

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

SUSAN A. POWELL)	
Claimant)	
VS.)	
)	Docket No. 1,034,303
U.S.D. 259)	
Self-Insured Respondent)	

ORDER

Claimant appealed the May 28, 2009, preliminary hearing Order entered by Administrative Law Judge John D. Clark.

ISSUES

This is a claim for a January 11, 2007, accident that arose out of and in the course of claimant's employment with respondent. On that date claimant fell at work and injured her right knee. Claimant contends the right knee injury led to an aggravation and injury to her left knee, which her treating physician now recommends be replaced. Claimant maintains the only opinion introduced on causation is that of Dr. George G. Flutter, who linked claimant's present left knee problems to her January 11, 2007, accident and the resulting right knee injury.

In the May 28, 2009, Order, Judge Clark denied claimant's request for medical treatment for her left knee. Claimant requests the Board to reverse that Order and remand this claim to the Judge for an order authorizing a medical provider for the left knee.

Conversely, respondent requests the Board to affirm the May 28, 2009, Order. Respondent challenges claimant's credibility and contends her own testimony and the opinions of Dr. Paul S. Stein and Dr. John R. Schurman, II, establish that claimant's left knee problems are neither related to work nor a natural result of her right knee injury.

The only issue on this appeal is whether claimant has proven her present left knee problems are related to her January 11, 2007, accident.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

On January 11, 2007, claimant slipped in water and fell. The fall injured claimant's right knee. Respondent does not challenge that claimant's accident arose out of and in the course of her employment as a teacher.

Claimant completed the 2006-2007 school year with the help of a scooter. On August 2, 2007, claimant underwent a right total knee replacement. Claimant's right knee problems did not improve following surgery and she requested another physician to take over treatment from Dr. John R. Schurman, II. In March 2008, claimant testified at a preliminary hearing she had last seen the doctor in February 2008 at which time she had swelling in her right knee, shooting pain from the right knee to her ankle and both knees were buckling.¹ She also testified the right knee replacement procedure had actually increased the pain and problems she was having in the right knee.² Moreover, at that hearing she indicated her left knee pain developed in November 2007.³ Claimant attributes the left knee pain to "[p]utting weight on it to take pressure off [the] right knee."⁴ Incidentally, claimant also maintains that in late November 2007 she developed low back pain.

Dr. George G. Fluter examined claimant at her attorney's request in February 2008 to provide treatment recommendations. Although the examination was apparently focused on the right knee, the doctor noted claimant had low back pain, dysesthesias in both hands and her left knee would give out and buckle.

Claimant has rheumatoid arthritis, which she had before her January 2007 fall at work. Dr. Fluter's February 4, 2008, medical report, which claimant introduced at the March 2008 hearing, addresses claimant's medical history. That report indicates that in 1998 Dr. John Estivo performed surgery on claimant's right knee and claimant also had left knee pain at that time. Dr. Fluter's February 2008 medical report also indicates claimant had an MRI of her right knee in July 1998, which displayed tears in both the lateral and medial menisci. In addition, the report indicates that in August 2007, when claimant was admitted to the hospital for the right knee replacement, the admission diagnosis was osteoarthritis/rheumatoid arthritis in both knees.⁵

¹ P.H. Trans. (Mar. 20, 2008) at 9.

² *Id.*, at 11.

³ *Id.*, at 24.

⁴ *Id.*

⁵ *Id.*, Cl. Ex. 1 at 4.

Because of continuing left knee symptoms, claimant requested the May 2009 preliminary hearing to request medical treatment for that knee. At that preliminary hearing claimant testified she was not having either right knee or left knee problems immediately before her January 2007 slip and fall. She also testified she could not recall having any medical treatment on her right knee before her January 2007 fall. She could, however, remember receiving medical treatment on her left knee, which she believed occurred several years before.

At the May 2009 hearing, claimant testified she was diagnosed with rheumatoid arthritis approximately 10 years ago, but that it was only her hands that were affected. She also testified she began using a cane within a month of her knee replacement surgery due to left knee pain and that she first began noticing problems in her left knee within a month of the January 2007 accident.⁶ Claimant attributed the left knee pain to the walking that she did. She maintains when her left knee symptoms first developed she told Dr. Schurman she was having left knee pain and that both her knees buckled and gave way. Moreover, claimant maintains that after her right knee replacement the left knee has progressively worsened.

Evidence was also introduced at the May 2009 hearing that claimant telephoned respondent's workers compensation personnel on September 12, 2008, and advised she had pain in both knees and swelling in her right knee.

Dr. Fluter saw claimant again and issued a March 26, 2009, report. Dr. Fluter's diagnoses included left knee pain and degenerative changes to the left knee with orthopedic recommendation for total knee replacement surgery. Without explaining how, the doctor concluded, "[t]he injury to the right knee and its sequelae led to exacerbation and acceleration of the underlying process affecting the left knee."⁷

At respondent's request, Dr. Paul S. Stein examined claimant in mid-January 2009. Because of claimant's rheumatoid arthritis, Dr. Stein was unable to make a definitive statement regarding the relationship of claimant's left knee, hips, lower back and right wrist complaints to the January 2007 accident. But the doctor did indicate he believed those complaints were more related to a flare-up of claimant's rheumatoid arthritis than to an altered gait from the right knee. In any event, Dr. Stein stated he would defer to the physician who was treating claimant's rheumatoid arthritis, Dr. Vivian Illera. The record at this juncture, however, does not contain an opinion from Dr. Illera.

⁶ P.H. Trans. (May 28, 2009) at 17.

⁷ *Id.*, Cl. Ex. 1 at 5.

Respondent introduced certain office notes from Dr. Schurman. The September 17, 2008, note indicates claimant had recently gone to the emergency room for painful swelling in her left calf. Dr. Schurman's impression was rheumatoid arthritis of the left knee and acute calf pain consistent with a popliteal cyst rupture. More importantly, the doctor concluded, "[i]n the end, I think she does have rheumatoid arthritis and will likely need to consider structural knee replacement."⁸

The undersigned finds claimant has failed to establish it is more probably true than not that she has injured or aggravated her left knee as a result of the January 11, 2007, injury to her right knee. Claimant is not a good historian as she has provided inconsistent testimony. In light of the opinions provided by Dr. Stein and Dr. Schurman, the undersigned is not persuaded by Dr. Fluter's bald assertion relating the left knee to the January 2007 accident. In conclusion, claimant has failed to prove it is more probably true than not that her left knee symptoms are related to her work injury in January 2007. Accordingly, the preliminary hearing Order 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.⁹ Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2008 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 May 28, 2009, preliminary hearing Order entered by Judge Clark.

IT IS SO ORDERED.

Dated this ____ day of August, 2009.

KENTON D. WIRTH
BOARD MEMBER

c: Roger A. Riedmiller, Attorney for Claimant
Robert G. Martin, Attorney for Respondent
John D. Clark, Administrative Law Judge

⁸ *Id.*, Resp. Ex. 1.

⁹ K.S.A. 44-534a.