

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

MIKE D. ERDLEY)
Claimant)
v.)
) Docket No. 1,068,534
HIAWATHA IMPLEMENT COMPANY, INC.)
Respondent)
and)
)
MIDWEST INSURANCE COMPANY, INC.)
Insurance Carrier)

ORDER

Respondent requests review of the October 26, 2015, Award by Administrative Law Judge (ALJ) Steven M. Roth. The Board heard oral argument on February 18, 2016.

APPEARANCES

Jeff K. Cooper, of Topeka, Kansas, appeared for claimant. Daniel J. Lobdell, of Kansas City, Kansas, appeared for respondent and insurance carrier (respondent).

RECORD AND STIPULATIONS

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

ISSUES

The ALJ found claimant sustained personal injury by repetitive trauma, with a date of injury by repetitive trauma of April 30, 2013, that arose out of and in the course of his employment, and that his repetitive trauma was the prevailing factor in causing his injury.¹ The ALJ also found claimant sustained a permanent whole body functional impairment of 25 percent and awarded permanent partial disability benefits (PPD) based on that finding. The ALJ ruled the \$600 respondent paid to claimant per year for the purchase of work tools was not “additional compensation,”² and was therefore excluded in computing claimant’s average weekly wage (AWW). The ALJ further found claimant is entitled to unauthorized and future medical compensation.

¹ Counsel advised at oral argument these findings are not in dispute.

² K.S.A. 2013 Supp. 44-511(a)(2)(A).

Respondent contends the ALJ erred by placing excessive weight on the opinions of Dr. Parmet, instead of the opinions of Dr. Zarr, and by mistakenly believing Dr. Parmet was a court appointed neutral physician. Respondent argues Dr. Zarr correctly limited his rating to claimant's upper extremities, and that Drs. Parmet and Koprivica erroneously found claimant's skin disorder was a whole body injury. Respondent maintains Dr. Parmet did not follow the *AMA Guides*³ in assessing claimant's impairment, and the need for future medical treatment was not proven. Respondent requests the Board modify the Award to adopt Dr. Zarr's 5 percent rating, and deny future medical treatment.

Claimant contends Drs. Parmet and Koprivica are board certified in occupational medicine, whereas Dr. Zarr has no training in dermatology or in the use of the *Guides*. Claimant maintains Dr. Zarr's opinions lack credibility, and that Dr. Zarr conceded he was confused in applying the *Guides* and, because of his confusion, had to seek guidance from respondent's counsel. Claimant also argues the ALJ erred in excluding the yearly \$600 tool allowance in computing the AWW because the purchase and use of tools were essential to claimant's work. Claimant requests the Board affirm the ALJ's Award, except the ALJ's finding regarding the AWW.

The issues are:

1. What is the nature and extent of claimant's disability?
2. Is claimant entitled to future medical treatment and unauthorized medical?
3. Should claimant's tool allowance be included in his AWW?

FINDINGS OF FACT

Claimant was 42 years old when he testified at the June 18, 2015, regular hearing, and had been employed by respondent as a small engine technician. Claimant disassembled and repaired engines and other equipment, and his job exposed him to gasoline and solvents. According to claimant, he was exposed to solvents 70 to 80 percent of his work day. Claimant worked for respondent, and the business' previous owner, for approximately 10 years. According to claimant, he worked with the same kinds of chemicals during the entire 10-year period. He denied any history of allergies. Respondent did not require claimant wear gloves, but he nevertheless paid for and wore them. Claimant wore a short-sleeved uniform that left his forearms uncovered.

Respondent paid claimant a yearly \$600 tool allowance, with which he always purchased tools for work.

³ 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. At oral argument, counsel agreed the Board could consider the *AMA Guides*, and the Board has done so.

In the spring of 2013, claimant developed skin discoloration on his hands, with burning and itching sensations that eventually extended almost up to his armpits. Claimant's skin deteriorated, with cracking, bleeding and oozing, and he developed a MRSA infection. Claimant went to the emergency room several times and was hospitalized for his injuries. He was sent by respondent to the University of Kansas Medical Center, where Dr. Lucy Liu, a specialist in dermatology, treated him for occupational dermatitis. According to claimant, when he was released, Dr. Liu imposed permanent restrictions of no exposure to gasoline, oil, solvents and carcinogens.

Claimant felt he could not return to his work for respondent because he feared additional chemical exposures would cause his symptoms to worsen. On approximately July 1, 2013, claimant was sent home by respondent. When claimant put fuel into his lawn mower or vehicle, his hands became tingly, with burning or itching sensations, causing him to immediately wash his hands. Claimant avoided getting gasoline on his hands, and even gasoline vapor caused a recurrence of symptoms.

Claimant testified he does not currently experience pain or other symptoms in his hands. However, his hands are dry and he uses lotion, and avoids exposure to oil, solvents and gasoline. Claimant denied regularly using lotion prior to his injuries. Claimant had callus type formations on his hands that he attributed to his workplace exposure. Claimant currently uses lotion on his hands before work, at lunch, after work and, at times, before bedtime.

Claimant saw Dr. Parmet and Dr. Koprivica at his attorney's request. Claimant asserted both doctors opined he should not return to the work he performed for respondent.

Allen J. Parmet, M.D., is a physician board certified in occupational and aerospace medicine, with experience in evaluating and treating dermatology issues, including allergic contact dermatitis. Fifty percent of Dr. Parmet's practice consists of treating patients and 50 percent performing IMEs for workers compensation claims and, occasionally, personal injury claims. Dr. Parmet's evaluations are one-third for claimants, one-third for respondents, and one-third as a neutral physician. Dr. Parmet is not board certified in dermatology or immunology and is not an allergist. He taught occupational medicine in a post-graduate setting and in the military.

Dr. Parmet evaluated claimant on February 26, 2015. The doctor took a history, reviewed medical records and performed a physical examination. Claimant reported he developed discoloration of his skin below shirt sleeve level, encompassing his hands, with reddening, a rash and painful skin cracks. Dr. Parmet testified those symptoms were consistent with allergic contact dermatitis.

Dr. Parmet diagnosed occupational dermatitis, caused by claimant's exposure to chemicals in the workplace, particularly petroleum-based solvents. Dr. Parmet imposed permanent restrictions to avoid exposure to triggering agents, including petroleum

products, lubricants, gasoline and diesel fuel. In Dr. Parmet's opinion, if claimant is exposed to the restricted substances, he will require treatment, consisting of topical steroids and drying agents.

Dr. Parmet testified, based on the *Guides*, claimant was on the border between Class 2 and Class 3 of skin disorders, and rated him at 25 percent permanent whole person impairment of function.

James S. Zarr, M.D., a specialist in physical medicine and rehabilitation, saw claimant on July 29, 2015, at the request of respondent. Dr. Zarr testified he had no specialized training in dermatology, occupational medicine, and in the use of the *Guides*.

Dr. Zarr reviewed medical records, took a history and performed a physical examination. Dr. Zarr diagnosed contact dermatitis of both arms, with occasional flare-ups on the palms of the hands, caused by chemical exposure at his employment. The substance causing the flare-ups was gasoline. Dr. Zarr testified the medical records indicated claimant had serious cracking in his skin that led to a MRSA infection. Claimant was not experiencing symptoms at the time he saw Dr. Zarr.

Dr. Zarr determined claimant had reached maximum medical improvement. However, he recommended claimant use a cream, Clobetasol, as needed for his flare-ups, about every one to two weeks.

Dr. Zarr rated claimant at 5 percent permanent functional impairment, but it is unclear whether his rating is to the upper extremities or to the whole person. The doctor testified:

Q. Okay. And I believe, did you testify, did you find that he sustained 5 percent to the body as a whole?

A. Yes.

Q. Okay. In looking at your report - -

A. I didn't really know how to distinguish that because of the way the table reads.

Q. Okay.

A. It reads zero. I just assumed that those were whole body ratings.

Q. Okay.

A. Even though it's really just arms and hands and really just hands now.

Q. Okay.

A. But originally it involved both arms, and I didn't know if the table would apply to just parts of extremities, so . . .

Q. Okay.

A. I have to admit I was a little confused.

Q. Okay, so while your report states that it's 5 percent to both upper extremities, if I understand your testimony today that after reviewing the tables, you believe it to be 5 percent to the whole body?

A. Well, I had said that in the report, 5 percent of the whole body. Oh, no, I didn't. I said 5 percent of both arms at the level of the hands. I'm sorry.

Q. Okay.

A. Yeah. I did it correctly on the report.

Q. Okay. So you do believe it to be 5 percent to the hands?

A. Yeah, yeah. I didn't - - maybe you can help me on that table. Is that - - can that be applied to just extremities and not whole body, or are those ratings whole bodies?

I just assume you could apply it to hands, so I guess the judge will help us decide.⁴

Dr. Zarr imposed permanent restrictions to avoid gasoline and similar chemical solvents.

Dr. Zarr reviewed the reports of Drs. Parmet and Koprivica and testified he disagreed that claimant sustained a 25 percent impairment because claimant was not limited in his activities of daily living. Dr. Zarr testified a job is not a part of a person's activities of daily living, and that activities of daily living refers to such things as dressing, grooming, toileting, and bathing. On cross-examination, Dr. Zarr conceded claimant's condition does interfere with his activities of daily living, which include, by definition, work activities.⁵

Preston Brent Koprivica, M.D., is board certified in occupational medicine, and met with claimant on November 3, 2015. The doctor has considerable training and experience in using the *Guides*. Dr. Koprivica reviewed medical records, took a history and performed a physical examination.

⁴ Zarr Depo. at 10-12.

⁵ See *Guides* at 1.

Dr. Koprivica diagnosed contact dermatitis caused by repetitive exposure to solvents and gasoline products from his employment with respondent. Dr. Koprivica found claimant was at maximum medical improvement, but opined future outbreaks were expected, that will require a steroid-based cream to try to minimize and recover from the outbreaks. Clobetasol was the steroid cream claimant used and will likely need periodically.

Dr. Koprivica imposed a permanent restriction to avoid exposures to oil-based petroleum products. Using the *Guides*, Dr. Koprivica rated claimant at 25 percent whole person impairment of function. The basis for his rating was the same as Dr. Parmet's.

Dr. Koprivica opined claimant's need for future medical treatment was based on the thought that if he is exposed again to gasoline or other petroleum based products, he will have outbreaks.

In January 2015, claimant became employed by Schenck Process running a drill in a machine shop, a job that does not require exposure to oil or gasoline. He wears cotton gloves with rubber tips for protection in case he has exposures. Claimant told Mr. Thomas⁶ he had not had an outbreak since beginning his current job.

Claimant told Mr. Benjamin⁷ he is now a machinist for another company.

PRINCIPLES OF LAW AND ANALYSIS

Average Weekly Wage

This issue requires little discussion. The \$600 yearly allowance respondent paid claimant was solely for the purchase of work tools. Claimant testified he used all of the allowances to buy tools for work. There is no evidence claimant owned the tools or was free to take the tools with him when he left respondent's employ. There is no evidence claimant received any economic benefit by virtue of these allowances. The ALJ properly excluded the tool allowance in computing claimant's AWW.⁸

Future and Unauthorized Medical

All three testifying physicians arrived at the same diagnosis: contact dermatitis. All three physicians agreed the disorder was caused by claimant's workplace exposures to gasoline, solvents and other petroleum based chemicals, and that claimant should avoid additional exposures. The preponderance of the credible evidence proves claimant is likely

⁶ Dick Thomas is a vocational consultant retained by claimant.

⁷ Steve Benjamin is a vocational consultant retained by respondent.

⁸ See *Ridgway v. Board of Ford County Comm'rs*, 12 Kan. App. 2d 441, 748 P.2d 891 (1987), *rev. denied* 242 Kan. 903 (1988).

to experience future outbreaks, for which he will at least require a steroid-based cream to try to minimize and recover from such outbreaks. Dr. Koprivica testified Clobetasol is a steroid cream claimant will likely need periodically. Dr. Zarr testified he recommended claimant use Clobetasol as needed for his flare-ups, about every one to two weeks.

Claimant overcame, with medical evidence, the presumption that respondent's obligation to provide additional medical treatment terminated when claimant reached maximum medical improvement.⁹ Claimant is entitled to future medical treatment upon application to and approval by the ALJ. Further, claimant is awarded up to \$500 unauthorized medical, to the extent not already paid, upon submission by claimant's counsel of appropriate documentation.

Nature and Extent of Disability

This issue also merits no detailed analysis or citation of authority. All three testifying physicians asserted their impairment ratings were based on the *Guides*, which contains guidelines for rating skin disorders. The Board finds it significant that both Dr. Parmet and Dr. Koprivica arrived at the same rating, the bases for which were identical. Dr. Zarr's impairment rating is not entirely clear, but is substantially lower than the ratings of the other two physicians. The Board finds that disparity lends credence to the ratings of Drs. Koprivica and Parmet. Moreover, Dr. Zarr was uncertain and confused how to apply the *Guides* under the circumstances of this claim. Neither Dr. Koprivica nor Dr. Parmet exhibited such uncertainty and confusion.

Respondent appears to maintain that Dr. Zarr properly limited his rating to the upper extremities. However, claimant's injuries encompass both hands and both upper extremities. As such, claimant's impairment is properly compensated as a permanent partial general disability.¹⁰ Also, the notion that the Award should be reversed or modified because the Judge mistakenly referred to Dr. Parmet as "the IME doctor"¹¹ is rejected by the Board. As is clearly indicated in the Award, the extent to which the ALJ relied on the opinions of Dr. Parmet was not based on whether or not the doctor was court-appointed. In this claim, the Board has de novo jurisdiction,¹² and the entire record has been reviewed, including who retained all testifying experts.

Claimant is therefore entitled to PPD based on a 25 percent impairment of function to the whole body.

⁹ K.S.A. 2012 Supp. 44-510h(e).

¹⁰ K.S.A. 2013 Supp. 44-510e(a)(2)(A)(i).

¹¹ ALJ Award (Oct. 26, 2015) at 7.

¹² See *Hall v. Roadway Express, Inc.*, 19 Kan. App. 2d 935, 939, 946, 878 P.2d 846 (1994).

CONCLUSIONS

1. Claimant sustained a 25 percent whole body permanent functional impairment and is entitled to PPD based on that finding.

2. Claimant is entitled to future medical treatment and unauthorized medical as specifically detailed in this Order.

3. Claimant's tool allowance is not included in his AWW.

AWARD

WHEREFORE, the Board finds that the Award of Administrative Law Judge Steven M. Roth dated October 26, 2015, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of April, 2016.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

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Honorable Steven M. Roth, Administrative Law Judge