BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

RICHARD TUCKER	)	
Claimant	)	
VS.	)	
	)	Docket Nos. 132,499; 143,598;
GREAT PLAINS MANUFACTURING, INC.	)	154,615
Respondent	)	
AND	)	
	)	
INTERCONTINENTAL INSURANCE COMPANY	)	
AETNA CASUALTY & SURETY COMPANY	)	
Insurance Carrier	)	
AND	)	
	)	
KANSAS WORKERS COMPENSATION FUND	)	

ORDER

ON February 17, 1994, the claimant's application for review of an Award entered by Administrative Law Judge George R. Robertson dated January 3, 1994, came on for oral argument.

APPEARANCES

The appeals involves three different claims. The claimant appeared on all three claims by his attorney, Scott M. Price, of Salina, Kansas. On Docket No. 132,499, respondent and its insurance carrier, Intercontinental Insurance Company, appeared by their attorney, David M. Druten, of Lenexa, Kansas. On Docket Nos. 143,598 and 154,615, respondent and its insurance carrier, Aetna Casualty & Surety Company, appeared by their attorney, Edward D. Heath, Jr., of Wichita, Kansas. On all three docket numbers, the Kansas Workers Compensation Fund appeared by its attorney, Norman R. Kelly, of Salina, Kansas. There were no other appearances.

RECORD

The record considered by the Appeals Board is the same as that listed in the January 3, 1994, Award of the Administrative Law Judge.

STIPULATIONS

The Appeals Board adopts the stipulations of the parties as listed in the January 3, 1994, Award of the Administrative Law Judge.

ISSUES

By the Award of January 3, 1994, the Administrative Law Judge has denied three separate claims, finding in each case that the evidence does not establish the injury arose out of and in the course of claimant's employment. In the claim assigned Docket No. 132,499, claimant has alleged a September 1988 injury to his right knee. In the other two claims, Docket Nos. 143,598 and 154,615, the claimant seeks benefits for injuries to his hip and back in February 1990 and February or March of 1991. The first issue to be determined on appeal in each case is, therefore, whether claimant has suffered an injury which arose out of and in the course of his employment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Docket No. 132,499

Claimant alleges injury to his right knee in September of 1988 when his job duties were changed from running a cold saw to deburring parts in the machine shop. Claimant testified that the change in jobs required that he stand on a concrete floor in one place throughout his work day. He stated that after the change in his job he started having problems with his knee which became progressively worse until he finally went to the company doctor in October of 1988. Claimant stopped working on November 11, 1988, after the pain became too severe to stand. Claimant remained off work until September of 1989, when he returned with restrictions which limited his standing to six hours a day and required that he otherwise sit while working.

The Appeals Board finds that claimant has, by a preponderance of the credible evidence, established that a preexisting knee injury and disability were aggravated and accelerated by the change in work duties in September and October of 1988. Claimant acknowledged numerous prior problems with his knees beginning with a motorcycle accident in September of 1979, in which he suffered a puncture wound to his right knee. In 1980, he tore an interior cruciate ligament which was subsequently repaired by arthroscopic surgery. Claimant underwent additional surgery in 1982 after he was injured working for another employer.

Claimant testified that when he started to work for respondent in 1986 his knee has been rehabilitated and was in good shape. The records reflect and claimant acknowledges, however, that he did visit Dr. Sloo in December of 1987 with complaints of knee pain. Claimant testified that he had not otherwise had problems and that this difficulty in 1987 arose during inventory. He indicated he did not miss any work on this occasion.

Claimant related his additional knee problems to the change in duties in September of 1988. At that time he began operating a drill press and was standing in one place for extended periods of time. The note from his initial visit to the company doctor, Dr. Baxter, assess the problem as, "probable degenerative changes in the knee, exacerbated by positioning at work." As previously indicated he stopped working November 11, 1988. Medical treatment was ordered following preliminary hearing in December of 1988. Several physicians treated claimant for approximately the next ten months while he was not working. When he did return to work in September of 1989, he returned with restrictions. According to claimant the work continued to cause problems with his knee and there were times when he could not work. He did, however, continue with the employment until the following spring of 1990.

It is clear from the record that claimant's symptoms became worse after changing his job duties in December of 1988. Claimant attributes the increased symptoms to his work. The only expert testimony on the subject was that given by Dr. Fullen. Dr. Fullen treated claimant from May 2, 1991, through August of 1991. He initially treated claimant primarily because of complaints with his left hip but also, because of the past history, dealt with problems in claimant's right knee. On direct examination Dr. Fullen testified only that the change in job duties "could explain his pain that he had or the progression of the pain." By itself this testimony might not adequately link the problem to claimant's work. On cross-examination, however, he is asked whether the condition for which claimant was treated in 1988 would have occurred but for the preexisting condition. Dr. Fullen first answered that the two events were related. When asked how they were related he gave the following answer:

> "...If the information is correct and he started standing...nine hours a day on a continuous basis and that may have accelerated his symptoms and indeed that's what he related. <u>So to that extent, the change in jobs is probably related to the knee to be seen at that specific point</u>; whereas if he hadn't

> changed jobs, he might have had to be seen for something, you know, we don't know, but I feel that had a bearing on it." (Emphasis added.)

While this answer leaves substantial room for interpretation, the Appeals Board believes the most reasonable understanding of this testimony is that in the doctor's opinion: (1) The change in the job duties accelerated the symptoms; and (2) the change in job duties caused him to be seen earlier than he might otherwise have been. The Appeals Board believes that this testimony, although substantially less direct than might be preferred, does, along with the claimant's testimony, establish adequate causal connection between claimant's work and an acceleration or aggravation of claimant's preexisting knee condition.

Because the Administrative Law Judge concluded the injury did not arise out of and in the course of claimant's employment, he made no other finding. Docket No. 132,499 is, therefore, remanded to the Administrative Law Judge for findings on the remaining disputed issues, including nature and extent of claimant's disability and possible liability of the Kansas Workers Compensation Fund.

Docket Nos. 143,598 and 154,615

As previously indicated, Dockets Nos. 143,598 and 154,615 concern alleged injuries to claimant's hip and low back. Claimant testified that upon his return to work in September of 1989, after a period of treatment for his knee injury, claimant worked as a drill press operator. He developed low back and hip pain which he attributes to the work he was doing operating the drill press. He testified that he spent most of his time sitting on a chair bent forward taking parts from below his knees on one side, placing them on the drill press, operating the handle of the machine, and then placing them down on the opposite side. This was a set of movements he made thousands of times each day.

After claimant reported the symptoms in his hip and low back he was referred first to Dr. Baxter and then to Dr. Eyster in June of 1990. Dr. Eyster diagnosed a hip condition which apparently caused back symptoms as well. In September of 1990, Dr. Eyster ordered an MRI and later scheduled hip surgery. He performed a core drilling of the left hip. In February 1991, after being released to return to work following surgery, claimant was provided with a chair with an adjustable back rest and adjustable foot rest. He nevertheless developed additional problems in his hip and in May 1991 was referred to Dr. Fullen.

The only medical evidence in the record relating to claimant's hip and back condition is that provided in the deposition of Dr. Fullen. In the deposition testimony itself, Dr. Fullen is not asked about the cause of the condition. However, the exhibits attached to his deposition include an October 18, 1991, letter to claimant's attorney. That letter reflects that the doctor had been provided a complete description of claimant's work duties and corresponding complaints. In the letter, Dr. Fullen indicates that he has diagnosed claimant's condition as avascular necrosis. The letter also recites the job activities to which

claimant attributed his hip and back problems. The doctor's final conclusion is found in the following answer regarding the cause of claimant's hip and back condition:

> "I can not conclude, even in spite of the above description, that this would definitely cause his avascular necrosis. The cause of his avascular necrosis is not known. Nevertheless, he was asymptomatic prior to this time. He does not give any other history of having a specific left hip injury on the job or on a non-job related activity."

The Appeals Board does not believe this opinion establishes the requisite causal connection between claimant's work activities and his hip or back condition. Accordingly, the Appeals Board affirms the decision of the Administrative Law Judge denying any further benefits under Docket Nos. 143,598 and 154,615.

AWARD

Docket No. 132,499

WHEREFORE, as to Docket No. 132,499 the Appeals Board reverses the decision of the Administrative Law Judge and finds claimant's injury did arise out of and in the course of his employment. The action is remanded for findings on the remaining disputed issues.

Docket Nos. 143,598 and 154,615

WHEREFORE, an award of compensation is hereby denied in accordance with the above findings for Docket Nos. 143,598 and 154,615.

The decision regarding assessment of fees and costs necessary to defray the expenses of administration of the Kansas Workers Compensation Act is to be made by the Administrative Law Judge after determination of possible liability of the Kansas Workers Compensation Fund on Docket No. 132,499.

IT IS SO ORDERED.

Dated this _____ day of June, 1994.

_____
BOARD MEMBER

_____
BOARD MEMBER

_____
BOARD MEMBER

cc: Scott M. Price, 148 S 7th, Salina, Kansas 67401
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