

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

TYSON R. GHERE)
Claimant)
VS.)
HUTCHINSON CORRECTIONAL FACILITY)
Respondent)
AND)
STATE SELF-INSURANCE FUND)
Insurance Fund)

Docket No. 1,044,803

ORDER

Respondent and its insurance fund (respondent) appealed the April 15, 2013, Award entered by Administrative Law Judge (ALJ) Thomas Klein, which was scheduled for oral argument on August 13, 2013. However, prior to oral argument, the Board reviewed the ALJ's Award, the entire record and the administrative file and discovered:

1. The administrative file contains a notice to take Dr. Stephanie Oberhelman's deposition filed by respondent on June 19, 2012, indicating Dr. Oberhelman's deposition would be taken on June 26.

2. The submission letters of both parties presented to the ALJ discuss Dr. Oberhelman's testimony. Claimant's submission letter lists the deposition transcript of Dr. Oberhelman, including exhibits 1 through 3 thereto, as part of the record.

3. Respondent's briefs to the Board discuss the testimony of Dr. Oberhelman.

4. Dr. Oberhelman was claimant's treating physician.

5. The ALJ's Award does not list Dr. Oberhelman's deposition and exhibits as part of the record and does not mention the name of Dr. Oberhelman in the Findings of Fact.

6. Dr. Oberhelman's deposition transcript and exhibits were not in the record received by the Board.

7. The Board consulted both parties, who agreed Dr. Oberhelman’s deposition transcript and exhibits were never sent to the ALJ. The ALJ then issued his Award without considering Dr. Oberhelman’s testimony or the exhibits attached to the doctor’s deposition transcript.

The Board finds that the ALJ did not consider Dr. Oberhelman’s testimony or the exhibits attached to the doctor’s deposition transcript before entering the Award and that Dr. Oberhelman’s testimony and the exhibits may be critical to the outcome of this claim.

WHEREFORE, the Board voids the ALJ’s April 15, 2013, Award and remands this claim to ALJ Klein to issue a new Award after considering the entire record, including Dr. Oberhelman’s deposition transcript and exhibits. Oral argument scheduled for August 13, 2013, is hereby canceled.

IT IS SO ORDERED.

Dated this ____ day of July, 2013.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

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Thomas Klein, Administrative Law Judge