

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

VINITA CASH)	
Claimant)	
VS.)	
)	Docket Nos. 179,458
HALSTEAD HOSPITAL)	& 179,459
Respondent)	
AND)	
)	
CONTINENTAL INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Respondent appeals from an Order dated February 17, 2000, requiring respondent to pay temporary total disability benefits from February 10, 1999 to December 28, 1999.

ISSUES

This is a post-award proceeding that began with an earlier order, one dated September 8, 1998, granting claimant post-award medical treatment. As a part of the treatment, claimant underwent surgery. Claimant was off work and respondent paid temporary total disability benefits through sometime in February or March 1999. In August 1999, Dr. Bradley W. Bruner, the authorized treating physician, advised claimant was not released to return to work. Claimant's counsel then sent respondent a demand for resumption of temporary total disability payments. Claimant's counsel also asked for, and the ALJ set, a hearing to consider sanctions for respondent's failure to pay temporary total disability benefits. From this hearing, the ALJ denied claimant's request for penalties but ordered respondent to pay temporary total disability from February 10, 1999, to December 28, 1999. This latter Order is the subject of respondent's appeal. Respondent describes the issues on appeal as follows:

1. Whether the Administrative Law Judge exceed [sic] his authority by entering an Order for temporary total disability benefits pursuant to a hearing on claimant's motion for penalties.
2. Whether claimant is entitled to temporary total disability benefits from February 20, 1999 to December 28, 1999.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes the Order for temporary total disability benefits should be affirmed.

Respondent protests that the Order for temporary total disability benefits did not afford respondent a reasonable opportunity to defend because the issue at the hearing was penalties, not claimant's right to temporary total disability benefits. The Board disagrees.

Claimant's counsel sent a demand on November 11, 1999, specifically requesting resumption of temporary total disability benefits. The letter attached a copy of the notes from Dr. Bruner, the authorized treating physician. Dr. Bruner's notes from August 5, 1999, state:

At this point in time I do not think she is a candidate to return to work and I did not release her to return when they stated we did in Feb. with the combination of her back and her knee problem.

The demand letter and attached medical notes notified respondent that claimant was seeking temporary total disability, the period for which she was seeking the benefits and the basis for the request. The Board believes due process was afforded. The Board also notes that post-award hearing procedures are not formalized by statute or regulation. The hearing in this case was to consider claimant's right to temporary total disability and right to penalties for failure to pay the temporary total disability. The Board agrees with and affirms the conclusion that as a matter of procedure the ALJ could order temporary total disability benefits for the period in question.

The Board also agrees that the evidence indicates claimant was temporarily totally disabled during the period in question. Following the July 1998 hearing, Dr. Bruner became the authorized treating physician. He took claimant off work and referred her to two other physicians. One, Dr. Robert L. Eyster, examined claimant's back and the other, Dr. John R. Schurman, II, treated claimant's knee injury. The treatment for the knee injury included surgery and, as of March 3, 1999, Dr. Schurman reported that, as to her knee injury, claimant could return to sedentary work. Dr. Eyster had not recommended specific treatment for the back and, at this point, respondent considered claimant to be released. But as of August 5, 1999, Dr. Bruner advised claimant had not been, and was not then, released to return to work as far as he was concerned. As of the visit on December 28, 1999, Dr. Bruner advised claimant's back was no different. He still did not release her to work but it appears, although not specifically stated, he believed her condition was at maximum medical improvement. The ALJ ordered the temporary total disability to be paid to December 28, 1999. The Board agrees with and affirms that finding and order.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order entered by Administrative Law Judge Bruce E. Moore on February 17, 2000, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of April 2000.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Steven R. Wilson, Wichita, KS
- Kurt W. Ratzlaff, Wichita, KS
- Bruce E. Moore, Administrative Law Judge
- Philip S. Harness, Director