

ISSUES

On February 24, 1997, Administrative Law Judge Floyd V. Palmer entered an Agreed Award approved by the parties. The Agreed Award was for a November 8, 1993, work-related accident that resulted in permanent injury to claimant's low back and left hip. Claimant was awarded a 12 percent permanent partial general disability based on functional impairment as respondent had returned claimant to work at her regular employment at the same wage. Claimant retained her right to review and modify the Award.

On September 23, 1998, claimant filed an Application for Review and Modification of the February 24, 1997 Agreed Award. Claimant alleged her condition had worsened as the direct and natural consequence of her November 8, 1993, injury. And as a result of the worsening condition, claimant alleged she was now permanently and totally disabled from engaging in any type of substantial and gainful employment.

Administrative Law Judge (ALJ) Brad E. Avery found claimant was permanently and totally disabled, but also found claimant failed to prove her increased disability was the direct and natural result of the November 8, 1993, injury. Thus, the ALJ denied claimant's request to modify the February 24, 1997, Agreed Award.

On appeal, claimant contends her testimony, coupled with the medical opinions of Dr. P. Brent Koprivica and Dr. Charles Erik Nye, prove claimant's low back condition worsened as the direct and natural result of the original November 8, 1993, low back injury. Claimant argues this worsening condition caused her such severe pain and discomfort that she could no longer perform her job duties for the State of Kansas and was forced to retire. Further, claimant argues her condition has now deteriorated to a level where she is incapable of engaging in any type of employment and she is entitled to permanent total disability benefits.

Conversely, respondent requests the Appeals Board (Board) to affirm the ALJ's Award which denied claimant's request to modify the February 14, 1997, Agreed Award. Respondent argues claimant failed to prove her November 8, 1993, low back injury worsened to the point she no longer had the ability to work. Respondent contends claimant's deteriorating physical condition was not caused by her original work-related injury but is a combination of the diabetic condition that claimant has had for some 22 years, an intervening 1994 non-work-related accident that fractured her right ankle and another non-work-related physical problem diagnosed as polymyalgia rheumatica.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record, considering the briefs, and hearing the parties' arguments, the Board makes the following findings and conclusions:

The Board finds the Award should be affirmed. The ALJ found claimant failed to prove her current deteriorating physical condition and the reason she retired from her job with respondent was the direct and natural consequence of her November 8, 1993 work-related low back injury. The ALJ reasoned the more likely cause of claimant's current deteriorating physical condition is a combination of her non-work-related health problems of diabetes, a 1994 fractured ankle and polymyalgia rheumatica (an arthritic condition involving the acute inflammation of the muscle fibers).¹ The Board finds the ALJ's conclusion is supported by the persuasive medical opinions of treating physician, Dr. Sharon McKinney, and evaluating physician, orthopedic surgeon, Dr. Sergio Delgado.

Moreover, the Board agrees with the ALJ's analysis of the evidence as set forth in the Award. The Board finds the ALJ's Award sets out findings of fact and conclusions of law that are accurate and supported by the record. It is not necessary to repeat those findings and conclusions in this Order. Therefore, the Board adopts the ALJ's findings and conclusions as its own.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that ALJ Brad E. Avery's August 31, 2000, Award, should be, and is hereby, affirmed.

The ALJ's order setting out the court reporter fees as administrative expenses to be assessed against the respondent and insurance carrier is adopted by the Board

IT IS SO ORDERED.

Dated this ____ day of June, 2001.

¹ See April 2, 1998, deposition of Sharon McKinney, D.O., p. 24.

BOARD MEMBER

BOARD MEMBER

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- c: Seth G. Valerius, Topeka, Kansas
Jeff K. Cooper, Topeka, Kansas
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Director