

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

DANIEL HAMRICK)	
Claimant)	
VS.)	
)	Docket No. 183,004
ARABIAN HORSE EXPRESS)	
Respondent)	
AND)	
)	
FARMERS ALLIANCE MUTUAL INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Claimant appealed the May 30, 2001 Award on Post-Award Medical Hearing entered by Assistant Director Kenneth J. Hursh. The Board heard oral argument on October 2, 2001.

APPEARANCES

Claimant appeared pro se. M. Doug Bell of Coffeyville, Kansas, appeared for respondent and its insurance carrier.

RECORD AND STIPULATIONS

At oral argument before the Board, the parties stipulated that the evidentiary record includes the documents designated by Assistant Director Hursh in the May 30, 2001 Award on Post-Award Medical Hearing, plus the documents claimant allegedly presented to Administrative Law Judge Jon L. Frobish, who was temporarily assigned to hear this post-

award proceeding.¹ Additionally, the record should include the following documents that the Assistant Director indicated claimant could submit following the April 6, 2001 hearing:²

- (1) A copy of a July 21, 1997 letter to Gregory Lower from Joyce Jones.
- (2) A copy of an October 1, 1997 letter to claimant from Anita Edwards.
- (3) A copy of an October 23, 1997 letter to Gregory Lower from M. Doug Bell.
- (4) A copy of a November 3, 1997 demand letter to M. Doug Bell and insurance carrier's Julie Wilson from Gregory Lower with copies of return receipts.
- (5) A copy of a November 24, 1997 letter to Judge Clark from Gregory Lower.

The following additional documents were allegedly presented to Judge Frobish, according to the various letters and briefs submitted by claimant to the Division of Workers Compensation. As indicated above, the parties agree that these documents are included in the record and may be considered by the Board in this appeal:

Items submitted with a November 30, 2000 letter to Judge Frobish from claimant:

- (1) A copy of a November 4, 2000 demand letter to Julie Wilson from claimant.
- (2) A copy of an application for post-award medical signed by claimant on November 30, 2000.

Items submitted with claimant's letter regarding post-award benefits allegedly presented to Judge Frobish on January 9, 2001:

- (1) A summary of medical expenses from August 1995 through December 31, 2000 (marked as Claimant's Exhibit No. A).
- (2) Spreadsheets for medical expenses after August 28, 1995 through December 2000 (marked as Claimant's Exhibit No. B).
- (3) Copies of transcriptions of office notes by Dr. J. E. Block from November 24, 1990, January 4, 1991, and February 6, 1996 (marked as Claimant's Exhibit No. D).

¹ Many documents were sent to the Division of Workers Compensation without either being formally offered at a hearing or the parties stipulating in writing to their being included in the evidentiary record. Accordingly, it was difficult to identify those documents that the parties believe comprise the record. Claimant is reminded all exhibits should be formally offered at a deposition or hearing, or placed into the evidentiary record by formal agreement or written stipulation.

² April 6, 2001 post-award hearing transcript; pp. 21, 22.

- (4) Charts of claimant's cholesterol ratios, spreadsheets of claimant's cholesterol figures, and spreadsheet of wine purchases from 1995 through 2000 (marked as Claimant's Exhibit No. E and No. F).
- (5) A document listing drugs, supplements, vitamins, and their value to the heart and/or to cardiac rehabilitation signed by Dr. Block and dated December 8, 2000 (marked as Claimant's Exhibit No. G).
- (6) A copy of a September 23, 1998 letter to Gregory Lower from Dr. Block (marked as Claimant's Exhibit No. H).
- (7) Seven pages of medical-related articles concerning the heart and diabetes (marked as Claimant's Exhibit No. I).
- (8) Spreadsheets for diabetes-related expenses from 1995 through 2000 (marked as Claimant's Exhibit No. J).

Other items allegedly submitted to Judge Frobish on January 9, 2001:

- (1) An October 12, 2000 letter to claimant from Dr. J. E. Block.

Items submitted with a January 15, 2001 letter to Judge Frobish from claimant:

- (1) Two pages of excerpts copied allegedly from a Medicare publication (marked as Claimant's Exhibit No. 7).
- (2) A December 4, 2000 letter to Jean Schmidt from claimant.

Items stapled to a January 16, 2001 letter to Judge Frobish from claimant:

- (1) A spreadsheet of medical expenses discharged in bankruptcy June 11, 1991.

Items stapled to a January 29, 2001 letter to Judge Frobish from claimant:

- (1) A spreadsheet of expenses discharged in bankruptcy June 11, 1991.
- (2) A January 29, 2001 letter to Connie Pruitt from claimant.

Item referenced in a March 28, 2001 letter to Judge Steven Howard from claimant:

- (1) A January 22, 2001 letter to Judge Frobish from Dr. J. E. Block.

Items submitted with an April 6, 2001 letter to Assistant Director Hursh from claimant:

- (1) A spreadsheet of medical expenses discharged in bankruptcy June 11, 1991.

ISSUES

This is a post-award proceeding in which claimant requests additional medical benefits, reimbursement for medical expenses previously paid, lump sum payment of medical expenses previously ordered, and penalties and interest for the nonpayment of those medical expenses previously ordered. A summary of how the claim has reached this juncture is helpful.

Claimant brought this claim for an October 13, 1990 myocardial infarction. This claim was originally decided in an August 28, 1995 Award, in which Administrative Law Judge Shannon S. Krysl found the myocardial infarction was compensable under the Kansas Workers Compensation Act. The Award did not address medical compensation.

Respondent and its insurance carrier then appealed the August 28, 1995 Award to this Board, who in its February 7, 1997 Order affirmed the conclusion that claimant's myocardial infarction was compensable under the Act. This Board also ordered respondent and its insurance carrier to pay the reasonable and necessary medical expenses that claimant had incurred due to the myocardial infarction. On page 9 of its decision, the Board noted claimant had introduced into the record an itemized list of medical bills incurred totaling \$39,635.80. The Board stated that claimant could seek future medical benefits upon proper application to the Director of the Division of Workers Compensation.

The Board also noted in its decision that respondent and its insurance carrier could seek utilization and peer review under the Act in the event of any dispute regarding the reasonableness or necessity of a medical expense. There is no indication that utilization or peer review was ever requested.

Respondent and its insurance carrier next appealed the Board's February 7, 1997 Order to the Kansas Court of Appeals, who in its unpublished opinion filed on August 7, 1998, affirmed the Board.

On November 4, 2000, claimant wrote respondent's insurance carrier, demanding payment to him of the \$39,635.80 in medical expense that was noted in the Board's February 7, 1997 Order.

On December 4, 2000, claimant filed an application, requesting post-award medical benefits.

Assistant Director Kenneth J. Hursh conducted a hearing on April 6, 2001, addressing claimant's post-award requests. On May 30, 2001, the Assistant Director issued a decision entitled Award on Post-Award Medical Hearing in which the Assistant Director made the following rulings, among others:

1. Awarded claimant \$152 for monies paid by claimant on August 10, 1993, to Dr. J. E. Block for medical services.
2. Retroactively applied the provisions of K.S.A. 44-510k, which was enacted by the Kansas Legislature effective July 1, 2000, and limited claimant's request for reimbursement of post-award medical expenses to those incurred no more than six months before the filing date of the application for post-award medical benefits. Because the application was filed on December 4, 2000, the Assistant Director limited claimant's request for reimbursement to those medical expenses incurred after June 4, 2000.
3. Awarded claimant \$394.25 as reimbursement for post-June 4, 2000 purchases of baby aspirin, Propranolol, Tricor, Zocor, Xanax, Paxil, and Alprazolam.
4. Denied claimant's request for reimbursement for the purchase of vitamins and wine.
5. Denied claimant's request for reimbursement for the purchase of Glucophage and Prandin, which were prescribed for treating diabetes.
6. Denied claimant's request for the payment or reimbursement of other medical expenses as claimant had allegedly failed to prove that they were incurred for treating the myocardial infarction.
7. Denied claimant's request for penalties as claimant had failed to set out with particularity the medical bills claimed to be unpaid and past due.
8. Awarded claimant future medical benefits for baby aspirin, Propranolol, Tricor, Zocor, Xanax, Alprazolam, and Paxil, regardless of the prescribing doctor until such time as respondent and its insurance carrier appoint an authorized treating physician near claimant's Ohio residence.
9. Granted claimant's request for additional medical benefits from a doctor to be designated by respondent and its insurance carrier.

Claimant contends Assistant Director Hursh erred. Claimant argues that (i) \$38,836.06 remains due and owing in unpaid medical expense from the \$39,635.80 noted in the Board's February 7, 1997 Order; (ii) respondent and its insurance carrier should be assessed both penalties and interest for failing to pay the medical expenses that were ordered paid in the Board's Order; (iii) respondent and its insurance carrier should reimburse claimant for medical expense that claimant has allegedly incurred following the August 28, 1995 Award entered by Judge Krysl; (iv) wine, vitamin C, vitamin E, and selenium are beneficial to claimant's cholesterol levels and heart condition and, therefore, respondent and its insurance carrier should be responsible for those purchases; (v) diabetes is a risk factor in heart disease and, therefore, respondent and its insurance carrier should pay for treating that condition; and, finally, (vi) he has been denied both

equal protection and due process of law because of the state's failure and delay in enforcing the law throughout this claim.

Accordingly, claimant now requests the Board to order the following:

1. Lump sum payment to him of \$38,836.06, which remains from the medical expense noted by the Board in its February 7, 1997 Order.
2. Payment to him of \$26,786 as penalties, plus interest, for the nonpayment of medical expense that was awarded by the Board in its February 7, 1997 Order.
3. Payment to him of \$21,724.26 as reimbursement and payment of the medical expense (excluding herbal remedies)³ that claimant allegedly incurred for treating his heart and diabetes conditions between August 28, 1995, and April 6, 2001, the date of the hearing before the Assistant Director.
4. Medical benefits for future treatment of claimant's heart and diabetes conditions, including authorized services from a physician, payment of prescribed medications, vitamins, minerals, and wine.

Conversely, respondent and its insurance carrier contend the May 30, 2001 decision entered by Assistant Director Hursh should be affirmed. They argue they contacted the various health care providers whose expenses totaled the \$39,635.80 noted in the Board's February 7, 1997 Order and were advised by all the various health care providers, except one, that their records showed zero balances on claimant's accounts. They contend they immediately paid Med. Pro. Corp. after learning that its records carried a \$674.76 balance due.

Respondent and its insurance carrier also contend that they reimbursed Medicare the sum of \$6,030.42 for medical expenses it paid on claimant's behalf for treating his heart condition. They argue the medical expenses that totaled \$39,635.80 as noted in the Board's February 7, 1997 Order have been paid either by claimant's private health insurer, by Medicare, or some other third party, or that the medical expenses were discharged in a bankruptcy proceeding that claimant filed in 1991. Accordingly, respondent and its insurance carrier argue there are no unpaid medical bills and, therefore, no grounds for assessing penalties.

Respondent and its insurance carrier further contend the Assistant Director correctly ruled that K.S.A. 44-510k, which limits how far back a judge may go in awarding post-award medical benefits, should apply retroactively to this claim because the statute is

³ In this post-award proceeding, claimant initially claimed reimbursement for all past and future expense for the herbs that he was taking for his heart. But on page 21 of claimant's submission brief filed with the Board on June 26, 2001, claimant abandons the claim for herbal remedies.

procedural in nature and the statute did not affect claimant's substantive rights. Accordingly, they argue the request for reimbursement of medical expenses incurred before the December 4, 2000 filing of the application for post-award medical benefits should be limited to only those expenses incurred no more than six months before the filing date of the application.

Finally, respondent and its insurance carrier agree with the Assistant Director's findings that claimant's expenditures for vitamins, herbal remedies, and wine should not be reimbursed by them.

In their brief to the Board, respondent and its insurance carrier designated Dr. David Utlak, a cardiologist from Canton, Ohio, who practices near claimant's present residence, as being authorized to provide claimant with ongoing medical treatment.⁴

The issues now before the Board are:

1. Is claimant entitled to receive payment, instead of the health care providers, of the medical expense ordered by the Board in its February 7, 1997 Order?
2. Is claimant entitled to receive penalties or interest for respondent and its insurance carrier's failure to pay the medical expense totaling \$39,635.80 that was noted in the Board's February 7, 1997 Order?
3. If so, how much in penalties should be assessed?
4. What reimbursement, if any, is claimant entitled to receive for the post-award medical expense that he has incurred?
5. Is the post-award medical statute K.S.A. 44-510k applicable to this claim? If so, should the statute, which was enacted by the 2000 Kansas Legislature and which limits the administrative law judge from awarding post-award medical expense that was incurred more than six months before the filing of the application for post-award medical treatment, be applied retroactively or only prospectively?
6. Are respondent and its insurance carrier responsible for either past or future treatment of claimant's diabetes and high blood pressure?
7. Are respondent and its insurance carrier responsible for either past or future purchases of wine, vitamin C, vitamin E, and selenium?

⁴ But claimant has since forwarded to the Director a September 26, 2001 letter from Dr. Utlak, which indicated that claimant needs a physician such as an internal medicine physician to be his primary care physician. Claimant represents that Dr. Utlak is willing to see him as a cardiology specialist only.

FINDINGS OF FACT

After reviewing the entire record, the Board finds:

1. On October 13, 1990, claimant had a myocardial infarction for which he later claimed workers compensation benefits. When the claim was submitted to Administrative Law Judge Shannon S. Krysl for decision, the principal issue before the Judge was whether claimant's myocardial infarction was caused by either unusual exertion or an external force related to claimant's work activities. In an August 28, 1995 Award, the Judge determined the myocardial infarction was caused by both unusual physical exertion and emotional stress directly related to claimant's employment and, accordingly, granted claimant's request for benefits.

2. Respondent and its insurance carrier appealed that Award to the Board, which by its February 7, 1997 Order also awarded claimant benefits for the myocardial infarction and ordered respondent and its insurance carrier to pay the medical expense that claimant incurred as a result of the myocardial infarction. In its Order, the Board noted claimant had introduced evidence of medical bills totaling \$39,635.80 but that respondent and its insurance carrier could seek utilization and peer review as provided by the Workers Compensation Act should there be any question whether the bills were excessive or unjustified. In its February 7, 1997 Order, the Board also stated that claimant could request additional medical benefits upon proper application to the Director. On page 9 in paragraph 4 of the February 7, 1997 Order, the Board held:

The Appeals Board finds that respondent and its insurance carrier are required to pay the medical expense claimant incurred as a result of the myocardial infarction. Further, claimant may request the payment of future medical expense upon proper application to the Director. At regular hearing claimant introduced medical bills totaling \$39,635.80. Should any issue arise whether that medical expense is excessive or unjustified, the respondent and its insurance carrier may seek utilization and peer review as set forth in K.S.A. 44-510(a).

In the Award section of the Board's Order, page 10, the Board wrote, in part:

The respondent and its insurance carrier are ordered to pay the medical expense claimant has incurred with respect to this injury. In addition, claimant may request additional medical benefits upon proper application to the Director.

3. Throughout the litigation of this proceeding, respondent and its insurance carrier contested the claim's compensability and denied responsibility for the ongoing medical expenses incurred for treating claimant's heart condition. When the claim reached regular hearing, claimant had allegedly incurred \$39,635.80 in medical expense as shown in an exhibit that was introduced into evidence and that listed the following health care providers:

J. E. Block, M.D.	\$4,426.00
Rauch Med-Econ Pharm.	2,368.76
Coffeyville Regional Med.	714.06
Emergency Medicine Phys.	808.00
Radiology Associates	16.50
Wal-Mart Pharmacy	2,367.41
Clark Memorial	17,318.85
Cardiology Diag. of Tulsa	10.39
Reliable Drug	196.08
Jewish Hospital	7,764.75
Med. Pro. Corp. (Hussain, Seyal)	3,645.00

4. Following the Board's February 7, 1997 Order, respondent and its insurance carrier continued to contest responsibility for claimant's myocardial infarction, appealing the Board's decision to the Kansas Court of Appeals. In its unpublished opinion filed August 7, 1998, the Court of Appeals affirmed the Board's Order, holding the medical evidence, which related claimant's myocardial infarction to his employment, was uncontradicted and must be regarded as conclusive. The Court stated, in part:

Here, two medical witnesses offered uncontroverted opinions that the combination of the 14-hour drive and the bad news appellee received were substantial causative factors of his heart attack. Since appellants offered no evidence, medical or otherwise, to controvert the doctors' testimony, we must regard that testimony as conclusive. . . .

The Court of Appeals' decision does not mention the \$39,635.80 in medical expense that was noted in the Board's Order.

5. On November 4, 2000, claimant wrote respondent's insurance carrier, demanding payment to him of the \$39,635.80 in medical expense that was noted in the Board's February 7, 1997 Order.

6. On December 4, 2000, claimant filed with the Division of Workers Compensation an Application for Post Award Medical in which he requested "lifetime heart related medical benefits including those in that class excluded by omission from the Award Feb. 7, 1997 by the Kansas Workers Compensation Appeals Board."

7. In their brief to the Board, respondent and its insurance carrier state that shortly before a January 2001 meeting with Judge Frobish they contacted the various health care providers whose bills totaled the \$39,635.80 noted in the Board's February 7, 1997 Order. They also state that all but one of the health care providers allegedly advised they had a zero balance. But Med. Pro. Corp. allegedly stated it carried a balance of \$674.76, which respondent and its insurance carrier allegedly immediately paid. Respondent and its insurance carrier also state in their brief that they paid Medicare the sum of \$6,030.42 as reimbursement of claimant's heart-related medical expenses.

8. Despite respondent and its insurance carrier's contentions that the various health care providers carry a zero balance, claimant produced a letter from Dr. J. E. Block dated January 22, 2001, that indicates his office is owed money. Dr. Block wrote:

One of my patients, Dan Hamrick, contacted me today and quoted attorney M. Doug Bell, attorney for Farmers Alliance Insurance Co., as telling you that a bill in the amount of \$4,426 had been paid. Dan said Bell told you the bill had been "zeroed out." The statement, if it were made, is inaccurate and untrue. This office has never been paid for most of those bills accumulated by Mr. Hamrick prior to the time he got Medicare in 1993 and for many thereafter because we recognized the seriousness of his medical problem and the fact that he had applied for insurance and that it would be forthcoming some time. We previously provided a letter to him for your court to say we expected payment.

It has been nearly a decade since some of these bills have been created, and we would appreciate prompt payment by the insurance company.

Neither Mr. Bell nor Farmers Alliance Insurance Co. made any contact with our office relative to payment of the bills. Any statement to that effect is a misrepresentation.

9. The parties agree that claimant filed for bankruptcy in 1991 and in that proceeding listed, among others, the following creditors and health care providers:

J. E. Block, M.D.	\$550
Clark Memorial Hospital	171
Emergency Medicine	808
Drs. Hussain and Seyal	675
Med-Aid Services	406
Radiology Associates	4

10. No testimony has been presented to support claimant's post-award requests. But the parties have presented numerous documents, including, among others, letters from Dr. J. E. Block and Dr. David J. Utlak, both of whom address the medical issues in this claim.

11. Claimant introduced into evidence a December 19, 2000 letter from Dr. J. E. Block, who has treated claimant for his heart condition. As found in the initial 1995 Award, Dr. Block has considerable experience in treating heart disease. On page 4 of the August 28, 1995 Award, Judge Krysl highlighted the doctor's credentials:

. . . Dr. Block is board certified in internal medicine. He has been a professor of medicine at U.C.L.A. and U.M.K.C. He was also acting assistant chief of cardiology from 1980 to 1985 at U.M.K.C. Dr. Block has performed considerable research in the area of high cholesterol and prevention of heart

disease. His expertise is in preventing heart disease and stroke. He has been practicing medicine in Coffeyville for ten years. Sixty percent of the patients he treats have heart disease.

12. In his December 19, 2000 letter, Dr. Block writes that the heart disease and heart damage arising from claimant's October 13, 1990 heart attack could not be treated properly without treating claimant's diabetes. Accordingly, the doctor recommended a strict diet; an exercise program; medicines for cholesterol, diabetes, and stress; an assortment of mega-vitamins and supplements; and a couple of glasses of wine per day for improving claimant's ratio of HDL (high-density lipoprotein) to total cholesterol. Dr. Block wrote, in part:

I have treated Mr. Hamrick since his heart attack on Oct. 13, 1990, and continue to examine him from time to time.

The treatment requires control and management of his LDL, VLDL and HDL cholesterol, his triglycerides, blood sugar and management and reduction of tension and stress in his life.

His heart damage and disease resulting from the heart attack could not be treated properly without inclusion of treatment of his elevated blood sugar defined as Type II diabetes.

The regimen has included — and will need to continue to include — strict diet, an exercise program involving aerobic and anaerobic exercise, medicine for cholesterol, blood sugar and stress or tension and an assortment of mega-vitamins and supplements.

A persistent problem for Mr. Hamrick from the beginning of treatment has been a dangerously high ratio of HDL (high-density lipoprotein) to total cholesterol. Following years of resistance to my recommendations for a couple of glasses of wine a day for improving the ratio, Mr. Hamrick started taking the wine about 1997 and his ratio has shown a dramatic improvement since that time.

13. Respondent and its insurance carrier introduced the May 29, 2001 medical report of Dr. David J. Utlak of Canton, Ohio, who recently examined claimant on May 11, 2001. In that report, Dr. Utlak indicated that claimant's diabetes and high blood pressure were two risk factors for heart disease that should be treated aggressively regardless of the myocardial infarction. The doctor, however, indicated that managing claimant's hypercholesterolemia would be somewhat different following an acute coronary event.

14. Dr. Utlak also wrote in his May 2001 report that baby aspirin and Propranolol, which is a beta-blocker, are essential medications for claimant's heart condition, and the Tricor and Zocor used to treat claimant's hypercholesterolemia are necessary and specifically

should be used as a result of the 1990 heart attack. The doctor, however, noted the medications that claimant is taking for his diabetes, such as the Glucophage and Prandin, should be used regardless of whether claimant had experienced the myocardial infarction. Additionally, Dr. Utlak stated that the Xanax and Paxil, which are prescribed for stress, are also appropriate and related to the 1990 heart attack. The doctor wrote, in part:

What medication should Mr. Hamrick [claimant] be taking as a result of the 1990 heart attack, if any? As mentioned above, all the medications which he is presently on are totally appropriate in his case. However, the baby aspirin 81 mg qd and the Propranolol (the beta-blocker) are essential medications, specifically regarding his heart attack. The other medications for diabetes should be used regardless of whether or not he has had a myocardial infarction in the past. The Tricor and Zocor are necessary and specifically should be used as a result of the 1990 heart attack. If there is significant stress in his life, Xanax and Paxil are also useful, specifically with regard to the 1990 heart attack.

Furthermore, Dr. Utlak wrote in his report that wine has been shown to raise HDL (the good cholesterol) levels and there is current scientific data that shows wine can be beneficial in terms of the long-term prognosis in patients who have coronary disease. But according to the doctor there is no scientific data to prove that herbal medications are of benefit to patients with coronary disease.

CONCLUSIONS OF LAW

1. For the reasons explained below, the Award on Post-Award Medical Hearing should be modified to grant claimant penalties in the sum of \$4,016.30 and reimbursement for medical expense in the sum of \$3,501.84.
2. Claimant's request for payment to him, rather than directly to the health care providers, of the medical expense awarded by the Board in its February 7, 1997 Order is denied. The Workers Compensation Act does not grant an injured worker the right to require an employer and its insurance carrier to pay the worker, rather than the health care provider, amounts representing the unpaid balances of medical bills.

At the time of claimant's heart attack, K.S.A. 1990 Supp. 44-510 set forth an injured worker's right to medical compensation. That statute provides, in part:

(a) It shall be the duty of the employer to provide the services of a health care provider, and such medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, ambulance, crutches, and apparatus, and transportation to and from the home of the injured employee to a place outside the community in which such employee resides, and within such community if the director in the director's discretion so orders, as may

be reasonably necessary to cure and relieve the employee from the effects of the injury.

The medical compensation statute specifically addresses payment of outstanding medical bills only when it addresses collection actions that are stayed in district court. The statute provides:

In the case of an action stayed hereunder, any award of compensation shall require any amounts payable for medical services or materials to be paid directly to the provider thereof plus an amount of interest at the rate provided by statute for judgments.⁵

The Board concludes the Kansas legislature did not intend injured workers to have the right to require payment to them, instead of the health care provider, amounts representing the unpaid balances of medical bills. Conversely, the Board concludes the legislature intended unpaid medical bills to be paid directly to the health care provider to avoid the risk of nonpayment and the resulting adverse consequences.

3. Claimant is entitled to receive penalties in the sum of \$4,016.30 because respondent and its insurance carrier failed to pay the medical expense ordered by the Board. Claimant's request for interest on the unpaid medical bills is denied.

When medical compensation that has been awarded is not paid after a proper demand, the Workers Compensation Act entitles the worker to receive penalties for each past due medical bill in the sum of \$25 or 10 percent of the amount that is past due, whichever is larger. K.S.A. 1990 Supp. 44-512a provides, in part:

(a) In the event any compensation, including medical compensation, which has been awarded under the workers compensation act, is not paid when due. . . the employee shall be entitled to a civil penalty. . . in an amount for each past due medical bill equal to the larger of either the sum of \$25 or the sum equal to 10% of the amount which is past due on the medical bill, if: (1) Service of written demand for payment, setting forth with particularity the items of disability and medical compensation claimed to be unpaid and past due, has been made personally or by registered mail on the employer or insurance carrier liable for such compensation and its attorney of record; and (2) payment of such demand is thereafter refused or is not made within 20 days from the date of service of such demand.

(b) After the service of such written demand, if the payment of disability compensation or medical compensation set forth in the written demand is not made within 20 days from the date of service of such written demand, plus

⁵ K.S.A. 1990 Supp. 44-510(b).

any civil penalty, as provided in subsection (a), if such compensation was in fact past due, then all past due compensation and any such penalties shall become immediately due and payable. . . . The employee may maintain an action in the district court of the county where the cause of action arose for the collection of such past due disability compensation and medical compensation, any civil penalties due under this section and reasonable attorney fees incurred in connection with the action.

Respondent and its insurance carrier do not contest the adequacy of the written demand or whether they paid the medical bills comprising the \$39,635.80 total referenced by the Board in its February 7, 1997 Order. Their defense is that either unknown third parties paid the bills or claimant's 1991 bankruptcy proceeding discharged claimant's obligation to pay the bills. In either event, respondent and its insurance carrier contend their responsibility to pay the medical bills has been extinguished. Accordingly, respondent and its insurance carrier argue no penalty should be assessed. The Board disagrees.

Kansas law is clear that once a worker makes a proper demand for payment of medical expenses, the burden shifts to the employer and its insurance carrier to avoid the effects following a K.S.A. 44-512a demand.⁶ And the record fails to establish that respondent and its insurance carrier satisfied those medical bills within 20 days of receiving the demand for payment, or that the health care provider had knowingly abandoned its claim for payment against respondent and its insurance carrier.

The Board does not believe that it was the legislature's intent to allow employers and their insurance carriers to reap benefit by avoiding paying medical bills until such time that a worker has been forced into bankruptcy, discharging the worker's personal obligation for a medical bill, or a health care provider has abandoned hope of ever receiving payment.

The Board concludes that payments by third parties do not extinguish an employer's obligation to provide workers compensation benefits, including medical compensation, to an injured worker. Likewise, an employer is not relieved of its obligations under the Workers Compensation Act by an injured worker's discharge in bankruptcy. Accordingly, the following penalties are due for each of the following medical bills:

<u>Provider</u>	<u>Amount Due</u>	<u>Penalty</u>
J. E. Block, M.D.	\$4,426.00	\$442.60
Rauch Med-Econ Pharm.	2,368.76	236.88
Coffeyville Regional Med.	714.06	71.41
Emergency Medicine Phys.	808.00	80.80
Radiology Associates	16.50	25.00
Wal-Mart Pharmacy	2,367.41	236.74

⁶ See *Ryder v. Reagor*, 213 Kan. 576, 516 P.2d 990 (1973); *Criss v. Folger Drilling Co.*, 195 Kan. 552, 407 P.2d 497 (1965); *Miller v. Massman Construction Co.*, 171 Kan. 713, 237 P.2d 373 (1951).

Clark Memorial	17,318.85	1,731.89
Cardiology Diag. of Tulsa	10.39	25.00
Reliable Drug	196.08	25.00
Jewish Hospital	7,764.75	776.48
Med. Pro. Corp. (Hussain, Seyal)	3,645.00	<u>364.50</u>
		\$4,016.30

Respondent and its insurance carrier are assessed the sum of \$4,016.30 as penalties for the nonpayment of medical compensation. Claimant’s request for interest under K.S.A. 1990 Supp. 44-512b is denied as that statute is not applicable because it addresses the failure to pay compensation before an award.

4. The Board will not enter a second order to pay the medical expenses ordered paid in its February 7, 1997 Order, as that order is valid and may be enforced in district court. As indicated above, K.S.A. 1990 Supp. 44-512a(b) provides, in part:

. . . The employee may maintain an action in the district court of the county where the cause of action arose for the collection of such past due disability compensation and medical compensation, any civil penalties due under this section and reasonable attorney fees incurred in connection with the action.

5. Claimant is entitled to receive reimbursement in the sum of \$3,501.84 for the medical expense that he paid before April 6, 2001, for treating his heart condition, hypercholesterolemia and stress.

Claimant’s right to reimbursement for those medical expenses that he paid following the August 28, 1995 Award is governed by K.S.A. 1990 Supp. 44-510, which provides, in part:

(b) . . . If the employer has knowledge of the injury and refuses or neglects to reasonably provide the benefits required by this section [medical benefits], the employee may provide the same for such employee, and the employer shall be liable for such expenses subject to the regulations adopted by the director. . . .

Respondent and its insurance carrier denied responsibility for claimant’s heart-related medical expenses throughout litigation of the claim, leaving claimant to obtain his own medical treatment. Accordingly, respondent and its insurance carrier are responsible for the reasonable and necessary medical expenses that claimant has incurred, which are directly related to the myocardial infarction.

6. Based upon the May 29, 2001 letter from Dr. Utlak, which the Board finds persuasive, the Board concludes that claimant should receive reimbursement for his medical expenditures to treat the heart condition, hypercholesterolemia and stress. On the other hand, respondent and its insurance carrier are not responsible for medical expenses

related to claimant's diabetes or high blood pressure as the record fails to establish that claimant's diabetes or high blood pressure were either caused or aggravated by the myocardial infarction. Accordingly, claimant is entitled to receive reimbursement for past purchases of baby aspirin, Propranolol, Tricor, Zocor, Xanax, Alprazolam, and Paxil, or their equivalents.

The Board denies claimant's request for the reimbursement for past purchases of vitamins and wine. There is no evidence that establishes the need for those items was affected or increased by the myocardial infarction. Further, the Board concludes that in this instance those items do not comprise "medical treatment" as that term is used in the Act.

Reviewing the receipts and documents in the record, the Board concludes that claimant is entitled to receive reimbursement in the sum of \$3,501.84, which was computed as follows:

Baby aspirin	\$26.26
Propranolol	91.56
Tricor	325.74
Zocor	1,678.73
Xanax/Alprazolam	274.03
Paxil	<u>1,105.52</u>
	<u>\$3,501.84</u>

7. Claimant presented a copy of his statement of account from Dr. Block's office. That statement indicates that claimant made several payments to Dr. Block from 1993 through 1997. But the Board denies reimbursement for those payments as the record fails to disclose whether those payments were made for treatment of claimant's myocardial infarction or for other unrelated health concerns such as his diabetes or high blood pressure.

Likewise, in reviewing claimant's receipts and summaries of payments, the Board has denied reimbursement for some of the claimed expense as it is not supported by testimony that the expense was incurred for treatment of the myocardial infarction, the expense was listed in claimant's itemization twice, or the item listed on the itemization was listed as one item when the receipts and documents indicate that it was for another item that has been determined to be unrelated to the myocardial infarction.

8. As indicated above, respondent and its insurance carrier are responsible for providing claimant medical treatment for his heart condition, hypercholesterolemia and stress. But respondent and its insurance carrier are not responsible for purchases of vitamins, herbs, or wine. Likewise, respondent and its insurance carrier are not responsible for treating claimant's diabetes or high blood pressure. Accordingly, respondent and its insurance carrier are ordered to provide claimant with an appropriate authorized treating physician and pay claimant's ongoing medical expenses for treating the

heart condition, hypercholesterolemia and stress. Claimant's request for payment of vitamins and wine is denied, along with the request for treatment of his diabetes and high blood pressure.

AWARD

WHEREFORE, the Board modifies the May 30, 2001 Award on Post-Award Medical Hearing entered by Assistant Director Kenneth J. Hursh as follows:

Claimant is awarded penalties in the sum of \$4,016.30 and reimbursement for medical expense in the sum of \$3,501.84. Claimant is awarded additional ongoing medical benefits for treating claimant's heart condition, hypercholesterolemia and stress. Respondent and its insurance carrier are ordered to immediately designate an authorized primary treating physician. If respondent and its insurance carrier fail to designate an authorized physician within 30 days of this Order, then any medical treatment that claimant obtains for treating his heart condition, hypercholesterolemia or stress shall be considered authorized and the responsibility of respondent and its insurance carrier.

The Board adopts the remaining orders set forth in the May 30, 2001 Award on Post-Award Medical Hearing that are not inconsistent with the above.

IT IS SO ORDERED.

Dated this ____ day of January 2002.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Daniel Hamrick, 402 23rd Street NW, Canton, OH, 44709
- M. Doug Bell, Attorney for Respondent and its Insurance Carrier
- Kenneth J. Hursh, Assistant Director
- Philip S. Harness, Workers Compensation Director