.<sup>1</sup>

Dr. Amundson's record of his November 22, 2006, examination of claimant contained a history of the two work-related injuries in the past and specifically noted that two weeks ago she was raking in her yard and that was followed by an onset of low back pain and a new onset of right side thigh numbness.

In a request for post-award medical treatment, the claimant has the burden to prove her right to an award of compensation and prove the various conditions on which her right depends.<sup>2</sup> In a post-award medical proceeding, an award for additional medical treatment can be made if the trier of fact finds that the need for medical care is necessary to relieve and cure the natural and probable consequences of the original accidental injury which was the subject of the underlying award.<sup>3</sup>

After her injuries, the claimant's primary complaint and treatment was focused on the mid-thoracic spine and neck. She settled her claims based upon ratings to those areas of her body. And this record establishes that her lumbar spine pain arose after raking her yard. Dr. Braun referred claimant for treatment for her lumbar spine complaints but noted that treatment was for the complaints due to the yard raking incident. Dr. Amundson noted the complaints again arose after an incident raking leaves. Neither doctor specifically related her current low back condition back to the two underlying accidental injuries.

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<sup>1</sup> Braun Depo. at 28-29.

<sup>2</sup> K.S.A. 44-501(a).

<sup>3</sup> K.S.A. 2004 Supp. 44-510k(a).

The Board finds claimant has failed to meet her burden of proof that her low back condition is the result of the original accidental injuries. The ALJ's Post Award Medical Order is affirmed in all respects.

**AWARD**

**WHEREFORE**, it is the decision of the Board that the Post Award Medical Order of Administrative Law Judge Brad E. Avery dated March 11, 2009, is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of June 2009.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

- c: Michael G. Patton, Attorney for Claimant
- Eric T. Lanham, Attorney for Respondent and its Insurance Carrier
- Brad E. Avery, Administrative Law Judge