

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

MARY K. LAWSON)	
Claimant)	
VS.)	
)	Docket No. 1,052,214
COFFEYVILLE REGIONAL MEDICAL CENTER)	
Respondent)	
AND)	
)	
KANSAS HOSPITAL ASSOCIATION WCF, INC.)	
Insurance Carrier)	

ORDER

Claimant requested review of the April 18, 2012 Award by Administrative Law Judge (ALJ) Bruce E. Moore. The Board heard oral argument on August 7, 2012.

APPEARANCES

William L. Phalen, of Pittsburg, Kansas, appeared for the claimant. Wade A. Dorothy, of Overland Park, 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. In addition, the parties stipulated at the oral argument to the Board that the Board shall consider as part of the record the IME report of Jeffrey A. Wald, M.D., generated pursuant to the November 2, 2010, referral order of ALJ Thomas Klein. The parties also stipulated at the oral argument that the record contains only one task loss opinion, Dr. Murati's 50 percent, and that claimant has suffered a 100 percent wage loss as she is not currently working. Both may be utilized if a permanent partial general (work) disability is awarded. Additionally, the parties agreed that the record contains only one functional impairment opinion, Dr. Murati's 10 percent whole person impairment which may also be used if a whole person award results. Additionally, if claimant's award is limited to two scheduled injuries pursuant to K.S.A. 44-510d, then the parties agree that claimant has suffered a 9 percent functional impairment to each upper extremity at the level of the hand.

ISSUES

The ALJ determined that claimant suffered a 9 percent functional impairment to the right upper extremity at the level of the hand and a 9 percent functional impairment to the left upper extremity at the level of the hand. The ALJ found claimant had not proven an entitlement to an award of either a whole person permanent disability or a permanent total disability.

Claimant contends that she sustained permanent injury to her skin because she was required to work with her hands in chemical solutions. Claimant further contends that since the skin is an organ covering the entire body, she is entitled to a whole body permanent partial functional impairment of 10 percent and a 75 percent permanent partial general (work) disability pursuant to K.S.A. 44-510e. In the alternative, if claimant is found to have two scheduled injuries, she should be found to be permanently and totally disabled based on the presumption created in *Casco*¹. The issues before the Board include the nature and extent of claimant's injuries and disability and whether claimant is entitled to a work disability or in the alternative, is permanently and totally disabled.

Respondent argues that the ALJ's Award should be affirmed.

FINDINGS OF FACT

Claimant began working for respondent in November 2005 as a housekeeper. Her job required her to wear latex gloves to protect her hands from the chemicals used to clean the patients' rooms in the hospital. She testified that although she wore gloves, sometimes the chemicals got inside the gloves. Claimant had her hands in and out of gloves and cleaning solution all day.

Claimant's job duties included wiping down the walls and beds in the rooms and scrubbing the floors, toilets and showers. In the course of completing these tasks, she developed problems with her hands. Claimant testified that her hands started to get calloused and would itch, crack, and bleed and her skin would shed. As time progressed, claimant's problems with her hands got worse. She testified that she reported these problems to her supervisor.

Claimant was sent to an infectious disease nurse at the hospital and was diagnosed with an allergic reaction to the cleaning solution and the latex gloves. Claimant was told that if she couldn't perform the duties of the job she should find somewhere else to work. Claimant continued to work, wearing the latex gloves and using the same cleaning solution. Her symptoms continued to get worse to the point where she had no skin on the tips of her fingers.

¹ *Casco v. Armour Swift-Eckrich*, 283 Kan. 508, 154 P.3d 494, *reh. denied* (May 8, 2007).

Claimant requested medical treatment from respondent, but was ignored. On February 19, 2010, claimant sought medical treatment on her own and saw physician's assistant, Kim Speaks, at the Coffeyville Doctors Clinic. Claimant reported that around this time, respondent changed the cleaning solution and her symptoms became worse. Ms. Speaks diagnosed claimant with contact dermatitis and prescribed a medicated cream for claimant to apply and instructed her to use cotton gloves at night and to use thicker gloves at work. Claimant took this information back to respondent and was given different gloves to use, but the new gloves didn't help.

Claimant's employment was terminated on April 19, 2010. She testified that she had been requesting medical treatment before she was terminated. Claimant testified that before she was terminated she had to have others help her with her work.

After claimant's employment was terminated she was sent to Dr. Sandhu on August 19, 2010. Dr. Sandhu diagnosed contact dermatitis and referred claimant to a dermatologist. After respondent rejected the referral to a dermatologist, claimant's attorney sent claimant to board certified physical medicine and rehabilitation specialist Pedro A. Murati, M.D. The ALJ also sent claimant to Dr. Jeff Wald, an allergist, on December 9, 2010. Dr. Wald diagnosed contact dermatitis and prescribed two medicated creams and an ointment.

Claimant continues to have problems with her hands. They continue to itch and crack, and she has healing sores all over her hands and fingers. These sores have opened up and are weepy and pussy before they start to heal. Claimant's hands were described as looking sunburned with dead, dry skin peeling off. Underneath the skin is cracked and red. Claimant testified that she has a lot of pain and has difficulty gripping things.

Claimant does not feel she could do any job that requires her to use her hands. Although claimant's termination ceased her exposure to the chemicals, thus lessening the severity of her symptoms, she continues to have difficulty and feels that she is permanently disabled. Claimant testified that her hands are so bad the itching keeps her up at night, which leaves her tired during the day and forces her to take naps during the day.

Claimant doesn't do any household cleaning at her house anymore and her family uses unscented and dye-free detergents. She denies any prior problems with her hands before going to work for respondent. Claimant has not worked since being terminated.

Claimant was referred by her attorney to Dr. Murati, for an examination on October 11, 2010. She had complaints of brittle, cracking and bleeding hands, difficulty dressing without pain, increased pain after washing hands, difficulty holding hands, cutting food or cleaning without pain, occasional numbness, tingling and burning, itching of both hands and inability to work using hands. Claimant denied any previous injuries to her hands.

Dr. Murati noted that claimant had a papular rash in the bilateral palms and thumbs and the dorsal aspect of the right first, second, third and fifth digits as well as the dorsal aspect of the left first digit, that appears to be resolving.

Dr. Murati diagnosed claimant with contact dermatitis. Dr. Murati recommended that claimant avoid cleaning fluids and latex products and that claimant see an allergy specialist for further testing and treatment. He opined that claimant's diagnosis was, within reasonable medical probability, a direct result of the work-related injury with was sustained each and every working day through April 19, 2010.

Claimant met with Dr. Murati for another examination on March 28, 2011. At this time, claimant had complaints of itchiness in both hands, lack of healing in her hands, inability to do anything with her hands, she couldn't cook due to the heat of the stove, couldn't use hand sanitizer due to burning, couldn't use rubber glove because of sweating, had a hard time dressing without pain and was having a hard time finding a job.

Dr. Murati again noted that claimant had open sores on her hands and that the skin on her hands was reddened and small blisters were evident.

Dr. Murati again diagnosed claimant with contact dermatitis. He imposed the restriction of avoiding cleaning fluids and recommended claimant follow up with a dermatologist. Based upon the findings of Dr. Wald, Dr. Murati no longer restricted claimant from contact with latex. He again opined that claimant's diagnosis was, within reasonable medical probability, a direct result of the work-related injury with was sustained each and every working day through April 19, 2010.

Dr. Murati assigned to the claimant a 10 percent impairment to the body as a whole for the contact dermatitis, a skin disorder. Dr. Murati gave claimant a whole person impairment because the skin is the largest organ on the body and he contends that, pursuant to the AMA Guides, 4th ed., ratings for disorders of the skin are not based upon the situs of the disorder in the body. He testified that if claimant were found to have two scheduled injuries instead of a whole body impairment, then her impairment would be 9 percent to each hand. Dr. Murati opined that claimant was going to be in need of continuous future medical care with a dermatologist.

Claimant was referred by the ALJ to board certified allergy and asthma specialist Jeffrey A. Wald, M.D., for a court ordered IME, on December 9, 2010. Dr. Wald tested claimant for latex sensitivity and found claimant to be negative on all seven exams. He diagnosed hand dermatitis, triggered at work. He noted the condition perpetuated even after claimant left work. Dr. Wald suspected underlying eczema, which would explain the continuation of her problem. He found the eczema was worsened by claimant's workplace exposure. He opined that with proper medical care, this should not be an ongoing disability. He recommended that claimant avoid contact with chemical irritants, use rubber

gloves with cotton liners, and provided medicated creams for twice daily application, after which she should cover her hands with cotton gloves.

Claimant was referred by her attorney to vocational specialist, Karen Crist Terrill, for a telephone evaluation, on June 29, 2011. Ms. Terrill developed a list of tasks performed by claimant during the 15 years preceding her April 19, 2010 accident. This task list was then presented to Dr. Murati, who determined that, of the 36 tasks on the list, claimant was unable to perform 18, for a 50 percent task loss.

PRINCIPLES OF LAW AND ANALYSIS

In workers compensation litigation, it is the claimant's burden to prove his or her entitlement to benefits by a preponderance of the credible evidence.²

The burden of proof means the burden of a party to persuade the trier of fact 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.³

K.S.A. 44-510d states in part:

(a)(11) For the loss of a hand, 150 weeks.

(23)(b) Whenever the employee is entitled to compensation for a specific injury under the foregoing schedule, the same shall be exclusive of all other compensation except the benefits provided in K.S.A. 44-510h and 44-510i and amendments thereto, and no additional compensation shall be allowable or payable for any temporary or permanent, partial or total disability, except that the director, in proper cases, may allow additional compensation during the actual healing period, following amputation. The healing period shall not be more than 10% of the total period allowed for the scheduled injury in question nor in any event for longer than 15 weeks. The return of the employee to the employee's usual occupation shall terminate the healing period.

Scheduled injuries are the general rule and nonscheduled injuries are the exception. K.S.A. 44-510d calculates the award based on a schedule of disabilities. If an injury is on the schedule, the amount of compensation is to be in accordance with K.S.A. 44-510d.⁴

² K.S.A. 44-501 and K.S.A. 44-508(g).

³ *In re Estate of Robinson*, 236 Kan. 431, 690 P.2d 1383 (1984).

⁴ *Casco v. Armour Swift-Eckrich*, 283 Kan. 508, , Syl. ¶ 7, 154 P.3d 494, *reh. denied* (May 8, 2007).

Claimant contends that the involvement of her skin in her accidental injury generates a whole body situation. Claimant contends that the skin is an organ, covering the entire body, therefore any involvement with the skin would automatically create a whole body award situation. However, in every case cited by claimant, there was a whole body element contained in the injury and disability. In *Chappell*⁵ the claimant suffered a hernia, which is a scheduled injury. However, the problems associated with the surgical scar on the trunk of the body changed the character of the award from a scheduled injury to a whole body disability. In *Massoni*⁶ the claimant suffered a burn injury to his right calf. The donor graft of skin came from the claimant's left hip, a part of the trunk and generated entitlement to a whole body award. In *Webber*⁷ an injury to the claimant's eye also caused damage to the skin surrounding the eye. That skin was a part of the claimant's face, a body part not contained in K.S.A. 44-510d. It was the whole body component of the injury that led to the whole body award, not the involvement of the eye.

Here, claimant's skin injuries are limited to the hands, which are clearly listed as scheduled injuries in K.S.A. 44-510d. Claimant has cited no case or statutory authority which would allow a whole body award due solely to damage to the skin on a scheduled injury body part. The Kansas Supreme Court, in *Casco*⁸ determined that scheduled injuries are the general rule and nonscheduled injuries are the exception. If an injury is on the schedule, the amount of compensation is to be in accordance with K.S.A. 44-510d⁹. Hands are clearly listed on the statutory schedule. Claimant's argument on this issue fails. Claimant suffered injuries to her hands and her entitlement to an award is controlled by K.S.A. 44-510d. As the parties stipulated that claimant suffered a 9 percent functional impairment to each upper extremity at the level of the hand, the award of the ALJ granting same is affirmed.

K.S.A. 44-510c(a)(2) states:

Permanent total disability exists when the employee, on account of the injury, has been rendered completely and permanently incapable of engaging in any type of substantial and gainful employment. Loss of both eyes, both hands, both arms, both feet, or both legs, or any combination thereof, in the absence of proof to the contrary, shall constitute a permanent total disability. Substantially total paralysis, or incurable imbecility or insanity, resulting from injury independent of all

⁵ *Chappell v. Goodyear Tire & Rubber Co.*, No. 1,027,227, 2008 WL 2002918 (WCAB Apr. 30, 2008).

⁶ *Massoni v. City of Liberal*, No. 1,029,645, 2008 WL 5484148 (WCAB Dec. 31, 2008).

⁷ *Webber v. Automotive Controls Corp.*, 272 Kan. 700, 35 P.3d 788 (2001).

⁸ *Casco v. Armour Swift-Eckrich*, 283 Kan. 508, 154 P.3d 494, *reh. denied* (May 8, 2007).

⁹ *Id.*, Syl. ¶ 7.

other causes, shall constitute permanent total disability. In all other cases permanent total disability shall be determined in accordance with the facts.¹⁰

No expert who testified in this matter has stated that claimant is permanently and totally disabled. Dr. Murati, claimant's hired expert, has restricted claimant from contact with cleaning fluids. That is claimant's only current restriction and it doesn't render claimant unemployable. Additionally, of the 36 tasks on Ms. Terrill's list, Dr. Murati determined that claimant is able to perform 18. While the task loss is not at issue when dealing with a scheduled injury award, the fact that claimant continues to be able to perform 18 of 36 tasks is evidence that she is not permanently and totally disabled.

Casco states in part:

When the workers compensation claimant has a loss of both eyes, both hands, both arms, both feet, or both legs or any combination thereof, the calculation of the claimant's compensation begins with a determination of whether the claimant has suffered a permanent total disability. K.S.A. 44-510c(a)(2) establishes a rebuttable presumption in favor of permanent total disability when the claimant experiences a loss of both eyes, both hands, both arms, both feet, or both legs or any combination thereof. If the presumption is not rebutted, the claimant's compensation must be calculated as a permanent total disability in accordance with K.S.A. 44-510c.

When the workers compensation claimant has a loss of both eyes, both hands, both arms, both feet, both legs, or any combination thereof and the presumption of permanent total disability is rebutted with evidence that the claimant is capable of engaging in some type of substantial and gainful employment, the claimant's award must be calculated as a permanent partial disability in accordance with K.S.A. 44-510d.¹¹

The rebuttable presumption analyzed in *Casco* is rebutted by the fact claimant has only the one restriction, that she can still perform 18 of 36 former tasks and the fact no expert, medical or vocational, has found claimant is permanently and totally disabled. Claimant's permanent partial disability award is limited to her functional impairment of 9 percent to each upper extremity at the level of the hand.

CONCLUSIONS

Having reviewed the entire evidentiary file contained herein, the Board finds the Award of the ALJ should be affirmed.

¹⁰ K.S.A. 44-510c(a)(2).

¹¹ *Casco v. Armour Swift-Eckrich*, 283 Kan. 508, Syl. ¶ 8, 9, 154 P.3d 494, *reh. denied* (May 8, 2007).

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Bruce E. Moore dated April 18, 2012, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of August, 2012.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: William L. Phalen, Attorney for Claimant
wlp@wlphalen.com

Wade A. Dorothy, Attorney for Respondent and its Insurance Carrier
wade@thedorothyfirm.com

Bruce E. Moore, Administrative Law Judge