BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

BRENDA JO FRANK Claimant	)	
V.	)	
AIR CAPITOL DELIVERY & WAREHOUSE, LLC Respondent	)	Docket No. 1,070,906
AND	)	
NATIONAL INTERSTATE INS. CO. Insurance Carrier	)	

ORDER

STATEMENT OF THE CASE

Respondent and its insurance carrier (respondent) requested review of the February 19, 2016, preliminary hearing Order entered by Administrative Law Judge (ALJ) Ali Marchant. Joseph Seiwert of Wichita, Kansas, appeared for claimant. Ryan D. Weltz and Kevin M. Johnson of Overland Park, Kansas, appeared for respondent.

The ALJ found claimant sustained her burden of proving her development of post traumatic stress disorder (PTSD) was a result of her August 13, 2014, traumatic injury by accident. The ALJ determined claimant is entitled to continuing medical treatment related to her psychological injury with authorized physician Dr. Lance Parker.

The record on appeal is the same as that considered by the ALJ and consists of the transcript of the April 23, 2015, Preliminary Hearing and the exhibits; the transcript of the February 16, 2016, Preliminary Hearing and the exhibits; the transcript of the September 26, 2014, deposition of claimant; and the transcript of the December 11, 2014, continuation of the deposition of claimant, together with the pleadings contained in the administrative file.

ISSUES

Respondent argues claimant's psychological complaints are related to the circumstances of her accident but are not directly traceable to a physical injury; therefore, claimant's complaints are not compensable under the Kansas Workers Compensation Act (Act).

Claimant contends the ALJ's Order should be affirmed. Claimant argues there is no distinction between mental trauma resulting from the circumstances of an accident and physical injuries resulting from an accident.

The issues for the Board's review are:

1. Did claimant sustain a psychological injury arising out of and in the course of her employment with respondent?

2. Was the August 13, 2014, accident the prevailing factor causing claimant's psychological injury?

3. Is claimant's alleged psychological injury directly traceable to her physical injury?

4. Is claimant's alleged psychological injury compensable under the Act?

FINDINGS OF FACT

Claimant worked for respondent as an over-the-road truck driver. On August 13, 2014, while driving in Texas, claimant was involved in a motor vehicle accident. Claimant's vehicle was forced onto a concrete divider and became lodged before catching fire. Claimant testified she was initially unable to exit the vehicle through the driver's side, but eventually freed herself and her pets through the passenger side door. The truck and trailer burned. Claimant sustained physical injuries to her left side, back, neck and shoulder, and underwent treatment with medication and physical therapy provided by respondent.

Claimant testified she experienced nightmares following the accident and was unable to ride in a vehicle due to severe anxiety. She began treatment with licensed psychologist Dr. Lance Parker in February 2015, who provided a diagnosis of PTSD related to the work accident. Claimant stated she has problems with driving and what Dr. Parker referred to as post traumatic stress. Claimant described:

> I get nauseous, my heart races. I throw up. And just get real scared. I have nightmares. I don't sleep real good. On TV some of the car commercials they just scare me. And some of the TV shows that have explosions or fires I just turn the channel.[1]

[1] P.H. Trans. (Feb. 16, 2016) at 14.

Claimant further testified:

> Q. The injuries that you sustained in the motor vehicle accident, do they trigger any of these symptoms for you in terms of the anxiety and the fearfulness?
>
> A. No.
>
> Q. When you were having difficulty getting out of the vehicle after the accident you said there was a fire. I am assuming that you were afraid for your life?
>
> A. Yes.
>
> Q. And it's the memories of these things associated with driving and fires and things of that nature that are causing you to have these responses of anxiety and post traumatic stress?
>
> A. Yes.[2]

Claimant treated with Dr. Parker until December 10, 2015, when the sessions were no longer provided by respondent. Dr. Parker noted on December 3, 2015, that claimant was making "excellent progress" in that she was slowly beginning to drive short distances and continuing to improve.[3] Claimant testified she initially would hold her breath and close her eyes when faced with oncoming traffic. She stated she no longer closes her eyes, but she continues to suffer anxiety and tension while performing her driving exercises. Claimant has worked as a truck driver for over 10 years. Dr. Parker took claimant off work, indicating she is restricted from driving until further notice.[4] Dr. Parker reported it was clinically necessary and beneficial for claimant to continue treatment in order to arrive at her goal of again driving a truck professionally.

Claimant met with licensed psychologist Dr. Ted Moeller in addition to treating with Dr. Parker. Dr. Moeller agreed with Dr. Parker's assessment of PTSD. Dr. Moeller opined claimant should continue treatment until either her behavioral goals are achieved, or she is found to be at maximum medical improvement.

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[2] *Id*. at 14-15.

[3] *Id.*, Cl. Ex. 2 at 2.

[4] See *id*. at 1.

PRINCIPLES OF LAW

K.S.A. 2014 Supp. 44-501b(c) states:

> The burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends. In determining whether the claimant has satisfied this burden of proof, the trier of fact shall consider the whole record.

K.S.A. 2014 Supp. 44-508(h) states:

> "Burden of proof" means the burden of a party to persuade the trier of facts 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 unless a higher burden of proof is specifically required by this act.

By statute, preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.[5] Moreover, this review of a preliminary hearing order has been determined by only one Board Member, as permitted by K.S.A. 2014 Supp. 44-551(l)(2)(A), as opposed to being determined by the entire Board as it is when the appeal is from a final order.[6]

ANALYSIS

The issue of whether a psychological condition is directly traceable to the work-related accident is a question that goes to the compensability of the condition or injury. Thus, the Board has jurisdiction over the issue on an appeal from a preliminary hearing Order.[7]

K.S.A. 2014 Supp. 44-508(f) requires the accident be the prevailing factor in causing the injury, medical condition, disability or impairment. The undersigned notes there is a conflict between post-May 15, 2011, law that requires proof the medical condition is the prevailing factor causing the injury and case law requiring the psychological condition be the direct result of the physical injury. As the Board is required to follow binding

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[5] K.S.A. 44-534a; see *Quandt v. IBP*, 38 Kan. App. 2d 874, 173 P.3d 1149, *rev. denied* 286 Kan. 1179 (2008); *Butera v. Fluor Daniel Constr. Corp.*, 28 Kan. App. 2d 542, 18 P.3d 278, *rev. denied* 271 Kan. 1035 (2001).

[6] K.S.A. 2014 Supp. 44-555c(j).

[7] See *Farra v. Mercy Hospital*, No. 1,055,822, 2004 WL 1301715 (Kan. WCAB May 27, 2004); *Baty v. Woodhaven Care Center*, No. 1,047,549, 2010 WL 1445627 (Kan. WCAB Mar. 31, 2010); *Jordan-Cain v. State of Kansas*, No. 1,058,565, 2012 WL 3279504 (Kan. WCAB Jul. 12, 2012).

precedent,[8] the undersigned is obligated to apply the standard set forth in *Love v. McDonald's*.[9]

In *Love*, the Kansas Court of Appeals established the requirements for proving a psychological claim. The Court stated:

> In order to establish a compensable claim for traumatic neurosis under the Kansas Workers' Compensation Act, K.S.A. 44-501 *et seq*., the claimant must establish: (a) a work-related physical injury; (b) symptoms of the traumatic neurosis; and (c) that the neurosis is directly traceable to the physical injury. Overruling *Ruse v. State*, 10 Kan. App. 2d 508, 708 P.2d 216 (1984).

The burden is upon claimant to prove her PTSD is directly traceable to a physical injury arising out of her work-related motor vehicle accident. The ALJ wrote, "[b]oth Dr. Parker and Dr. Moeller have opined that Claimant has [PTSD] as a result of her traumatic work accident."[10] While it is clear claimant suffers from PTSD as a result of the motor vehicle accident, there is no evidence claimant's PTSD is related to a physical injury. Claimant agreed it was the memories of things associated with driving and fires that causes anxiety and post traumatic stress, not her physical injuries.[11] Neither Dr. Parker nor Dr. Moeller provided causation opinions relating claimant's PTSD to a physical injury.

CONCLUSION

Claimant failed to meet the burden of proving she has a psychological condition directly traceable to a physical injury related to her August 13, 2014, injury.

ORDER

WHEREFORE, it is the finding, decision and order of this Board Member that the Order of Administrative Law Judge Ali Marchant dated February 19, 2016, is reversed.

IT IS SO ORDERED.

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[8] See *Gadberry v. R. L. Polk & Co.*, 25 Kan. App. 2d 800, 808, 975 P. 2d 807 (1998).

[9] *Love v. McDonald's Restaurant,* 13 Kan. App. 2d 397, Syl. ¶ 1, 771 P.2d 557, *rev. denied* 245 Kan. 784 (1989).

[10] ALJ Order (Feb. 19, 2016) at 3.

[11] P.H. Trans. (Feb. 16, 2016) at 14-15.

Dated this _____ day of April, 2016.

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HONORABLE SETH G. VALERIUS
BOARD MEMBER

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Hon. Ali Marchant, Administrative Law Judge