

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

JEREMY LEE)	
Claimant)	
)	
VS.)	
)	
ALL THINGS EXTERIOR, INC.)	
Respondent)	Docket No. 1,044,969
)	
AND)	
)	
KANSAS BLDG. INDUSTRY WC FUND)	
Insurance Carrier)	

ORDER

Claimant requested review of the September 8, 2010 Award by Administrative Law Judge Bruce E. Moore. The Board heard oral argument on December 2, 2010. The Division's Acting Director appointed E. L. Lee Kinch of Wichita, Kansas, to serve as Board Member Pro Tem in place of Carol Foreman, who retired September 17, 2010.

APPEARANCES

Melinda G. Young of Hutchinson, Kansas, appeared for the claimant. Roy T. Artman of Topeka, Kansas, appeared for respondent and its insurance carrier.

RECORD AND STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Award. The evidentiary record also includes Dr. John P. Estivo's court ordered independent medical evaluation report dated May 28, 2010.

ISSUES

The Administrative Law Judge (ALJ) found claimant did not sustain his burden of proof that he suffered any permanent impairment of function due to his work-related injury.

Claimant requests review of the nature and extent of claimant's disability. Claimant argues that he suffered a 40 percent functional impairment as well as a 49 percent work disability based upon a 70 percent task loss and 27.5 percent wage loss.

Respondent argues claimant failed to sustain his burden of proof that he suffered any permanent impairment of function as a result of his accidental injury on March 17, 2009, and therefore the ALJ's Award should be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings of fact and conclusions of law:

Claimant was hired in late May 2008 as a warehouse inventory technician for respondent. He worked this job (loading and unloading trucks) for about a week and then was transferred to a job working for the owner. His job duties included installing windows, vinyl siding and doors as well as painting and replacing exterior trim around the windows. Claimant earned \$10 an hour in his full-time position which was 40 hours a week.

Claimant described his accident:

I was on the ladder, about six to eight feet off the ground and was working on hanging a piece of siding. And the ladder sank in the ground, caved in the front porch, and I went off to the side, and my lower back arched over steel on the ground.¹

Claimant testified he didn't have any feeling in the lower part of his body. He was transported by ambulance to a Salina hospital and then transferred to Wesley Hospital in Wichita, Kansas. Physical therapy was ordered and claimant was hospitalized for two or three days. A CT scan to his pelvis and lumbar spine did not reveal any abnormalities. A CT scan of his abdomen did not reveal any abnormalities. A chest x-ray was negative. A CT of the thoracic spine was negative. A CT of the cervical spine was negative. An MRI of the lumbar spine did not reveal any abnormalities. Claimant was discharged from the hospital and underwent physical therapy. On April 2, 2009, a nerve conduction study/EMG was performed and was determined to be a normal study to both lower extremities.

Dr. Paul Stein, a board certified neurosurgeon, performed an examination and evaluation of claimant at the request of respondent's attorney. The doctor reviewed claimant's medical history and imaging studies. Claimant told Dr. Stein that he had fully recovered from his injuries and had no complaints. Based upon his July 21, 2009 examination, the doctor found claimant did not have any neurological deficits and diagnosed claimant with transient post-traumatic paralysis with full recovery. Dr. Stein did not recommend any additional testing or medical treatment and concluded claimant was at maximum medical improvement.

¹ R.H. Trans. at 8-9.

Dr. Stein opined claimant had fully recovered from his accidental injury that occurred on March 17, 2009. Based upon the *AMA Guides*², Dr. Stein opined claimant did not sustain any permanent partial functional impairment and that no restrictions were required.

In mid July 2009, claimant began working as a laborer for a farmer. Claimant would mainly sit in a tractor or combine and also perform farm labor. He only worked until the second week in October 2009 and he earned \$7.50 an hour. Claimant worked another three weeks for a total of \$400 for a different farmer to help him finish his fall harvest.

Claimant became employed part-time by Sonic earning \$7.25 an hour. He worked approximately 36 hours in a 2-week period. Claimant only worked until the latter part of March 2010. At the time of the regular hearing, claimant was working for North Central Technical College earning \$7.25 an hour for 40 hours a week.

Claimant testified that he has lifted 75-pound bales of hay while working for a farmer which aggravated his back. He further testified that he had some soreness from it but he was able to return to work the next day. And he testified there are days when he is pain free.

Dr. Pedro Murati, board certified in physical medicine and rehabilitation, examined claimant on September 9, 2009, at the request of claimant's attorney. Dr. Murati performed a physical examination of claimant and diagnosed claimant with low back pain and status post transient myelopathy. The doctor recommended claimant continue his home exercise program for the low back pain. Based upon the *AMA Guides*, the doctor concluded claimant had a 40 percent whole person functional impairment which placed him in the Lumbosacral DRE Category IV. The doctor imposed restrictions of no lifting, carrying, pushing or pulling greater than 50 pounds and claimant should alternate sitting, standing and walking. Dr. Murati reviewed the list of claimant's former work tasks prepared by Dr. Robert Barnett and concluded claimant could no longer perform 14 of the 20 tasks for a 70 percent task loss.

Dr. Robert Barnett, a certified rehabilitation counselor, conducted a telephone interview of claimant on November 18, 2009, at the request of claimant's attorney. Mr. Barnett reviewed medical records and obtained a 15-year employment history. He prepared a task list of 20 non-duplicative tasks claimant performed in the 4 years before his injury because claimant was a full-time student and only 17 years old at the time of the accident.

After the pre-hearing settlement conference on this claim, the ALJ appointed Dr. John Estivo to perform an independent medical examination of claimant and offer opinions

² American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the *Guides* unless otherwise noted.

as to diagnosis, permanent impairment rating and restrictions. Dr. Estivo examined claimant on May 28, 2010. Claimant told Dr. Estivo that he had fully recovered and returned to the condition he was before the fall. Dr. Estivo diagnosed claimant status post lumbar spine contusion and status post transient post-traumatic paralysis with full recovery. Dr. Estivo noted that it was difficult to state why claimant had experienced temporary paralysis of his lower extremities because all of the studies were negative and there was not objective evidence to explain it. Because claimant had fully recovered, Dr. Estivo opined there was no need for further medical treatment, no basis for assessing a permanent impairment rating under the *AMA Guides* and no basis for imposing permanent restrictions on claimant's activities.

The ALJ analyzed the evidence in the following fashion:

The only issue before the court is whether Claimant has suffered any permanent impairment of function or permanent partial disability as a result of his March 17, 2009 accident. After considering all of the evidence, the court finds that Claimant has failed to sustain his burden of proof of establishing either permanent impairment of function or permanent partial disability. The credible medical evidence before the court establishes that Claimant has fully recovered from the effects of his injury. While he has occasional aches and pains, those aches and pains do not interfere with either his ability to earn a livelihood or engage in activities of daily living. Claimant does not qualify for an impairment under the *Guides*, and does not require, or observe, any permanent work restrictions. He has not suffered any loss of income as a result of his injury, and has no objective task loss.³

The Board agrees and affirms.

It must be noted that there was no dispute that claimant suffered a work-related accidental injury. Claimant simply did not meet his burden of proof that he suffered a permanent impairment as a result of his accidental injuries. Although the credible medical evidence established that claimant did not need additional medical treatment at the time of the regular hearing, claimant is not foreclosed from seeking future medical treatment, if necessary, pursuant to K.S.A. 44-510k. Nor do the findings herein preclude review and modification pursuant to K.S.A. 44-528.

AWARD

WHEREFORE, it is the decision of the Board that the Award of Administrative Law Judge Bruce E. Moore dated September 8, 2010, is affirmed in accordance with the foregoing.

³ ALJ Award (Sep. 8, 2010) at 6.

IT IS SO ORDERED.

Dated this _____ day of April, 2011.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Melinda G. Young, Attorney for Claimant
Roy T. Artman, Attorney for Respondent and its Insurance Carrier
Bruce E. Moore, Administrative Law Judge