

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

<b>JAMES BEISEL</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 159,286
<b>THE BOEING CO. - WICHITA</b>	)	
Respondent	)	
AND	)	
	)	
<b>AETNA CASUALTY &amp; SURETY CO.</b>	)	
Insurance Carrier	)	
AND	)	
	)	
<b>WORKERS COMPENSATION FUND</b>	)	

**ORDER**

This case comes before the Appeals Board on remand by the Kansas Court of Appeals. Beisel v. The Boeing Company, \_\_\_ Kan. App. 2d \_\_\_, 932 P.2d 1050 (1997).

**RECORD AND STIPULATIONS**

The Appeals Board has reviewed and considered the record listed in the original Award by the Administrative Law Judge.

**ISSUES**

The Kansas Court of Appeals directed the Appeals Board to determine how much, if any, the Kansas Workers Compensation Fund should reimburse the respondent for unnecessary medical benefits paid on behalf of the claimant in this case.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and considering the arguments, the Appeals Board concludes that the Kansas Workers Compensation Fund should be liable for all medical expenses associated with the administration of narcotic medications after September 30, 1992.

Claimant sustained an injury arising out of and in the course of his employment. The date of accident was from April 1990 through September 20, 1991. H. R. Kuhns, M.D., one of the authorized treating physicians, initially prescribed conservative treatment and anti-inflammatory medications. He later prescribed narcotic medications including Lortab and Demerol. Two physicians, Kenneth D. Zimmerman, M.D., and Ernest R. Schlachter, M.D., expressed opinions that the narcotic medications were not reasonably necessary to cure and relieve claimant from the effects of his injury. On the basis of those opinions, the Administrative Law Judge, in an award entered April 13, 1995, determined that the medications after August 25, 1992, were not necessary. She ordered that the Kansas Workers Compensation Fund be responsible for those medical expenses. The Administrative Law Judge also ordered the Workers Compensation Fund be responsible for the costs of any treatment associated with claimant's chemical dependency.

The Appeals Board reversed the finding by the Administrative Law Judge. The Appeals Board concluded that the appropriate remedy would be utilization review in accordance with procedures established under K.S.A. 44-510. The Board also found no basis for awarding costs of treating for chemical dependency because the evidence did not establish claimant needed such treatment. The Court of Appeals reversed the decision by the Appeals Board and remanded for the current proceedings. The Court of Appeals concluded there were no utilization review procedures established under K.S.A. 44-510 and, accordingly, the provisions of K.S.A. 44-534a control. The Court of Appeals did not reverse the Board's decision on future treatment for chemical dependency. K.S.A. 44-534a authorizes reimbursement by the Kansas Workers Compensation Fund for compensation paid and later partially or totally disallowed. The remand order by the Court of Appeals stated:

"This matter is remanded with direction to try on the merits the question of how much, if any, the Fund is required to reimburse appellants for unnecessary medical benefits paid on behalf of the claimant in this case. K.S.A. 44-534a will control the proceedings on remand."

The Appeals Board based its previous decision upon an understanding that procedures for utilization review had been implemented. The Court of Appeals suggests that if procedures were in place, the more specific utilization review procedures might be the appropriate vehicle, not the general provisions of K.S.A. 44-534a. The Board still believes utilization review procedures are in place. However, the decision by the Court of Appeals emphasizes the absence of published procedures. There are no procedures published in the manner regulations are published. The Appeals Board, therefore,

considers the remand by the Court of Appeals to be a direction for the Appeals Board to determine what, if any, medical expenses were paid that were not reasonably necessary to relieve or cure claimant's injury. Those expenses are to be the responsibility of the Kansas Workers Compensation Fund.

After reviewing the evidence, the Appeals Board agrees with the decision by the Administrative Law Judge finding certain expenses unnecessary. Specifically, the Appeals Board agrees with and accepts the testimony of both Drs. Schlachter and Zimmerman indicating that the narcotic medications were not necessary or appropriate treatment for claimant's injury. K.S.A. 44-510 obligates the employer to provide medical treatment "as may be reasonably necessary to cure and relieve the employee from the effects of the injury." The narcotic medications, beyond a certain point in time, were not necessary to relieve and cure claimant from the effects of his injury.

The Appeals Board differs, however, as to the date after which those narcotic medications should be considered unnecessary. The medications were prescribed by an authorized treating physician. Neither Dr. Zimmerman nor Dr. Schlachter gave a specific date beyond which the medication should not have been prescribed. It seems quite possible from their testimony that neither believed the narcotic medications were necessary in the first instance. However, the first date shown in the record for a specific medical opinion that they were not necessary and should be discontinued was the September 30, 1992, letter of Dr. Schlachter. The Appeals Board, therefore, concludes that the costs of administration of narcotic medications after September 30, 1992, were not reasonably necessary to relieve or cure claimant's injury. The costs of administration of those narcotics should be borne by the Kansas Workers Compensation Fund.

Based upon statements of counsel at the hearing before the Appeals Board, the Appeals Board understood the parties would be able to determine the specific dollar amount of the costs of the narcotic medication after any given date. The decision by the Court of Appeals contains the statement, however, that the amount of reimbursement remains an issue on appeal. This may reflect only the disagreement about the date after which the medication should be disallowed. However, in the event the parties are not able to agree as to the costs of administration of a narcotic medication after September 30, 1992, the parties should seek a hearing under K.S.A. 44-534a for a determination by the Administrative Law Judge after both parties are afforded an opportunity to present evidence.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Shannon S. Krysl dated April 13, 1995, should be, and is hereby, modified. The Kansas Workers Compensation Fund is ordered to reimburse respondent for the costs of administration of narcotic medication after September 30, 1992.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of May 1997.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

- c: Frederick L. Haag, Wichita, KS
- Steven R. Wilson, Wichita, KS
- Michael T. Harris, Wichita, KS
- Administrative Law Judge, Wichita, KS
- Philip S. Harness, Director