

(1) The question of whether there is a causal relationship between claimant's 1995 hip injury and his 1993 work-related knee injury gives rise to the issue of whether claimant has sustained personal injury by accident arising out of and in the course of his employment with respondent. Thus, the Appeals Board has the jurisdiction and authority to review this preliminary hearing order under K.S.A. 44-534a.

In proceedings under the Workers Compensation Act, the claimant has the burden to prove by a preponderance of the credible evidence the various conditions upon which claimant's rights depend. K.S.A. 44-501(a). See also Chandler v. Central Oil Corp., 253 Kan. 50, 853 P.2d 649 (1993). The provisions of the Workers Compensation Act shall be applied impartially to both employers and employees. K.S.A. 44-501(g). In determining whether the claimant has satisfied his burden of proof, the trier of facts shall consider the whole record.

Neither party introduced any expert medical testimony expressing an opinion concerning the question of whether there exists a causal relationship between the two accidents and resulting injuries. We have only the claimant's testimony in this regard which, in the current state of the record, is uncontroverted. Uncontradicted evidence which is not improbable or unreasonable cannot be disregarded unless shown to be untrustworthy and is otherwise ordinarily regarded as conclusive. Anderson v. Kinsley Sand & Gravel, Inc., 221 Kan. 191, 558 P.2d 146 (1976).

Claimant suffered a compensable left knee injury in 1993 which resulted in permanent impairment of its function. Claimant testified that on July 12, 1995, for no apparent reason, his left knee gave way causing him to fall and fracture his left hip. Although he had never actually fallen to the ground before, claimant stated that there were many occasions where he would lose his balance and have to catch hold of something to keep from falling.

Claimant took voluntary retirement from his employment with Shawnee County Refuse Department following his July 1993 knee injury. Respondent points out that since his medical release from his July 1993 knee injury, claimant has been active by way of walking for hours at a time at various arts and crafts festivals and by dancing with his girlfriend. Claimant contends that he must frequently stop to sit and rest when walking and points out that his knee injury substantially limited his dancing. He now predominately slow dances. Claimant concedes that he does not wear a knee brace, nor has he sought medical treatment for his knee since late 1993 when he was released by his physician following a medial meniscectomy surgery on September 3, 1993.

The Appeals Board finds from the uncontradicted testimony of the claimant that his left hip fracture which he suffered July 12, 1995 was the result of his left knee giving way, causing him to fall. The Appeals Board further finds that the left knee gave way as a natural and probable consequence of the July 1993 work-related knee injury. Therefore, as the primary knee injury arose out of and in the course of claimant's employment with the respondent, the hip injury is compensable as a direct and natural consequence of the primary injury. See Chinn v. Gay & Taylor, Inc., 219 Kan. 196, 547 P.2d 751 (1976); Jackson v. Stevens Well Service, 208 Kan. 637, 493 P.2d 264 (1972).

For purposes of preliminary hearing, the Order by the Administrative Law Judge granting medical treatment and payment of past medical bills as authorized medical should be affirmed.

(2) A preliminary finding that a claimant is temporarily and totally disabled is not one of the issues specifically listed in K.S.A. 44-534a as subject to review by the Appeals Board on an appeal from a preliminary order. However, an allegation that the Administrative Law Judge exceeded his or her jurisdiction may be reviewed pursuant to K.S.A. 1995 Supp. 44-551(b)(2)(A) which states in pertinent part:

"If an administrative law judge has entered a preliminary award under K.S.A. 44-534a and amendments thereto, a review by the board shall not be conducted under this section unless it is alleged that the administrative law judge exceeded the administrative law judge's jurisdiction in granting or denying the relief requested at the preliminary hearing."

Respondent contends that the Administrative Law Judge exceeded his jurisdiction in awarding temporary total disability compensation benefits to the claimant in this case because claimant voluntarily retired in November 1993, and since that date has not sought out any form of substantial and gainful employment, nor does claimant have any intentions of returning to the open labor market.

Claimant was released to return to work by his treating physician following his 1993 knee injury. Claimant did not return to work but instead elected to take voluntary retirement. The hip fracture which occurred in 1995 rendered him temporarily incapable of engaging in any type of substantial and gainful employment. The question of whether a claimant can be awarded temporary total disability benefits for an injury which occurred after his voluntary retirement is a question of law. The jurisdiction of an administrative law judge to decide issues of fact and law is not lost because a finding may have been incorrect. The Appeals Board finds that the Administrative Law Judge had the jurisdiction to decide this question of law and to award temporary total disability compensation. Therefore, the respondent's appeal of the preliminary award of temporary total disability compensation should be dismissed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order for Compensation of Administrative Law Judge Floyd V. Palmer dated October 10, 1995, should be, and hereby is, affirmed for purposes of the award of medical expenses and treatment, but the Appeals Board lacks the jurisdiction to review the award of temporary total disability compensation on an appeal from a preliminary order.

IT IS SO ORDERED.

Dated this ____ day of February 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: John J. Bryan, Topeka, KS
James E. Benfer, Topeka, KS
James B. Biggs, Topeka, KS
Floyd V. Palmer, Administrative Law Judge
Philip S. Harness, Director