BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

RANDY BUTTON	)	
Claimant	)	
VS.	)	
	)	Docket No. 177,161
CENTRAL MECHANICAL CONSTRUCTION	)	
Respondent	)	
AND	)	
	)	
TRANSPORTATION INSURANCE COMPANY	)	
Insurance Carrier	)	

ORDER

On December 17, 1996, the application of claimant for review by the Workers Compensation Appeals Board of the Award of Assistant Director Brad E. Avery dated July 2, 1996, came on for oral argument in Topeka, Kansas.

APPEARANCES

Claimant appeared by and through his attorney, Michael C. Helbert of Emporia, Kansas. Respondent and its insurance carrier appeared by and through their attorney, Rex W. Henoch of Lenexa, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The record and stipulations as specifically set forth in the Award of the Administrative Law Judge are herein adopted by the Appeals Board.

ISSUES

What is the nature and extent of claimant's injury and/or disability?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Appeals Board makes the following findings of fact and conclusions of law:

Claimant alleges an injury to his right leg and right hip, arguing his entitlement to a general body impairment and a work disability. Respondent contends claimant's injury is limited to the right leg as was found by the Assistant Director in the Award. This comprises the sole issue before the Appeals Board for consideration.

Claimant suffered injury on January 19, 1993, when he fell through a hole in the floor at a construction site suffering a fracture to his right leg. Subsequent to the fall claimant alleged pain in his leg, right hip, low back, and wrist. The parties acknowledged the back and wrist injuries have resolved and there is no claim before the Appeals Board at this time for those portions of claimant's anatomy.

The dispute arises as to whether the medical evidence supports a finding that claimant's disability is limited to a scheduled injury to the leg or whether it extends into the hip thus involving a whole body impairment.

The parties have done a commendable job in briefing this matter and in particular setting out the applicable law as dictated in Bryant v. Excel Corp., 239 Kan. 688, 722 P.2d 579 (1986) and Fogle v. Sedgwick County, 235 Kan. 386, 680 P.2d 287 (1984). Both cases support the premise that it is the situs of the resulting disability and not the situs of the trauma which determines a claimant's entitlement to workers compensation benefits. In this instance, the dispute exists between Dr. Michael Montgomery, an orthopedic surgeon who was the claimant's treating physician, and Dr. Peter V. Bieri, a specialist in otolaryngology (ear, nose and throat) and maxillofacial and plastic surgery. Dr. Bieri examined claimant at the request of claimant's attorney.

Dr. Montgomery opined that claimant's disability was limited to the leg. In support of this position he performed range of motion studies to claimant's right and left hips and found them to be the same. While there was some variation from the norm, he opined that in order to ascertain whether a range of motion variation existed it was necessary to examine both the good and the injured hip. Dr. Bieri on the other hand examined only the right hip, finding range of motion limitations of 10 percent to claimant's flexion, extension, and abduction, and a 20 percent variation in claimant's internal rotation. He found claimant's adduction and external rotation to be normal.

Both Dr. Montgomery and Dr. Bieri testified claimant had functional impairments with Dr. Montgomery assessing claimant a 5 percent impairment to the lower extremity and Dr. Bieri assessing claimant a 17 percent impairment to the lower extremity. When Dr. Bieri was asked the situs of the disability, he confirmed that it would be in the leg at the site of the fracture which, the medical evidence indicates, was in the femur, the upper part of the leg bone directly below where the leg connects to the hip.

Claimant's attorney also argued that the repair surgery, which necessitated the insertion of several screws and a metal plate into claimant's leg, converted this matter into a whole body impairment. A main screw was inserted in the femur up into the femur head which the claimant alleged involved the hip. A plate was then attached to the femur with four screws going through the femur holding the bone in place at the fracture site. Dr. Montgomery, the treating physician, created and placed the appliances used to correct claimant's physical problems. In reviewing the medical evidence, the Appeals Board finds the testimony of the treating physician to be the more credible medical opinion in this matter. Dr. Montgomery did not feel claimant suffered a range of motion loss to the hip and took the opportunity to compare both right and left hips while doing his testing. Dr. Bieri's tests, while showing limitations in the range of motion of the right hip, do not take into consideration whether there were any similarities in the range of motion of the left hip. This creates difficulties with Dr. Bieri's opinion as they may relate to what may or may not be normal with this particular claimant.

The Assistant Director in the Award cited Fogle finding the situs of the resulting disability to be in the femur, i.e., the leg rather than the hip and felt claimant had suffered an 11 percent impairment to the lower extremity. This opinion was reached by comparing the functional impairment rating of Dr. Bieri with that of Dr. Montgomery and averaging the two. The Appeals Board adopts that finding as its own.

In all other regards the award of the Assistant Director is affirmed insofar as it is not in contradiction to the opinions expressed herein.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Assistant Director Brad E. Avery dated July 2, 1996, should be, and is hereby, affirmed and the claimant, Randy Button, is granted an award against the respondent, Central Mechanical Construction, and its insurance carrier, Transportation Insurance Company, for an accidental injury occurring on January 19, 1993, for an 11% permanent partial disability to the right leg.

Claimant is entitled to 14 weeks temporary total disability compensation at the rate of $299 per week in the amount of $4,186.00 followed by 20.46 weeks permanent partial disability at the rate of $299 per week totaling $6,117.54 making a total award of $10,303.54. As of the time of this award the entire amount is due and owing in one lump sum minus any amounts previously paid.

Pursuant to K.S.A. 44-536 claimant's contract of employment with his counsel is approved.

The fees necessary to defray the expense of the administration of the Workers Compensation Act are hereby assessed against the respondent and its insurance carrier to be paid as follows:

Nora Lyon & Associates		
Transcript of Regular Hearing	$197.80	
Appino & Biggs Reporting Service		
Deposition of Peter Bieri, M.D.	$146.60	
Deposition of Lloyd Langston	352.90	
Deposition of Peter Bieri, M.D.	155.30	
Forbes Reporting Service		
Deposition of Michael Montgomery, M.D.	$129.20	
Regular Hearing Continued by Deposition	76.00	
Deposition of Susan Button		49.40
Metropolitan Court Reporters, Inc.		
Deposition of Michael Dreiling	$203.45	
Owens, Brake, Cowan & Associates		
Deposition of Caroline Klebe	$124.00	

IT IS SO ORDERED.

Dated this ____ day of December 1996.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Michael C. Helbert, Emporia, KS
Rex W. Henoch, Lenexa, KS
Brad E. Avery, Assistant Director
Office of Administrative Law Judge, Topeka, KS
Philip S. Harness, Director