

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

AIDA CARRASCO)	
Claimant)	
VS.)	
)	Docket No. 1,028,219
MANPOWER)	
Respondent)	
AND)	
)	
NATIONAL FIRE INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier appealed the January 18, 2008, preliminary hearing Order for Medical Treatment entered by Administrative Law Judge Brad E. Avery.

ISSUES

Claimant alleges she sustained repetitive trauma injuries to her upper extremities working for respondent from December 20, 2005, through January 18, 2006. In the January 18, 2008, Order, Judge Avery granted claimant's request for medical treatment.

Respondent and its insurance carrier contend Judge Avery erred. They argue claimant failed to prove her present need for medical treatment is related to the injuries she sustained while working for respondent. Instead, they contend claimant's subsequent work as a housekeeper has resulted in her present symptoms and present need for medical treatment. Accordingly, respondent and its insurance carrier request the Board to reverse the January 18, 2008, Order.

Conversely, claimant requests the Board either to affirm the Order or to dismiss the appeal. Claimant first argues respondent and its insurance carrier's true issue on appeal is whether claimant's subsequent employer should be held responsible for a portion of claimant's medical benefits and, therefore, the Board does not have jurisdiction to review that issue in this appeal. Next, claimant argues the Board should dismiss this appeal as respondent and its insurance carrier have failed to comply with the Judge's January 18, 2008, Order to provide claimant with medical treatment with Dr. Ketchum. Finally, claimant argues respondent and its insurance carrier have failed to prove claimant sustained a

subsequent injury after leaving respondent's employment. In that regard, claimant argues that Dr. Ketchum's medical report is not competent evidence as the doctor saw claimant without having the services of a Spanish language interpreter and, therefore, the doctor was unable to communicate with claimant. Claimant also contends the Judge had ordered Dr. Ketchum's medical treatment in a July 21, 2006, Order but respondent restricted the doctor to providing only an independent medical evaluation.

The only issues before the Board on this appeal are:

1. Is respondent and its insurance carrier required to prove they have complied with an order to provide medical treatment before their appeal of such order may be considered by the Board?
2. Does the Board have the authority and jurisdiction to address the issue raised by respondent on this appeal?
3. Did claimant establish her present need for medical treatment is the result of the work she performed for respondent?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the undersigned Board Member finds and concludes:

This is the second preliminary hearing that has been held in this claim. At the first preliminary hearing, which was held on July 20, 2006, claimant sought medical treatment with Dr. Lynn D. Ketchum, temporary total disability benefits, and the payment of certain medical bills. At that hearing, respondent and its insurance carrier did not challenge that claimant's bilateral upper extremity injuries were compensable; instead, they contended claimant had reached maximum medical improvement.

At the July 20, 2006, hearing, claimant testified respondent assigned her to work for Weyerhaeuser where she folded boxes. Claimant began working for respondent on approximately December 20, 2005, and after approximately two weeks she began experiencing symptoms in her hands. Except when she was off for medical treatment, claimant worked 40 hours per week. Claimant further testified she last worked for respondent for three days in March 2006. Finally, she represented she did not obtain other work until May 17, 2006, when she began working 20 to 25 hours per week for another employer doing housekeeping.

At the July 20, 2006, preliminary hearing, claimant presented a May 24, 2006, medical report from Dr. Edward J. Prostic. The doctor concluded claimant sustained

repetitive minor traumas to her upper extremities while working for respondent and that she should receive medical treatment. The doctor wrote, in pertinent part:

Miss Carrasco [claimant] is seen today with the kind assistance of an interpreter. She reports injury from repetitious minor trauma making boxes and other duties for Manpower through the last date of her employment in February, 2006. She became progressively more painful at both hands and was sent to the emergency department of St. Francis Hospital in Topeka, Kansas. She was seen by Dr. Donald Mead, who felt that she had bilateral wrist tendinitis. Ibuprofen and wrist splints were prescribed. The patient was sent for an EMG that apparently was negative. Physical therapy was provided. The patient was subsequently seen by Dr. John Gilbert. He also prescribed ibuprofen. The patient left her employment at Manpower [respondent]. She was out of work until four days ago when she started cleaning houses and doing dishes.

....

The patient continues to have intermittent pain, swelling, numbness, and tingling of both hands, worst at the long and ring fingers. She sometimes awakens from sleep at night. When she awakens in the morning, she has a feeling of swelling and numbness. She has decreased grip with both hands. She has worsening with active use. She continues to take ibuprofen and to occasionally use her splints.

....

During the course of her employment at Manpower, Aida Carrasco sustained repetitious minor trauma to her upper extremities. She has symptoms of bilateral carpal tunnel syndrome. She has sensory loss of the right thumb that correlates with this diagnosis. Her sensory loss on the left is in the ulnar nerve distribution. Unless the EMG was performed within the last sixty days, she needs a new EMG and treatment to be guided by the study. If peripheral nerve entrapment is proven, decompressive surgery should be offered. If it is not proven, she should be offered splintage and corticosteroid injections. Presently, she should not be at hand intensive activities.¹

Following the July 20, 2006, preliminary hearing, Judge Avery ordered medical treatment to be paid by respondent and its insurance carrier on claimant's behalf with Dr. Ketchum until further order or until certified as having reached maximum medical improvement.

For reasons that are not explained, the medical treatment that Judge Avery ordered on July 21, 2006, was never commenced. In November 2006, however, claimant was

¹ P.H. Trans. (July 20, 2006), Cl. Ex. 1.

examined and rated by Dr. Lynn D. Ketchum. At that examination, there was no interpreter for claimant and the doctor was, therefore, limited in his ability to obtain claimant's medical history. In his November 20, 2006, letter to respondent's attorney, Dr. Ketchum noted, in part:

Although it was indicated that an interpreter would be provided for the claimant, due to some conflict, an interpreter was not present for this patient's examination today. As such, we did attempt to obtain a history and physical examination of her. With the aid of Dr. John Gilbert's records, we have determined that she worked for Manpower beginning in December of 2005 and was terminated in early February of 2006. Through Manpower, she went to work at Weyerhaeuser doing box fabrication, and she did that 40 hours a week. She said that she had to break down boxes with her hands and stack eight boxes and glue them together. She lists a date of injury of January 30, 2006, at which time she began experiencing pain in both hands, primarily exertionally; she relates this to the strenuous and repetitive nature of her work. She had previously worked picking up trash in the park but thinks that the work at Weyerhaeuser was considerably harder than what she was doing in the park and what she is capable of.

After reporting the injury on January 30, 2006, she was given braces but she was also seen by Dr. Mead. She had a course of physical therapy, as well as nonsteroidal anti-inflammatory medications and light duty, but the symptoms persisted. She has not had any injections or surgery. She was unable to meet the production quotas at Weyerhaeuser and, by her history, was no longer employed there as of the middle of February.

She has continued to work on and off since then and is currently employed. She has worked as a cashier but is currently doing housekeeping for 40 hours a week, although she said that sometimes she only works 35 hours a week because of the pain in her hands. She has been doing this for approximately six months.²

Dr. Ketchum performed nerve conduction tests, which indicated claimant had mild carpal tunnel syndrome in her right upper extremity. But the results from the test performed on the left upper extremity were normal. The doctor also had x-rays taken of claimant's right wrist. Those images showed claimant had a scapholunate dissociation. In short, the doctor found it was highly unlikely that claimant's working for respondent for two months caused her carpal tunnel syndrome as all of her employment through the time of her examination contributed to the syndrome. In addition, the doctor found it impossible to determine whether claimant's working for respondent caused the scapholunate dissociation. The doctor wrote, in part:

² P.H. Trans. (Jan. 17, 2008), Resp. Ex. A.

It is highly unlikely that her work at Manpower for two months was the cause of this carpal tunnel syndrome. She has been a worker most of her adult life and probably all of her employment, up until the present, contributed to this very mild carpal tunnel syndrome.

We took x-rays of the right wrist today and with the supinated clenched fist and ulnar deviation stress views, they show a widening of the scapholunate joint of 4.5 mm., which is abnormal. This indicates a scapholunate dissociation. She is tender on the dorsum of the right wrist over the scapholunate joint. It is possible that the job at Manpower could have caused this scapholunate dissociation on the right, but it is impossible to tell whether it happened there, whether it happened at some time in the past, or at some time since she has left the employment at Manpower.³

There is no evidence that claimant received any medical treatment for her upper extremities after seeing Dr. Ketchum. On the other hand, there is no indication claimant was requesting medical treatment. Indeed, at a February 2007 penalty hearing that claimant brought due to respondent and its insurance carrier's failure to pay disability benefits in a timely manner, the subject of claimant's medical treatment was not raised.

Following the February 2007 hearing, apparently nothing notable occurred until September 25, 2007, when claimant returned to Dr. Prostic for a follow-up examination. Dr. Prostic noted that since first examining claimant in May 2006 she had continued working cleaning houses and her hands were gradually worsening. But, more importantly, Dr. Prostic concluded claimant's symptoms at the more recent examination were essentially the same as those of May 2006. In his September 25, 2007, report to claimant's attorney, Dr. Prostic stated, in pertinent part:

Symptoms offered today are essentially those of May 24, 2006 with symptoms going to both elbows.

. . . .

It continues to be my opinion that during the course of her employment at Manpower, Aida Carrasco sustained repetitious minor trauma to her upper extremities. She has bilateral carpal tunnel syndrome and mild scapholunate disassociation on the right. She should have a new EMG. If it confirms carpal tunnel syndrome, she should have decompressive surgery. . . .⁴

³ *Id.*

⁴ *Id.*, Cl. Ex. 1.

Two years have now elapsed since claimant left respondent's employment. Since last working for respondent, claimant's part-time job cleaning houses has evolved into full-time work. Respondent and its insurance carrier reasonably argue claimant's present need for medical treatment does not relate to the work she performed for respondent but, instead, is the result of the house cleaning work she later performed. Likewise, claimant reasonably argues she has needed medical treatment since leaving respondent's employment in early 2006 as established by Dr. Prostic's May 2006 examination.

Judge Avery impliedly found that claimant's present need for medical treatment is directly related to the work she performed for respondent. The undersigned agrees. The evidence establishes that claimant did not have upper extremity symptoms before she began working for respondent but those symptoms developed due to the repetitive work activities she performed for respondent. In July 2006, Judge Avery ordered respondent to provide claimant with medical treatment. But that treatment was not provided and claimant's symptoms have continued to worsen. Finally, the opinion of Dr. Prostic is persuasive that claimant's present symptoms are essentially those of May 2006. The timing of Dr. Prostic's examinations places him in a unique position in determining the source of claimant's complaints. And, furthermore, the doctor has no apparent interest in the determination of which employer should be ultimately responsible for claimant's medical treatment.

Moving to the next issue, claimant contends the Board should dismiss this appeal as respondent has allegedly failed to provide claimant with the medical treatment the Judge has ordered to be provided. Notwithstanding the arguably inherent fairness in claimant's position, the undersigned is aware of no statute in the Workers Compensation Act that supports that argument. The Act, however, does have a provision, K.S.A. 44-5,120, that governs fraudulent and abusive acts. Accordingly, if claimant believes respondent and its insurance carrier have improperly failed to initiate the ordered medical treatment, claimant has recourse. As a practical matter, the orders entered under the Workers Compensation Act should be vigorously enforced. Without such enforcement, injured workers can be denied benefits when they are most crucially needed.

Finally, claimant contends the Board lacks jurisdiction to adjudicate this appeal on the basis that the issue is not whether claimant's present need for medical treatment relates to the work she performed for respondent but, instead, whether respondent is entitled to apportion its liability with a subsequent employer. The undersigned disagrees with that analysis. Accordingly, the undersigned concludes the Board does have the authority and jurisdiction to adjudicate this appeal as the issue raised by respondent is whether claimant's present need for medical treatment is the result of the injuries she sustained working for respondent. And that is an issue that the Board is to review from a preliminary hearing order as provided by K.S.A. 44-534a.

In conclusion, the January 18, 2008, Order for Medical Treatment should be affirmed.

By statute, preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.⁵ 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.

WHEREFORE, the undersigned affirms the January 18, 2008, Order for Medical Treatment entered by Judge Avery.

IT IS SO ORDERED.

Dated this ____ day of March, 2008.

KENTON D. WIRTH
BOARD MEMBER

c: Conn Felix Sanchez, Attorney for Claimant
Terry J. Torline, Attorney for Respondent and its Insurance Carrier
Brad E. Avery, Administrative Law Judge

⁵ K.S.A. 44-534a.