

Claimant suffered a low back injury arising out of and in the course of her employment with respondent on November 6, 1989. After a period of conservative treatment the authorized treating physician recommended surgery. Eight days post-surgery and while still in the hospital, claimant died from a myocardial infarction. The Administrative Law Judge found that the myocardial infarction was precipitated by the stress of the surgery and/or subsequent therapy and awarded death benefits to the decedent's surviving spouse and children. On appeal, respondent contends the weight of the credible evidence favors a finding the myocardial infarction was not causally related to the surgery or therapy.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments of the parties, the Appeals Board finds and concludes:

(1) When an employee suffers an injury arising out of and in the course of employment, every natural consequence that flows from that injury, including a new and distinctive injury, is compensable if it is a direct and natural result of a primary injury. See Chinn v. Gay & Taylor, Inc., 219 Kan. 196, 547 P.2d 751 (1976). Injury or death which is caused by medical treatment for a compensable injury is considered a direct and natural result of the primary injury and is compensable. See Roberts v. Krupka, 246 Kan. 433, 790 P.2d 422 (1990).

(2) The Appeals Board finds that the medical treatment for claimant's job-related low back injury, acted as a precipitating cause of claimant's myocardial infarction and death. Georgia Roe's dependents, including her husband and minor children are, therefore, entitled to death benefits provided under the Kansas Workers Compensation Act.

After a period of conservative treatment for a job-related low back injury, claimant was, on June 18, 1990, admitted for the low back surgery. Upon admission, however, the anesthesiologist diagnosed congestive heart failure. EKG's were done on the 18th and 19th. Claimant was put on diuretics; her blood work and electrolyte tests were monitored. Dr. Brown canceled surgery and made arrangements for treatment of the congestive heart failure. He felt at that time the surgery would be dangerous because of the additional stress and overload the surgery would cause. Claimant was, therefore, discharged from the hospital on June 21, 1990.

Claimant was readmitted to the hospital on June 26, 1990, and a laminectomy and spinal fusion were performed on June 27, 1990. She initially progressed satisfactorily post-operatively. On June 30 she started physical therapy and a rehabilitation program to restore extremity function and self-care. On July 4th she experienced a sudden episode of shortness of breath and difficulty in breathing. She expired shortly thereafter.

Four physicians testified. Dr. Reiff Brown, the surgeon who performed the low back surgery on June 27th, testified that in his opinion the stress from the operation and the attempts at recovery from that operation were the cause of claimant's heart attack. By stress he indicated that he was referring in part to the stress placed on claimant's body during early rehabilitation periods when she was gradually trying to increase her time out of bed, increase her time on her feet, increase the distance that she was walking and attempting to increase her self-care. Dr. Brown considered claimant to be a person that was in borderline physical condition. She had diabetes and was obese. Considering those

factors he found it unlikely that it would be simply happenstance that the heart attack occurred seven (7) or eight (8) days after her operation.

Dr. Edward Jones, a pathologist, testified regarding the autopsy he performed. He found an enlarged heart associated with congestive heart failure and heart disease. He found evidence of long-term high blood pressure and coronary atherosclerosis. He also found evidence of myocardial infarction which he concluded probably happened twenty-four (24) to thirty-six (36) hours prior to her death. He also found old fibrosis indicative of an old myocardial infarction. He concluded that the atherosclerosis was the cause of the myocardial infarction. He indicated that the surgery is a risk factor but once she had recovered from the anesthetic he did not think it would add much risk.

In addition to the opinions of the treating surgeon and the pathologist, each party presented testimony of an expert cardiologist. Claimant offered the testimony of Dr. Hiebert. Dr. Hiebert testified from his review of the records. In his opinion the claimant died as a consequence of a myocardial infarction related to the laminectomy surgery. He testified that EKGs performed on June 18, and 19, at the time of claimant's first admission, indicate she suffered a myocardial infarction at that time. In his opinion the low back surgery performed after the initial myocardial infarction added stress which precipitated myocardial infarction and resulted in her death.

Respondent offered the contradictory testimony of Dr. Davia, a cardiologist. Dr. Davia opined that there was no causal connection between the back surgery and the patient's sudden death. He disagreed with Dr. Hiebert's conclusion that there had been a myocardial infarction before surgery. He gave three reasons why he did not believe claimant suffered a myocardial infarction before surgery. First, he disagreed with Dr. Hiebert's reading of the EKGs done on June 18 and 19. Although he agreed the EKGs were abnormal, he did not think they reflected an infarction on June 18 or 19. He testified the changes in the EKGs from June 18 to June 19 could be explained by change in placement of the leads on the patient. Dr. Davia felt the enzymes would have been elevated at the time, had claimant had an infarction large enough to cause the heart failure. Finally, he felt the infarction in that time frame, June 18 or 19, should have been detectable by the pathologist. According to Dr. Davia claimant was a heart attack waiting to happen at any time. He noted that claimant had smoked on the day she died. He indicated the acute effects of smoking a cigarette could be sufficient to have precipitated myocardial infarction.

Respondent has very carefully and thoroughly presented evidence from which one could conclude that the timing of claimant's heart attack was a coincidence and unrelated to her surgery. The Appeals Board finds such a coincidence to be improbable in light of the evidence presented. Claimant was initially admitted for low back surgery, the surgery was canceled and claimant discharged because the surgery posed a risk in light of her heart condition. When she was readmitted and the surgery performed, that risk became a reality. The Appeals Board finds Dr. Hiebert's conclusion persuasive that the EKG showed myocardial infarction prior to the surgery. The computer readout from the EKG reported changes indicative of infarction. That reading was confirmed by the physician performing the EKG.

Respondent vigorously challenges Dr. Hiebert's credibility on the basis of a statement in his first deposition on that no enzymes were drawn on the 18th or 19th. Dr. Davia testified that enzymes were in fact drawn and they were normal. At the second

deposition, Dr. Hiebert attempts to rehabilitate the initial testimony by explaining he was referring to specific types of cardiac enzymes. He ultimately acknowledges, however, that the enzymes drawn would normally elevate following myocardial infarction. It appears, however, that the enzymes were drawn on the 18th at a point in time when one would not necessarily expect they would have elevated. Because of the timing of the tests, Dr. Hiebert's testimony remains convincing when he testifies that those enzymes, the normal test, would not be inconsistent with his conclusion that a myocardial infarction had occurred on the 18th or 19th.

Based upon a review of the record as a whole, the Appeals Board finds it is more probably true than not the surgery and stress related to the subsequent rehabilitation caused or precipitated the myocardial infarction and resulting death. Accordingly, the surviving spouse and children are entitled to death benefits under the Kansas Workers Compensation Act.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the April 21, 1994 Award entered by Administrative Law Judge George R. Robertson, should be, and same is hereby, affirmed.

WHEREFORE AN AWARD OF COMPENSATION IS HEREBY ENTERED IN FAVOR of the survivors of Georgia Roe, and against the respondent, Central Kansas Medical Center, and the insurance carrier, Sedgwick James of Missouri. The surviving spouse, Harold, and one minor dependent, Erika, are entitled to death benefits from date of death on July 4, 1990 at one-half of \$217.21 per week or \$108.61 each per week. Spouse remarried September 12, 1992 and is entitled to dower benefits of 100 weeks and minor dependent to re-apportionment of benefits.

From July 4, 1990 to the September 12, 1992 date of re-marriage, surviving spouse is entitled to 114.57 weeks of benefits at \$108.61 per week in the sum of \$12,443.45. After September 12, 1992, 100 weeks of dower benefits at \$108.61 in the sum of \$10,861.00 which is all due and owing in one lump sum.

As of April 20, 1994, there would be due and owing from July 4, 1990 to September 12, 1992 to minor dependent 114.57 weeks at the rate of \$108.61 per week in the sum of \$12,443.45 plus 83.57 weeks of benefits at \$217.21 per week in the sum of \$18,152.24, for a total due and owing of \$30,595.69, which is ordered paid in one lump sum less any amounts previously paid. Thereafter, death benefits to minor dependent at \$217.21 per week or until further order of the Director or further operation of the law.

Fees necessary to defray the expenses of administration of the Workers Compensation Act are hereby assessed against the respondent and such are directed to pay costs of the transcripts as follows:

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| Underwood and Shane | |
| Deposition of Dr. Edward Jones dated 9/19/91 | \$377.50 |
| Deposition of Dr. C. Reiff Brown dated 9/19/91 | 449.00 |
| Total | <u>\$826.50</u> |

Appino & Achten Reporting Service

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| Deposition of Dr. John Hiebert dated 5/13/93 | | \$358.50 |
| Deposition of Dr. James Davia dated 9/3/93 | | 532.20 |
| Deposition of Dr. John Hiebert dated 11/24/93 | | 113.60 |
| | Total | \$1004.30 |
| | | |
| Valerie J. Green, RPR-CM | | |
| Deposition of Max Beebe taken 9/16/93 | | Unknown |
| | | |
| Ruth Herman, C.S.R | | |
| Deposition of Debbie Tomlinson dated 7/12/93 | | |
| Deposition of Mary Doherty dated 7/12/93 | | |
| Deposition of Maude Allen dated 7/12/93 | | |
| Deposition of Jeff Weese dated 7/12/93 | | |
| Deposition of Mark Blackwell dated 7/12/93 | | |
| Deposition of Dr. Jeff Brozek dated 7/12/93 | | |
| Deposition of Linda Francis dated 7/12/93 | | |
| | Total | \$651.60 |
| | | |
| Owens, Brake & Associates | | |
| Regular Hearing Transcript dated 6/3/93 | | \$281.70 |
| Motion Hearing Transcript dated 11/12/93 | | 157.63 |
| | Total | \$439.33 |

IT IS SO ORDERED.

Dated this ____ day of February, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Larry Karns, Topeka, KS
 Richard A. Boeckman, Great Bend, KS
 Richard Friedeman, Great Bend, KS
 George R. Robertson, Administrative Law Judge
 George Gomez, Director