BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

CHARLES RICHARD HANSHAW Claimant	)	
VS.	)	
UNIV. OF KANSAS MEMORIAL UNIONS Respondent	)	Docket Nos. 1,029,100 & 1,029,625
AND	)	
TRAVELERS INSURANCE CO. Insurance Carrier	)	

ORDER

Respondent and its insurance carrier request review of the September 7, 2006 preliminary hearing Order for Medical Treatment entered by Administrative Law Judge Brad E. Avery.

ISSUES

In Docket No. 1,029,100 the claimant alleged he suffered accidental injury on January 11, 2006. In Docket No. 1,029,625 the claimant alleged he suffered accidental injury on June 12, 2006. The claimant had a history of four surgeries for a left inguinal hernia. The claimed injuries in each of the above captioned docketed cases involve incidents where claimant felt a popping and increased pain in the left groin area with lifting activities at work. The Administrative Law Judge (ALJ) found the claimant suffered accidental injury arising out of and in the course of employment in each of the docketed claims and ordered respondent to provide medical treatment.

The respondent requests review of the following issues: (1) whether the ALJ exceeded his jurisdiction in granting medical treatment; (2) whether the accident arose out of and in the course of employment; (3) whether the medical evidence was sufficient to support the ALJ's findings; and, (4) whether all parties were considered in the ALJ's findings. Respondent's primary argument is that claimant's continuing problems are a natural and probable consequence of his original hernia injury and surgical repair. Because the respondent's insurance carrier at that time is responsible, the respondent argues the ALJ erred in issuing an Order without United States Fire Insurance Co. being

a party to this action. Respondent further argues the medical evidence establishes the claimant's current need for medical treatment is due to the May 30, 2002 injury in Docket No. 1,016,896 and therefore the September 7, 2006 Orders should be reversed.

Claimant argues the ALJ's Order should be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the undersigned Board Member makes the following findings of fact and conclusions of law:

A brief history of the claimant's hernia injuries while working for respondent is necessary. Claimant was injured on May 30, 2002 while lifting a cooler from the bed of a pickup . Claimant experienced a pulling sensation and pain in his left groin. On June 24, 2002, a surgical left inguinal herniorrhaphy with mesh placement was performed. This resulted in a workers compensation claim in Docket No. 1,016,892 (a separate claim not included in the current litigation).

The claimant alleged he suffered a recurrent hernia on September 24, 2003, and a surgical recurrent herniorrhaphy with mesh placement was performed on December 8, 2003. This resulted in a workers compensation claim in Docket No. 1,028,099 (another separate claim not included in the current litigation).

Claimant had recurrent symptoms and a repeat herniorrhaphy was performed on March 26, 2004. The claimant continued to have symptoms as well as ilioinguinal neuralgia due to scar entrapment post-operatively. On November 1, 2004, a surgical left groin exploration with re-section of mesh overlay and left ilioinguinal neurectomy was performed.

Claimant continued to experience problems but had not been determined to have suffered a recurrent hernia. He continued working for respondent and on April 18, 2006, a preliminary hearing was held in Docket Nos. 1,018,099 and 1,016,896. In summary, the ALJ determined claimant had suffered an additional accidental injury on March 1, 2004, but there was no claim filed for that accident and the ALJ further determined claimant suffered accidental injury January 11, 2006, but no claim had been filed for that date of accident and consequently, the ALJ denied claimant's request for medical treatment.

The claimant then filed the instant claims for injury which were consolidated for hearing on September 5, 2006. At that hearing the parties agreed the ALJ should also take judicial notice of the testimony from the preliminary hearing held April 18, 2006, in Docket Nos. 1,018,099 and 1,016,896.

Claimant worked as a maintenance technician for the respondent. On January 11, 2006, the claimant was using a screw gun putting screws into the two-by-fours along the ceiling when he felt something pull in his side and had extreme pain. He notified his employer about the injury and was denied medical treatment. Claimant sought medical treatment on his own through his family physician. Dr. Atwood prescribed some pain medication and referred the claimant to a surgeon.

After the January 11, 2006, incident the claimant experienced an increase in pain. He testified:

> Q. Was there any difference in the pain?
>
> A. No. Just severity. Just --
>
> Q. More of it, more intense --
>
> A. Yeah.
>
> Q. -- more severe? And do you feel that you hurt yourself that day, in January of '06, when you felt more intense pain?
>
> A. Well, I feel that I made it worse. I was already in -- in pain; I just -- I feel like I made it worse, is what I did.
>
> Q. And how -- how did you -- how do you feel you made it worse?
>
> A. Well, my side was already hurting me, and when I felt the pop, or whatever, then it hurt real bad, almost intolerable. I'd get to the point to where I'd physically get light-headed, I'd get the shakes, it hurt -- it hurt that bad. It's lessened some now, but -- but there for a while, it was that bad.[1]

Claimant continued to work after the incident.

On June 12, 2006, the claimant was installing a door closer with his partner when he reached to attach the closer to the door frame and felt something pop in his side and he again had extreme pain. He continued to work that day. Claimant again notified his employer and was advised to seek treatment with his own physician but his claim was later denied.

As a result of the claimant's previous workers compensation claims, the ALJ had ordered an independent medical examination of claimant to be performed by Dr. Dick Geis. Claimant was examined and evaluated by Dr. Geis on March 7, 2006. Dr. Geis diagnosed

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[1] P.H. Trans. (Apr. 18, 2006) at 25.

the claimant with a direct and indirect left inguinal hernia status post repair, recurrent direct inguinal hernia repair, and a left groin exploration with scar tissue and mesh overlay excision and left ilioinguinal neurectomy.

Dr. Geis opined the claimant did not suffer an impairment after the first or second surgery. The doctor further opined, "It was only after the third herniorrhaphy that Mr. Hanshaw's work and other ADL's were negatively affected and permanent restrictions were recommended by Dr. Myrick."[2] But Dr. Geis did not specifically address either the January 11, 2006 incident or the June 12, 2006 incident. Nor was any other medical evidence offered with regard to the two latest incidents.

It is well settled in this state that an accidental injury is compensable even where the accident only serves to aggravate or accelerate an existing disease or intensifies the affliction.[3] The test is not whether the job-related activity or injury caused the condition but whether the job-related activity or injury aggravated or accelerated the condition.[4]

The claimant described incidents at work on January 11, 2006, and June 12, 2006, which resulted in sharply increased symptoms in the area of his hernia. Claimant has met his burden of proof to establish that he aggravated his preexisting condition on each occasion. This Board Member affirms the ALJ's finding that the claimant suffered accidental injury arising out of and in the course of his employment on January 11, 2006, and June 12, 2006.

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.[5] Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2005 Supp. 44-551(b)(2)(A), as opposed to being determined by the entire Board when the appeal is from a final order.[6]

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[2] P.H. Trans. (Apr. 18, 2006), Cl. Ex. 2 at 6.

[3] *Harris v. Cessna Aircraft Co.*, 9 Kan. App. 2d 334, 678 P.2d 178 (1984)*; Demars v. Rickel Manufacturing Corporation*, 223 Kan. 374, 573 P.2d 1036 (1978); *Chinn v. Gay & Taylor, Inc.*, 219 Kan. 196, 547 P.2d 751 (1976).

[4] *Hanson v. Logan U.S.D. 326*, 28 Kan. App.2d 92, 11 P.3d 1184, *rev. denied* 270 Kan. 898 (2001); *Woodward v. Beech Aircraft Corp.*, 24 Kan. App.2d 510, 949 P.2d 1149 (1997).

[5] K.S.A. 44-534a.

[6] K.S.A. 2005 Supp. 44-555c(k).

WHEREFORE, it is the finding of this Board Member that the Orders of Administrative Law Judge Brad E. Avery in Docket Nos. 1,029,100 and 1,029,625 dated September 7, 2006, are affirmed.

IT IS SO ORDERED.

Dated this _____ day of November 2006.

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BOARD MEMBER

c: James L. Wisler, Attorney for Claimant
Christina R. Madrigal, Attorney for Respondent and its Insurance Carrier
Brad E. Avery, Administrative Law Judge