

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

JASON KEARN)	
Claimant)	
VS.)	
)	
CONDRAY FARMS, INC.)	Docket No. 1,037,777
Respondent)	
AND)	
)	
KANSAS EMPLOYERS WORKERS COMPENSATION FUND)	
Insurance Carrier)	

ORDER

Respondent requests review of the March 1, 2012 Award by Administrative Law Judge (ALJ) Rebecca A. Sanders. The Board heard oral argument on August 7, 2012.

APPEARANCES

Melinda G. Young, of Hutchinson, Kansas, appeared for claimant. Edward D. Heath, Jr., of Wichita, Kansas, appeared for respondent and its insurance carrier (respondent).

RECORD AND STIPULATIONS

The Board has considered the record¹ and adopted the stipulations listed in the Award.

ISSUES

The ALJ found that as a result of claimant's accidental injury of May 23, 2007, he sustained a 4% permanent functional impairment to the body as a whole and a 97.50% work disability.

Respondent contends that claimant failed to prove any causal connection between his February 10, 2010 stroke and the work-related accident. Respondent argues claimant is only entitled to permanent partial disability based on a 5% impairment to the right leg.

¹ No treatment records were admitted into evidence. The only medical evidence consists of Dr. Murati's deposition testimony and his two reports.

Claimant argues that the Award should be affirmed.

The issues the Board must address are:

(1) Were claimant's cerebrovascular event and the effects thereof compensable as natural and probable consequences of claimant's right knee injury?

(2) What is the nature and extent of claimant's disability?

FINDINGS OF FACT

Claimant was age 30 when he testified at the August 18, 2011 regular hearing. Claimant performed farm work for respondent, including working with hogs. Claimant started working for respondent about a month and a half before his accident occurred.

On May 23, 2007, claimant and a co-employee named Stacy were coaxing an uncooperative sow into the breeding barn. The sow evidently decided she did not want to move into the barn and she stopped. Claimant pushed the sow and as he did so, the sow started backing up. The backward movement of the sow caused claimant's legs to become pinned between a gate and the sow. Claimant suffered an injury to his right knee.

On the day following the accident claimant went to Cloud County Health Center's emergency room (ER) in Concordia, Kansas. The ER physician, Dr. Travis Jordan, referred claimant to Dr. Craig Vosburgh, an orthopedic surgeon. Claimant underwent a right lower extremity MRI scan on June 11, 2007, which revealed an old osteochondritis dissecans (OCD) defect in the medial femoral condyle with hypertrophic change and postoperative changes present; a suggestion of slight chondromalacia over the deficit; and no meniscal or ligamentous abnormality with minimal joint effusion. Dr. Vosburgh diagnosed symptomatic OCD of the medial femoral condyle of the right knee. He performed surgery on July 6, 2007, which consisted of a right knee arthroscopy with chondroplasty and subchondral micropuncture. Claimant testified he underwent right knee surgery by Dr. McAtee in Manhattan, Kansas, when he was in high school, but he provided no details about the nature of the prior surgery.

Claimant testified that a couple weeks after the knee surgery he developed pain in his right calf. At the suggestion of respondent, claimant again reported to the ER. Claimant underwent venous Doppler studies which revealed deep vein thrombosis (DVT) in claimant's right leg. Claimant thereafter continued under treatment from a number of physicians for his DVT, consisting of blood thinning medication, including Coumadin and Lovenox.

On February 10, 2010, claimant suffered a stroke caused by intracranial pressure. Claimant testified that when he had the stroke he was still taking Lovenox.² Claimant admitted that on the date of his stroke he used cocaine, but he testified that he had been feeling bad before using the cocaine. He testified he intended to seek medical attention, but instead decided to hang out at his home with friends, where he used cocaine and drank some beer.³ After his friends left he did some cleaning up. He intended to go to bed, but blacked out and collapsed. His parents discovered claimant 28 hours later. Claimant was 27 years old at the time of his stroke.⁴

At the request of his counsel, claimant was examined by Dr. Pedro Murati, a board certified physiatrist and independent medical examiner, on September 14, 2010. Dr. Murati took a history, reviewed medical records, and examined claimant. Dr. Murati diagnosed: (1) right patellofemoral syndrome, (2) status post right knee arthroscopy with chondroplasty and subchondral micropuncture, and (3) "status post right DVT which may be work-related if the claimant's history is accurate."⁵ Pursuant to the *AMA Guides*⁶, Dr. Murati rated claimant's permanent impairment of function at 7% to the right leg, which converts to 3% to the whole body. He also rated claimant's cerebro-vascular accident (CVA) at 10% to the whole body, 1% of which he apportioned to the worsening of the stroke alleged to have resulted from claimant's use of Coumadin. The right leg impairment of 3% to the body and the 1% whole body rating for the CVA combine under the Guides to 4% to the whole person. Dr. Murati found claimant lost the ability to perform 19 out of 20 tasks identified by Dr. Barnett⁷ for a 95% task loss. He found claimant to be essentially and realistically unemployable.

Dr. Murati was initially not provided with medical records relating to claimant's stroke. However, he was thereafter provided with those records, which he reviewed and then authored a supplemental report dated December 23, 2010. In that supplemental report, Dr. Murati opined: "Upon review of the medical records the claimant suffered from

² R.H. Trans. at 16. Claimant was switched to the Lovenox because he was resistant to Coumadin. R.H. Trans. at 25-26.

³ Claimant did not testify he had used amphetamines, but Dr. Murati reported that post-stroke testing revealed amphetamines were also present in claimant's system.

⁴ R.H. Trans. at 21-22.

⁵ Murati Depo., Ex. 2 at 4.

⁶ American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the *AMA Guides* unless otherwise noted.

⁷ Claimant was interviewed by vocational consultant, Robert Barnett, Ph.D., via telephone on August 29, 2011. Claimant was not working at the time of this meeting and was receiving Social Security Disability benefits. Dr. Barnett prepared a list of work tasks claimant performed in the 15-year period prior to the accidental injury.

a hypertensive crises [sic] due to Cocaine use. I do not believe the CVA was a result of the work related injury. However, I believe the severity of the CVA was worsened due to the Coumadin, use which was a work related issue."⁸

Dr. Murati testified at his deposition as follows:

Q. What is your opinion with respect to the cause of the CVA?

A. Well, the CVA was caused by probably a very high intracranial pressure from the use of various illegal substances, including cocaine and amphetamines. That caused the cerebral vascular accident, but the severity was worsened because he was on Coumadin, which is a blood thinner, use of which was a work-related issue from his deep vein thrombosis.⁹

When asked whether claimant's right knee surgery was responsible, in and of itself, for the CVA, Dr. Murati responded "I don't think so."¹⁰

Dr. Murati also testified:

Q. Doctor, did you see anyplace in the medical records that the order for blood thinners was discontinued prior to his stroke?

A. No. Nowhere does it say not to take it.¹¹

However, Dr. Murati admitted that the medical records he reviewed (but which are not in evidence) from December 2009 did not indicate claimant was being prescribed any blood thinning medication.¹²

PRINCIPLES OF LAW AND ANALYSIS

K.S.A. 2007 Supp. 44-501(a) states in part: "In proceedings under the workers compensation act, the burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends."

⁸ Murati Depo., Ex. 3.

⁹ *Id.* at 17-18.

¹⁰ *Id.* at 27.

¹¹ *Id.* at 34-35.

¹² *Id.* at 32.

K.S.A. 2007 Supp. 44-508(g) defines burden of proof as follows: "Burden of proof means the burden of a party to persuade the trier of facts 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."

Every direct and natural consequence that flows from a compensable injury, including a new and distinct injury, is also compensable under the Workers Compensation Act.¹³ In *Jackson*,¹⁴ the Court held:

When a primary injury under the Workmen's Compensation Act is shown to have arisen out of the course of employment every natural consequence that flows from the injury, including a new and distinct injury, is compensable if it is a direct and natural result of a primary injury. (Syllabus 1).

But the *Jackson* rule does not apply to new and separate accidental injuries. In *Stockman*,¹⁵ the Court attempted to clarify the rule:

The rule in *Jackson* is limited to the results of one accidental injury. The rule was not intended to apply to a new and separate accidental injury such as occurred in the instant case. The rule in *Jackson* would apply to a situation where a claimant's disability gradually increased from a primary accidental injury, but not when the increased disability resulted from a new and separate accident.¹⁶

In *Logsdon*,¹⁷ the Kansas Court of Appeals reiterated rules found in *Jackson*¹⁸ and *Gillig*¹⁹ and found:

Whether an injury is a natural and probable result of previous injuries is generally a fact question.

¹³ *Casco v. Armour Swift-Eckrich*, 283 Kan. 508, 154 P.3d 494 (2007); *Frazier v. Mid-West Painting, Inc.*, 268 Kan. 353, 995 P.2d 855 (2000).

¹⁴ *Jackson v. Stevens Well Service*, 208 Kan. 637, 493 P.2d 264 (1972).

¹⁵ *Stockman v. Goodyear Tire & Rubber Co.*, 211 Kan. 260, 263, 505 P.2d 697 (1973).

¹⁶ *Id.* at 263.

¹⁷ *Logsdon v. Boeing Company*, 35 Kan. App. 2d 79, Syl. ¶¶ 1, 2, 3, 128 P.3d 430 (2006); see also *Leitzke v. Tru-Circle Aerospace*, No. 98,463, unpublished Court of Appeals opinion filed June 6, 2008.

¹⁸ *Jackson v. Stevens Well Service*, 208 Kan. 637, 493 P.2d 264 (1972).

¹⁹ *Gillig v. Cities Service Gas Co.*, 222 Kan. 369, 564 P.2d 548 (1977).

When a primary injury under the Worker's Compensation Act is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury, including a new and distinct injury, is compensable if it is a direct and natural result of a primary injury.

When a claimant's prior injury has never fully healed, subsequent aggravation of that same injury, even when caused by an unrelated accident or trauma, may be a natural consequence of the original injury, entitling the claimant to post award medical benefits.

In *Casco*,²⁰ the Kansas Supreme Court stated: "When there is expert medical testimony linking the causation of the second injury to the primary injury, the second injury is considered to be compensable as the natural and probable consequence of the primary injury."

The Board finds that claimant did not sustain his burden of proof that his stroke or its results were direct and natural consequences of his right knee injury of May 23, 2007. The record supports the following conclusions:

(1) There is no evidence connecting claimant's accident to any head trauma or brain injury.

(2) There is evidence that there was some causal relationship between claimant's right knee injury or surgery and his development of DVT. Dr. Murati testified that claimant's use of Coumadin was for a work-related condition, claimant's post-operative development of DVT. In Dr. Murati's supplemental report dated December 23, 2010, he opines that claimant's DVT "may be work related if claimant's history is accurate."²¹

(3) However, assuming the DVT resulted from claimant's knee injury or surgery, Dr. Murati's opinion that claimant's use of Coumadin worsened the effect of his stroke is based on the invalid assumption that claimant was taking Coumadin when his stroke occurred. Coumadin and Lovenox were prescribed at various times for claimant's DVT, but the evidence demonstrates claimant was not taking Coumadin when he suffered the stroke. Claimant testified he was not taking Coumadin on the date of the stroke. There is evidence in Dr. Murati's narrative report, apparently gleaned from records he reviewed, that claimant was taking no blood thinning medication at all when his stroke occurred. The basis for Dr. Murati's opinion that claimant's Coumadin use worsened the effect of the stroke is based on the assumption that claimant was taking Coumadin when the stroke occurred. That assumption is unsupported by the evidence, rendering Dr. Murati's opinion on this issue improbable and unreasonable.

²⁰ *Casco v. Armour Swift-Eckrich*, 283 Kan. 508, 516, 154 P.3d 494 (2007).

²¹ Murati Depo., Cl. Ex. 2 at 4.

Further, even assuming claimant accurately testified he was switched from using Coumadin to Lovenox and that Lovenox had the same effect on the severity of claimant's stroke as Coumadin, the preponderance of the credible evidence does not support a finding that claimant was in fact taking either medication when he suffered the CVA.

(3) Claimant's CVA was not caused by his knee injury, his knee surgery, his DVT, or the blood thinning medication claimant had been prescribed. Dr. Murati testified, consistently with his supplemental report, that claimant's use of cocaine and amphetamines was the cause of his stroke.²²

(4) Claimant's stroke was not a natural and probable consequence of the knee injury or surgery, but was instead caused by an increase in claimant's intracranial pressure due to his use of cocaine and amphetamines.²³ Claimant's CVA was therefore a consequence of a new and distinct injury having nothing to do with claimant's knee injury or knee surgery.²⁴

(5) Claimant is entitled to permanent partial disability benefits based on Dr. Murati's rating of 7% to the right leg. Claimant is denied compensation with respect to his CVA.

CONCLUSIONS

(1) Claimant has not sustained his burden of proof that his stroke or its consequences were direct and natural consequences of claimant's accidental injury or surgery to the right knee. Claimant is accordingly entitled to no compensation as a result of his CVA.

(2) Claimant is awarded permanent partial disability benefits based on a 7% permanent functional impairment of the right leg.

²² It is not raised by the parties, however, the Act has specific provisions concerning cerebrovascular accidents. K.S.A. 44-501(e) provides that compensation shall not be paid in the case of coronary or coronary artery disease or cerebrovascular injury unless it is shown that the exertion of the work necessary to precipitate the disability was more than the employee's usual work in the course of the employee's regular employment.

²³ See *Carr v. Unit No. 8169*, 237 Kan. 660, 703 P.2d 751 (1985). (Respondent did not owe for bills relating to medical treatment received by claimant as a result of an overdose of pain medication prescribed for his accidental injury.)

²⁴ Although not raised by the parties, claimant's use of cocaine and amphetamines likely at least contributed to the occurrence of the stroke. Accordingly, the provisions of K.S.A. 44-501(d)(2) may apply.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Rebecca A. Sanders dated March 1, 2012, should be, and hereby is, modified in accordance with the Board's findings and conclusions set forth in this Order.

Claimant is entitled to 27.14 weeks of temporary total disability compensation at the rate of \$235.59 per week in the amount of \$6,393.91 followed by 12.10 weeks of permanent partial disability compensation, at the rate of \$235.59 per week, in the amount of \$2,850.64 for a 7% loss of use of the right leg, making a total award of \$9,244.55.

IT IS SO ORDERED.

Dated this _____ day of November, 2012.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

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