

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

**WILLIAM B. GROB** )  
Claimant )  
VS. )  
**CARDINAL LOGISTICS MGMT. CORP.** )  
Respondent )  
AND )  
**AMERICAN ZURICH INSURANCE CO.** )  
Insurance Carrier )

Docket Nos. **1,056,801 &  
1,056,802**

**ORDER**

Respondent and its insurance carrier (respondent) request review of the November 5, 2012, Award by Administrative Law Judge (ALJ) William G. Belden. The Board heard oral argument on April 3, 2013.

**APPEARANCES**

Judy A. Pope of Leawood, Kansas, appeared for claimant. Samantha N. Benjamin-House of Kansas City, Kansas, appeared for respondent.

**RECORD AND STIPULATIONS**

The Board has considered the entire record and adopts the stipulations listed in the Award.

**ISSUES**

The ALJ found claimant sustained personal injury by accident arising out of and in the course of his employment in both pending claims. In Docket No. 1,056,802, the ALJ found claimant did not provide respondent with timely notice of his November 30, 2010, accident. That claim was accordingly denied.

In Docket No. 1,056,801, the ALJ found notice of claimant's March 30, 2011, accident was timely provided. In the March 30, 2011 claim, Mr. Grob was awarded permanent partial disability (PPD) based on a 65.6% work disability from March 31, 2011, to April 30, 2012, followed by a 60.6% work disability from May 1, 2012, to July 15, 2012, followed by a 65.6% work disability as of July 16, 2012.

Respondent contends: (1) claimant did not sustain personal injury by accident arising out of and in the course of his employment; (2) claimant did not provide timely notice; (3) the ALJ erred in determining the nature and extent of claimant's disability; (4) the ALJ erred in finding respondent liable to pay medical expenses incurred by claimant; (5) claimant is not entitled to unauthorized medical; and, (6) claimant is not entitled to future medical. Respondent urges the Board to find both claims not compensable.

Claimant maintains he is entitled to temporary total disability (TTD) from March 31, 2011, to August 28, 2011. Claimant further argues he suffered a 2.5% permanent functional impairment for the alleged accidental injury on November 10, 2010, and is permanently and totally disabled due to the alleged accidental injury on March 30, 2011. In the alternative, claimant requests the ALJ's Award be affirmed.

The issues<sup>1</sup> the Board is asked to consider are:

- 1) Did claimant sustain personal injury by accident arising out of and in the course of his employment?
- 2) Did claimant provide timely notice?
- 3) Is claimant entitled to TTD from March 31, 2011 to August 28, 2011?
- 4) What is the nature and extent of claimant's disability?
- 5) Is respondent liable to pay medical expenses incurred by claimant?
- 6) Is claimant entitled to unauthorized medical?
- 7) Is claimant entitled to future medical treatment?

#### **FINDINGS OF FACT**

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

---

<sup>1</sup> At oral argument, counsel for respondent withdrew an issue contesting the ALJ's jurisdiction to award benefits.

Claimant, William B. Grob, who worked primarily as a truck driver for 32 years, commenced employment for respondent as a truck driver on May 2, 2010. Claimant also had work experience as an equipment operator.

Claimant described the November 30, 2010, accident as follows:

We haul mattresses and box springs and they were packed in the trailer, real tight packed in the trailer. I reached up on top to get them out and they were packed in there so tight, I had to keep yanking and yanking to get them out of the trailer. And when they finally come out, then the pile collapsed on top of me.<sup>2</sup>

Claimant was knocked to the ground by three or four mattresses and sustained head and neck injuries. Claimant testified he reported the accident the following day to Linda Ames, respondent's dispatcher and claimant's supervisor. No treatment was authorized.

In January 2011, claimant sought treatment on his own with Dr. Charles Sullivan, his primary care physician, for headaches and neck pain. Dr. Sullivan took claimant off work and ordered a cervical MRI scan. The MRI was conducted on March 15, 2011, and revealed claimant had a bulging disk at C6-7. In order to return to work, claimant had to take a DOT physical in March 2011. Claimant passed the physical.

On March 30, 2011, claimant was involved in another work-related accident in which he was again knocked to the ground while unloading mattresses, seven of which landed on top of him. Claimant injured his neck. On March 31, 2011, claimant sought treatment at the emergency room of Lourdes Hospital in Paducah, Kentucky. Claimant called respondent from the emergency room and advised Linda Ames of his accident. Respondent authorized no treatment.

Claimant returned to see Dr. Sullivan, who referred him to Dr. Charles Striebinger, a board certified neurosurgeon. On April 5, 2011, claimant was evaluated by Dr. Striebinger, who diagnosed C7 radiculopathy on the left, secondary to a herniated nucleus pulposis at C6-7, with a protrusion over the nerve root at that level. He recommended surgery. At his July 31, 2012 deposition, Dr. Striebinger testified:

Q. Now, during that first visit, Doctor, did you come to a conclusion about whether there was a change in Mr. Grobe's [sic] condition from the date the MRI was taken in mid March until you examined him in your office on April 5th, 2011?

A. There was definitely a change in his symptom complex from the time the MRI was done until the time I saw him in the office, absolutely.

---

<sup>2</sup> R.H. Trans. at 11.

Q. Okay. And was that change for the better or for the worse?

A. His symptoms became markedly -- they were markedly worse.<sup>3</sup>

On April 8, 2011, Dr. Striebinger performed a complete anterior cervical discectomy and herniated fragment resection at C6-7, with a fusion at the same level. The fusion included interbody bone grafting and application of an anterior cervical plate.

Claimant received post-surgical treatment from Dr. Striebinger. Claimant's final visit with the doctor was on May 19, 2011. An x-ray was taken of claimant's neck to verify the placement of the cervical plate and bone graft. Upon physical examination, Dr. Striebinger found claimant still had numbness in his fingers and motor weakness. Claimant's pain had improved.

Claimant requested that Dr. Striebinger release him at maximum medical improvement (MMI). Dr. Striebinger referred claimant for a functional capacity evaluation (FCE). On June 9, 2011, claimant called Dr. Striebinger's office and requested a rating. The FCE was conducted on June 17, 2011.

Claimant repeated his DOT physical after the March 30, 2011, accident and he did not pass. Claimant was off work from March 31, 2011, until he began working part-time for another employer on August 29, 2011. Claimant received no TTD while he was off work. The part-time job lasted only a few months. On October 17, 2011, respondent terminated claimant's employment. Claimant suffered a stroke on October 31, 2011. From May 2012 to July 10, 2012, claimant earned approximately \$100 per week mowing lawns. Claimant was not engaged in substantial gainful employment when he testified at the July 10, 2012, regular hearing. Claimant was approved to receive social security disability benefits.

On December 1, 2011, Dr. William Hopkins, a board certified orthopedic surgeon, performed a medical evaluation at the request of claimant's attorney. The doctor reviewed medical records, took a history and performed a physical examination. Dr. Hopkins determined claimant had reached MMI. Dr. Hopkins opined claimant sustained a 25% permanent impairment of function to the whole body based on Cervicothoracic Category IV of the *AMA Guides*.<sup>4</sup> Dr. Hopkins attributed 2.5% impairment to the November 2010 accident and the remaining 22.5% to the March 2011 accident.

Dr. Hopkins imposed permanent restrictions of no overhead lifting greater than 20 pounds and no repetitive bending or heavy lifting. Dr. Hopkins reviewed a list of work tasks

---

<sup>3</sup> Striebinger Depo. at 6-7.

<sup>4</sup> 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.

prepared by Dr. Robert Barnett, a clinical psychologist and vocational counselor. Dr. Hopkins opined claimant could no longer perform 3 of the 8 tasks for a 37.5% task loss.

According to Dr. Hopkins, claimant developed radicular complaints into his left arm and required surgery due to the work-related accident of March 30, 2011. Both of claimant's work-related accidents caused injury to the cervical spine.

Dr. Chris Fevurly is board certified in internal medicine, preventive medicine, occupational medicine, independent medical examination and disability evaluation. At the request of respondent's attorney, Dr. Fevurly evaluated claimant on February 6, 2012. The doctor reviewed medical records, took a history and performed a physical examination. Dr. Fevurly's diagnosis was degenerative disk disease at multiple levels, disk protrusions at C5-6 and C6-7, central canal stenosis and C7 radiculopathy. Claimant had achieved MMI. Dr. Fevurly testified at his August 29, 2012 deposition:

Q. Based upon your experience and your decades of being a physician, your evaluation of the claimant, the review of the medical records that you were provided, what is your opinion regarding causation analysis and the claimant's neck symptoms that were ultimately operated on by Dr. Striebinger?

A. Well, I think the medical records really don't support a claim that, you know, either one of these two events was a significant contributor to his neck complaints. I do believe that the degenerative disk disease and cervical disk herniation with radiculopathy resulted really just from degenerative disk disease and not specifically from a single event either in November 2010 or March 2011. Now, that's based on the fact that the records made very little mention or no mention of these work events and Mr. Grob really is unable to pinpoint if either event was the onset of his neck pain or if they add any contribution at all at least in his memory, so I think that the predominant reason he developed the radiculopathy is his age and degenerative disk disease.<sup>5</sup>

Based on the *AMA Guides*, Dr. Fevurly placed claimant in DRE Cervicothoracic Category III and rated claimant's permanent impairment at 15% to the whole body due to C7 radiculopathy. Dr. Fevurly imposed physical restrictions of no lifting greater than 70 pounds occasionally and no prolonged overhead work or overhead lifting.

Dr. Fevurly reviewed Dr. Barnett's list of work tasks claimant performed in the relevant 15-year period and concluded claimant could no longer perform 2 of the 8 tasks for a 25% percent task loss.

---

<sup>5</sup> Fevurly Depo. at 23-24.

There is no evidence claimant experienced neck symptoms or received treatment for his neck before the first alleged accidental injury.<sup>6</sup> Claimant had not been treated for dizziness, headaches, or tingling and numbness down the left arm before the November 30, 2010, accident.

Linda Ames, respondent's account manager, dispatcher and supervisor, testified she talks to respondent's truck drivers at least two or three times a day. All drivers had been requested to contact Ms. Ames if they had a work-related injury. Ms. Ames testified claimant did not tell her of any work-related injuries between November 2010 and March 2011.

On February 22, 2011, Ms. Ames had a meeting with claimant for failure to follow procedures and non-communication. Ms. Ames testified that at the meeting, claimant threatened to quit. Claimant received an oral warning and was suspended until he had received medical treatment and a return to work slip. On March 22, 2011, claimant returned to work performing his normal job.

On or about April 6, 2011, an employer's report of accident was filled out by Vicki Burge, the workers compensation contact for respondent. The report referred to an accident on March 30, 2011, in Paducah, Kentucky. The description in the report of how the accident occurred is unclear because it stops in mid-sentence. Claimant received a letter from the carrier dated April 7, 2011 which referred to a "[d]ate of accident: 03-30-2011."<sup>7</sup> The letter requested claimant to provide answers to some written questions. The questions are not in the record. Claimant received another letter from the carrier, also dated April 7, 2011, in which claimant was requested to provide a signed medical authorization and a "[s]tatement of [f]acts."<sup>8</sup>

On May 10, 2012, claimant was examined by Dr. James Appelbaum, a neurologist, pursuant to the ALJ's April 19, 2012 Order appointing him as neutral physician. Dr. Appelbaum did not address causation. He found there was no documentation of impairment before November 30, 2010. Dr. Appelbaum opined claimant had no impairment to the cervical spine, but found minor loss of cervical range of motion. The doctor imposed a restriction consisting of no lifting over 50 pounds overhead more than three minutes at a time. Dr. Appelbaum's opinion about claimant's impairment made no reference to the *AMA Guides*.

---

<sup>6</sup> *Id.* at 32.

<sup>7</sup> R.H. Trans., CI's Ex 2.

<sup>8</sup> Ames Depo., Ex. 6.

**PRINCIPLES OF LAW AND ANALYSIS**

The ALJ's Award is affirmed in all respects. The findings of fact set forth in the Award are fully supported by a preponderance of the credible evidence. Those findings, as supplemented by the findings in this Order, are adopted by the Board and are incorporated by reference into this Order. The ALJ's conclusions of law are supported by the evidence and the Kansas Workers Compensation Act. Those conclusions are likewise adopted by the Board and are incorporated into this Order.

**CONCLUSIONS OF LAW**

1) Claimant sustained personal injury by accident arising out of and in the course of his employment on November 30, 2010, (Docket No. 1,056,802) and on March 30, 2011, (Docket No. 1,056,801).

2) Claimant did not provide timely notice pursuant to K.S.A. 2010 Supp. 44-520 in Docket No. 1,056,802. Compensation is accordingly denied in that claim. Claimant did provide timely notice in Docket No. 1,056,801.

3) Claimant is not entitled to TTD benefits from March 31, 2011, to August 28, 2011.

4) Claimant's permanent impairment of function is 20% to the whole body. Claimant is entitled to receive permanent PPD based on a work disability of 65.6% from March 31, 2011, to April 30, 2012; a 60.6% work disability from May 1, 2012, to July 15, 2012; and a work disability of 65.6% commencing on July 16, 2012. Claimant is not permanently and totally disabled.

5) Respondent is liable to pay medical expenses incurred by claimant following the March 30, 2011, accident as authorized medical treatment, as detailed in the Award.

6) Claimant is entitled to unauthorized medical as set forth in the Award.

7) Claimant is entitled to future medical treatment as set forth in the Award.

As required by the Workers Compensation Act, all five members of the Board have considered the evidence and issues presented in this appeal.<sup>9</sup> Accordingly, the findings and conclusions set forth above reflect the majority's decision and the signatures below attest that this decision is that of the majority.

---

<sup>9</sup> K.S.A. 2010 Supp. 44-555c(k).

**AWARD**

**WHEREFORE**, it is the Board's decision that the Award of ALJ William G. Belden dated November 5, 2012, is affirmed in all respects.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of July, 2013.

\_\_\_\_\_  
BOARD MEMBER

\_\_\_\_\_  
BOARD MEMBER

\_\_\_\_\_  
BOARD MEMBER

- c: Judy A. Pope, Attorney for Claimant.  
judypopelaw@yahoo.com  
Samantha N. Benjamin-House, Attorney for Respondent and its Insurance Carrier.  
sbenjamin@mvplaw.com; mvpkc@mvplaw.com  
Honorable William G. Belden,