

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

**STEVEN D. HEDRICK**  
Claimant

VS.

**CESSNA AIRCRAFT COMPANY**  
Self-Insured Respondent

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Docket No. 1,021,777

**ORDER**

Claimant appeals the May 21, 2008 preliminary hearing Order of Administrative Law Judge Thomas Klein (ALJ). Claimant was denied temporary total disability benefits and the ALJ rejected claimant's request for psychological treatment after the ALJ determined that claimant's need for such treatment was due to a preexisting condition.

Claimant appeared by his attorney, Roger A. Riedmiller of Wichita, Kansas. Respondent, a self-Insured, appeared by its attorney, Edward D. Heath, Jr., of Wichita, Kansas.

This Appeals Board Member adopts the same stipulations as the ALJ, and has considered the same record as did the ALJ, consisting of transcript of Preliminary Hearing held September 13, 2005, with attachments, the transcript of Preliminary Hearing held May 20, 2008, with attachments; and the documents filed of record in this matter.

**ISSUES**

1. Did the ALJ err in determining claimant's need for psychological treatment is due to a preexisting condition?
2. Did the ALJ err in denying claimant temporary total disability compensation (TTD)?

**FINDINGS OF FACT**

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

Claimant suffered an accidental injury on October 15, 2003, which resulted in an injury to his left knee. After unsuccessful attempts through physical therapy to solve the problem, claimant underwent knee surgery, including a left knee arthroscopic chondroplasty and limited synovectomy on May 7, 2004, under the care of Daniel J. Prohaska, M.D. Approximately one month later, claimant developed pain in the involved knee, with swelling of the lower extremity. Approximately two weeks after that, claimant noted chest pain and shortness of breath, and was hospitalized. Testing indicated evidence of a pulmonary emboli and deep venous thrombosis in the left leg. Claimant was treated with anticoagulation from July 2004 through January 2005, with no recurrence of the deep venous thrombosis or the pulmonary embolus.

Since the summer of 2004, claimant has noted shortness of breath with minimal exertion and marked limitation in exercise capacity. He has been evaluated by numerous health care professionals and has been referred to the Mayo Clinic for evaluation. Claimant was evaluated by pulmonologist Richard W. Spann, M.D., on September 23, 2004. Dr. Spann found claimant to display no evidence of new pulmonary embolism, and x-rays indicated his lungs were clear. There was an indication that claimant may have chronic hyperventilation syndrome. Claimant was released to return to work. Dr. Spann opined that claimant's symptoms were not related to his work-related injury.

Claimant was referred to licensed psychologist Ann Cramer, Ph.D., for an evaluation of psychological problems, including anxiety and depression, which claimant related to his work-related injuries, the subsequent blood clot and ongoing breathing problems. Claimant acknowledged to Dr. Cramer past psychological problems, including a suicide attempt in 1998 when he was having marital problems. Dr. Cramer found claimant's ongoing current psychological problems to be related to his physical injuries to his left knee, and the subsequent blood clot. Dr. Cramer's report does not indicate what tests were performed on claimant.

Claimant was referred for a psychological evaluation to licenced psychologist T. A. Moeller, Ph.D., on September 26 and 29, 2006, for an assessment of claimant's psychological status secondary to his work-related injury of October 15, 2005. Dr. Moeller subjected claimant to an exhaustive series of neurological tests, with the results detailed in his report of October 11, 2006.<sup>1</sup> After an extensive battery of tests, Dr. Moeller determined that claimant suffered from anxiety and depression and demonstrated

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<sup>1</sup> P.H. Trans. (May 20, 2008), Resp. Ex. 3.

symptom magnification. He also determined, within a reasonable degree of psychological probability, that claimant's psychological problems were not related to his physical injuries suffered while working for respondent.

Claimant was referred to neuropsychologist Neal B. Deutch, Ph.D., for an evaluation on February 9 and March 2, 2007. Dr. Deutch subjected claimant to a series of neuropsychological tests. Dr. Deutch recommended claimant undergo counseling for anxiety and depression and low self-esteem. There is nothing in Dr. Deutch's report to indicate the cause of claimant's ongoing problems.

### PRINCIPLES OF LAW AND ANALYSIS

In workers compensation litigation, it is the claimant's burden to prove his or her entitlement to benefits by a preponderance of the credible evidence.<sup>2</sup>

The burden of proof means the burden of a party to persuade the trier of fact by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record.<sup>3</sup>

When a primary injury under the Workers Compensation Act arises out of and in the course of a worker's employment, every natural consequence that flows from that injury is compensable if it is a direct and natural result of the primary injury.<sup>4</sup>

Claimant alleges that, as the result of his work-related knee injury and the subsequent development of a blood clot, he then developed resultant chronic hyperventilation syndrome which caused claimant to develop added psychological problems. The Kansas Supreme Court, in *Berger*,<sup>5</sup> discussed neurosis and anxiety disorders, as well as other psychiatric problems and their relation to trauma or work-related injuries. In *Berger*, the Court stated:

Even though this court has long held that traumatic neurosis is compensable; we are fully aware that great care should be exercised in granting an award for such injury owing to the nebulous characteristics of a neurosis. An employee who predicates a claim for temporary or permanent disability upon

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<sup>2</sup> K.S.A. 44-501 and K.S.A. 2003 Supp. 44-508(g).

<sup>3</sup> *In re Estate of Robinson*, 236 Kan. 431, 690 P.2d 1383 (1984).

<sup>4</sup> *Gillig v. Cities Service Gas Co.*, 222 Kan. 369, 564 P.2d 548 (1977).

<sup>5</sup> *Berger v. Hahner, Foreman & Cale, Inc.*, 211 Kan. 541, 506 P. 2d 1175 (1973)

neurosis induced by trauma, either scheduled or otherwise, bears the burden of proving by a preponderance of the evidence that the neurosis exists and that it was caused by an accident arising out of and during the course of his employment.<sup>6</sup>

As set forth in *Love*,<sup>7</sup> the following three elements must be met for a traumatic neurosis claim to be compensable:

1. A physical injury;
2. Symptoms of traumatic neurosis; and
3. These symptoms are directly traceable to the physical injury.<sup>8</sup>

Claimant contends his condition of chronic hyperventilation syndrome resulted from the combination of a knee injury and subsequent development of a blood clot post surgery. However, claimant ignores the fact that his chronic hyperventilation syndrome was diagnosed by John J. Hart, M.D., on March 4, 2004, well before the May 7, 2004 surgery and before the development of the blood clot in July 2004. Claimant satisfies the first two elements of traumatic neurosis, but fails to trace his symptoms to his physical injuries. While Dr. Cramer attempts to tie the conditions together, her evaluation is void of any tests which would verify that connection. Dr. Moeller, on the other hand, subjected claimant to a battery of neuropsychological tests, with the result being that he found no connection between claimant's injuries and the psychological conditions diagnosed by Dr. Moeller. This Board Member finds the opinion of Dr. Moeller to be the more persuasive in this matter. The ALJ's determination that claimant has failed to prove that his need for psychological treatment is related to his work-related injury is affirmed.

K.S.A. 44-534a grants the administrative law judge the authority to determine a claimant's request for temporary total disability and ongoing medical treatment at a preliminary hearing. The Board's review of preliminary hearing orders is limited to specific issues as set forth in the statute.

Not every alleged error in law or fact is reviewable from a preliminary hearing order. The Board's jurisdiction to review preliminary hearing orders is generally limited to the following issues which are deemed jurisdictional:

1. Did the worker sustain an accidental injury?

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<sup>6</sup> *Id.* at 550.

<sup>7</sup> *Love v. McDonald's Restaurant*, 13 Kan. App. 2d 397, 771 P.2d 557 (1989).

<sup>8</sup> *Id.* at 398.

2. Did the injury arise out of and in the course of employment?
3. Did the worker provide timely notice and written claim of the accidental injury?
4. Is there any defense that goes to the compensability of the claim?<sup>9</sup>

Claimant's entitlement to TTD is not an issue over which the Board takes jurisdiction from an appeal of a preliminary hearing. Claimant's appeal of that issue is, therefore, dismissed.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.<sup>10</sup> Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2007 Supp. 44-551(i)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

#### CONCLUSIONS

Claimant has failed to prove that his need for psychological treatment stems from his injury suffered on October 15, 2005, or from the resultant blood clot which formed after the May 2004 surgery. Therefore, the Order of the ALJ denying claimant psychological treatment is affirmed. Claimant's appeal of the ALJ's denial of TTD is dismissed.

#### DECISION

**WHEREFORE**, it is the finding, decision, and order of this Appeals Board Member that the Order of Administrative Law Judge Thomas Klein dated May 21, 2008, should be, and is hereby, affirmed in part and dismissed in part.

**IT IS SO ORDERED.**

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<sup>9</sup> K.S.A. 44-534a(a)(2).

<sup>10</sup> K.S.A. 44-534a.

Dated this \_\_\_\_ day of August, 2008.

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HONORABLE GARY M. KORTE

c: Roger A. Riedmiller, Attorney for Claimant  
Edward D. Heath, Jr., Attorney for Respondent  
Thomas Klein, Administrative Law Judge