BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

DEBORAH K. ZUERCHER	)	
Claimant	)	
VS.	)	
	)	Docket Nos. 186,892 & 233,958
WHEAT STATE MANOR, INC. AND	)	
NEWTON MEDICAL CENTER	)	
Respondents	)	
AND	)	
	)	
KANSAS ASSOCIATION OF HOMES FOR THE	)	
AGING INSURANCE GROUP, INC. AND	)	
KANSAS HOSPITAL ASSOCIATION WCF, INC.	)	
Insurance Carriers	)	

ORDER

Respondent Wheat State Manor, Inc., its insurance carrier, and the claimant appeal Administrative Law Judge John D. Clark's June 7, 2000, Award. On December 8, 2000, the Appeals Board heard oral argument in Topeka, Kansas.

APPEARANCES

Claimant appeared by her attorney, Steven R. Wilson of Wichita, Kansas. Respondent, Wheat State Manor, Inc., and its insurance carrier, Kansas Association of Homes for the Aging, Insurance Group, Inc., appeared by their attorney, Jeffrey A. Chanay, of Topeka, Kansas. Respondent, Newton Medical Center, and its insurance carrier, Kansas Hospital Association, WCF, Inc., appeared by their attorney, Orval B. Mason of Arkansas City, Kansas.

RECORD AND STIPULATIONS

The Appeals Board (Board) has considered the record listed in the Award. Additionally, the record contains a stipulation approved by the Administrative Law (ALJ) on March 14, 2000, admitting into evidence the medical treatment records of orthopedic surgeon Kenneth A. Jansson, M.D.

At oral argument before the Board, the parties agreed that the attorney for Wheat State Manor, Inc. would submit to the Board a letter specifying the dates claimant was paid temporary total disability and temporary partial disability benefits after July 11, 1997. The Board has received that letter dated December 11, 2000, and the letter is made part of the record.

The Board has adopted the stipulations listed in the Award.

ISSUES

The ALJ consolidated these two docketed claims for litigation purposes. In Docket No. 186,892, claimant requests review and modification of an Award entered on May 19, 1994 for a March 14, 1993, accident while claimant was employed by Wheat State Manor, Inc. (Wheat State). In Docket No. 233,958, the claim is for a July 11, 1997, accident while claimant was employed by Newton Medical Center (Newton). The ALJ found claimant's need for medical treatment and her increase in disability was a direct and natural consequence of the March 14, 1993, injury and modified the May 19, 1994, Award.

Wheat State appeals and the issues raised by Wheat State are summarized as follows:

1. Did the ALJ have jurisdiction to modify the May 19, 1994, Award entered in Docket No. 186,892, when claimant's application for review and modification failed to allege an increase in claimant's disability?

2. Is a scheduled injury award subject to review and modification after that award has been paid in full and the total weeks allowed under the schedule also have expired before claimant's alleged disability increased?

3. Is claimant's need for medical treatment and increased disability the direct and natural consequence of the March 14, 1993, injury while employed by Wheat State or, instead, the result of a new accident while employed by Newton?

4. What is the nature and extent of claimant's disability?

On appeal, the claimant contends, if the Board affirms ALJ's decision to modify the May 14, 1994, Award, the modification should be for 148.57 weeks of permanent partial general disability at $49.88 per week or $7,411 instead of the ALJ 's review and modification Award of 147.43 weeks of permanent partial general disability at $49.88 or $7,353.81. Further, the claimant contends, if the Board finds claimant suffered a new accidental injury while employed by Newton, claimant has proved she is entitled to a 64.5 percent work disability.

In contrast, Newton, requests the Board to affirm the ALJ's Award. Newton contends the record as a whole proves claimant's need for medical treatment and her increased disability is the direct and natural consequence of the March 14, 1993, injury while employed by Wheat State.

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:

1. Did the ALJ have jurisdiction to modify the May 19, 1994, Award entered in Docket No. 186,892, when claimant's application for review and modification failed to allege an increase in claimant's disability?

Wheat State argues that none of claimant's applications for review and modification that were filed in this case alleged an increase in claimant's disability. All of the applications for review and modification that were filed only requested medical treatment or temporary total disability benefits. Thus, Wheat State contends, the ALJ did not have the jurisdiction to modify the May 19, 1994, Award and increase claimant's disability.

The ALJ did not address this issue and the Board finds the issue was not raised by Wheat State before the ALJ. The issue is raised for the first time before the Board. The Board only has jurisdiction to review findings of the ALJ upon questions of law and fact as presented and introduced before the ALJ.[1] Thus, the Board concludes it does not have jurisdiction to review this issue because it was not raised before the ALJ. Wheat State's appeal of this issue is therefore dismissed.

2. Is a scheduled injury award subject to review and modification after the Award has been paid in full and the total weeks allowed under the schedule also have expired before claimant's alleged disability increased?

The May 19, 1994, Award was for a March 14, 1993, accident that caused only a permanent right knee injury. The Award was, therefore, for a scheduled leg injury limited to a maximum of 200 permanent partial disability weeks.[2] Claimant was awarded 1.71 weeks of temporary total disability compensation at the rate of $172.01 per week or $294.14 following by 22.80 weeks of permanent partial disability at the rate of $172.01 per week or $3,921.83 for 11.5 percent permanent partial disability of claimant's right lower extremity making a total award of $4,215.97.[3] The May 19, 1994, Award was a running award but all of the temporarily total and permanent partial disability weeks were past due on the date

---

[1] See K.S.A. 44-555c(a).

[2] See K.S.A. 1992 Supp. 44-510d(a)(16).

[3] The total benefits awarded in the May 19, 1994, Award totaled $4,216.51 instead of $4,215.97 as found by the Board. This small discrepancy is due to the rounding of the percentages applied to the money rate.

of the Award. The claimant did not relinquish her right to review and modify the Award or her right to future medical treatment.

Claimant testified her right knee became symptomatic while she was performing her regular work duties while working for respondent Newton on or about July 11, 1997. Claimant thought the increased symptoms were the result of pushing heavy carts of material. Claimant also admits she had some episodes of pain and discomfort in her right knee since she last saw orthopedic surgeon Dr. Kenneth A. Jansson, on July 14, 1994, for the March 14, 1993, right knee injury. Dr. Jansson was claimant's treating physician following the March 14, 1993, accident. He performed surgery on claimant's right knee on June 8, 1993. Claimant testified the episodes of pain and discomfort that she had experienced since her 1993 operation usually diminished and went away after a short period of time. But the right knee symptoms she developed on or about July 11, 1997, persisted and seemed to worsen.

After claimant's right knee symptoms worsened on or about July 11, 1997, claimant filed both an application for review and modification in Docket No. 186,892 and filed a claim for a new accident occurring on or about July 11, 1997, while employed by respondent Newton, which was assigned Docket No. 233,958.

Wheat State argues the May 19, 1994, Award cannot be reviewed and modified because the Award involved a scheduled leg injury and all the temporary total disability and permanent partial disability benefits have been paid. The 200 maximum weeks allowed for a scheduled leg injury had also expired before claimant alleged her right knee symptoms worsened on or about July 11, 1997, and she sought additional medical treatment.

The Board disagrees with Wheat States arguments. The Board concludes, if the greater weight of the evidence in this case proves claimant's need for medical treatment and her increased disability are the direct and natural consequence of her previous March 14, 1993, right knee injury, then the March 19, 1994, Award is subject to review and modification. The May 19, 1994, Award did not extinguish claimant's future rights of review and modification and medical treatment. Thus, the ALJ has the authority to modify the Award if the ALJ finds the functional impairment or work disability of the claimant has increased or diminished.[4] If claimant's disability increased as the natural and probable consequence of the March 14, 1993, injury, all benefits relate back to the March 14, 1993, accident. And if, as alleged by claimant, she now suffers a whole body injury instead of a scheduled right knee injury, then claimant is entitled to a modification of the award based

---

[4] See K.S.A. 1992 Supp. 44-528.

on 415 weeks of permanent partial general disability benefits and she is not limited to the weeks contained in the schedule.[5]

3. Is claimant's need for medical treatment and alleged increase in disability the direct and natural consequence of the previous March 14, 1993, right knee injury suffered while employed by Wheat State or, instead, did claimant suffer a new accident while employed by Newton?

The ALJ found claimant's need for medical treatment and her increased disability was not the result of new accident while working for Newton but, instead, was the direct and natural consequence of the March 14, 1993, right knee injury while working for Wheat State.

The Board agrees with the ALJ and adopts his findings and conclusions contained in the Award on this issue. The Board is mindful that claimant thought she had suffered a reinjury of her right knee while pushing heavy carts at work for Newton. But claimant also testified she had been experiencing episodes of pain and discomfort in her right knee since her March 14, 1993, injury and the resulting June 8,1993, surgery.

In March 1994, claimant voluntarily left Wheat States' employment and started working almost immediately for Newton. Because of increased pain and discomfort in her right knee, claimant returned to see Dr. Jansson, her treating physician, on July 14, 1994. At that time, Dr. Jansson placed claimant in a short term physical therapy program and claimant's symptoms improved. But claimant also testified she continued to have episodes of pain, soreness and stiffness in her right knee. Sometimes she would go to a doctor for the pain and discomfort and sometimes the pain and discomfort would resolve by her taking over-the-counter medication.

Because this case represents a very close question between the issue of a new injury or the direct and natural consequence of the previous compensable primary injury, the medical evidence contained in the record is critical in deciding this issue and should be given considerable weight. The Board, in this case, finds the greater weight of the medical evidence tips the scales in favor of the finding that claimant's need for medical treatment and increased disability was the direct and natural consequence of her previous March 14, 1993, right knee injury.

Dr. Jansson performed both the 1993 and 1998 surgeries on claimant's right knee. He did not testify in this case but his medical treatment records were admitted into the record by the stipulation of the parties which was approved by the ALJ on March 14, 2000.

---

[5] See, e.g., Woodward v. Beech Aircraft Corp., 24 Kan. App. 2d 510, 949 P.2d 1149 (1997) (In that case, claimant suffered a compensable left knee injury in 1991 and then suffered right knee pain in 1992 as a result of over compensating for the injured left knee. The Board found the compensable left knee injury aggravated the preexisting degenerative condition in the right knee. The court approved the Board's finding that the claimant sustained bilateral knee injuries as a result of the 1991 accident. Thus, claimant suffered a nonscheduled injury and compensation was awarded pursuant to K.S.A. 44-510e).

Dr. Jansson first saw claimant for her March 13, 1993, right knee injury on May 27, 1993. On June 8, 1993, Dr. Jansson, performed diagnostic orthroscopy of claimant's right knee. He resectioned the medial plica and a portion of the fat pad. Additionally, the doctor performed a chondroplasty of the medial femoral condyle and medial tibial plateau. Dr. Jansson's post-operative diagnosis was pathologic medial plica and chondromalacia.

Dr. Jansson followed claimant through December 30, 1993. Claimant was released to work with no restrictions and an 8 percent permanent functional impairment of the right lower extremity. On July 14, 1994, claimant returned to see Dr. Jansson, after she had started working for Newton, for continuing right knee complaints. At that time, claimant was placed in a short term physical therapy program and claimant's knee symptoms improved.

When claimant had increased symptoms in her right knee in 1997, she was initially seen by other physicians but eventually she was referred to Dr. Jansson for evaluation and treatment. Dr. Jansson saw claimant on December 17, 1997. His diagnosis, at that time, was severe bone on bone arthrosis. Dr. Jansson placed restrictions on claimant's activities of no pushing, lifting, kneeling or squatting. After conservative treatment did not improve claimant's condition, including injections, surgery was performed on June 9, 1998.

Dr. Jansson performed diagnostic arthroscopy with abrasion arthroplasty and a high tibial osteotomy. The postoperative diagnosis was severe medial compartment degenerative joint disease with Grade IV chondromalacia. The doctor followed claimant through June 5, 1999, when he determined claimant had met maximum medical improvement. He released claimant to return to work with restrictions of no prolonged standing or walking and occasionally kneeling, squatting, climbing stairs and ladders. He increased his 8 percent permanent partial functional impairment rating that he had assigned in 1993 by 2 percent to a total of 10 percent.

Included in Dr. Jansson's medical records are letters to Dr. Jansson from both the attorney for Newton and the attorney from Wheat State and Dr. Jansson's reply to those letters. In a letter dated August 27, 1998, Newton's attorney confirmed a discussion he had with Dr. Jansson the previous day. First, the letter defines chondromalacia as a degenerative disease process which naturally progresses with the day-to-day activities of life. Dr. Jansson diagnosed claimant in 1993 with a Grade I or II chondromalacia and in 1998 he diagnosed claimant with Grade IV chondromalacia. Within a reasonable degree of medical probability, Dr. Jansson opined that the Grade IV chondromalacia was a natural and probable consequence of the progression of the Grade I and II chondromalacia condition that he had diagnosed in 1993 in relation to claimant's work at Wheat State.

In contrast, Wheat State's attorney wrote Dr. Jansson a letter dated June 8, 1999. In that letter, Dr. Jansson was asked, based on a review of claimant's preliminary hearing testimony, if he could "state within reasonable degree of certainty whether Ms. Zuercher's employment with Newton Medical Center aggravated or accelerated her right knee condition? " In Dr. Jansson's letter dated June 28, 1999, he replied,

> I have no independent knowledge of any of Ms. Zuercher's activities, whether she was at Newton Medical Center, sitting at home or playing football for the Green Bay Packers are things I am not aware of. I would defer to her comments and opinions as to what and where she experienced the knee pain she experienced. The situation and explanation she gives in her testimony are consistent with the medical findings so there is nothing she says that I would disqualify based on physical inconsistencies. Certainly we see many patient's [sic] whose condition worsens without specific definitive episodes that the patient is aware of.

At claimant's attorney's request, she was examined and evaluated by Philip R. Mills, M.D. Dr. Mills saw claimant on two occasions, December 17, 1998, and June 16 1999. He was the only physician to testify in this case. Before Dr. Mills examined claimant, he was provided with claimant's previous medical treatment records for his review. After taking a history from claimant and conducting a physical examination of claimant, Dr. Mills' diagnosis was (1) severe degenerative arthritis in the right lower extremity status post high tibial ostectomy and abrasion arthoplasty, (2) degenerative arthritis of the left knee, (3) back strain, and (4) obesity.

During Dr. Mills' testimony, he was asked by Wheat State's attorney on cross-examination, and the doctor answered the following questions concerning the cause of claimant's current right knee complaints:

> Q. And in fact, did Mrs. Zuercher tell you that she was doing well with the right knee prior to July of 1997?
>
> A. It is my understanding that she was doing reasonably well, that is correct.
>
> Q. And did Mrs. Zuercher point to any incident that would have occurred in July of 1997 that would have caused an increased in or renewal of complaints of her right knee?
>
> A. Yes. She was pushing heavy carts on a carpet.
>
> Q. Now, do you believe that the activity of pushing heavy carts on the carpet had aggravated or accelerated her right knee condition?
>
> A. That is certainly a possibility, correct.[6]

Thereafter, the following questions were posed by Newton's attorney on recross examination and answered by Dr. Mills:

---

[6] See Dr. Philip Mills' evidentiary deposition, pp. 59-60.

> Q. Doctor, in response to Mr. Chanay [Wheat States attorney] you said that there was a possibility that pushing the carts on carpet while working for Newton Medical Center aggravated the condition of the right knee. Number 1, what condition are you referring to at that point?
>
> A. Her underlying knee problem which she had had since the injury in the early '90s.
>
> Q. The chondromalacia?
>
> A. Yes.
>
> Q. And you say that is a possibility. Doctor, in court we would like to express opinions within reasonable degree of medical probability or certainty, can you say within reasonable degree of medical probability or certainty that pushing a cart on the carpet aggravated that underlying chondromalacia in Mrs. Zuercher's right knee or is that merely a possibility?
>
> A. It's a possibility.
>
> Q. But you can say within reasonable degree of medical probability, can you not, the chondromalacia is a progressive degenerative condition?
>
> A. Yes.
>
> Q. And you can say within a reasonable degree of medical probability or certainty that that condition has degenerated and progressed from June of 1993 up until June of 1998 when the second surgery was done on the right knee, correct?
>
> A. Yes.
>
> Q. And it was your opinion, if I understood it correctly, that the progression was the natural and probable result of the earlier diagnosed chondromalacia?
>
> A. Correct.[7]

The Board concludes, based on Dr. Jansson's opinion contained in his medical records and Dr. Mills' opinion expressed in his deposition testimony, that it is more probably true than not that claimant's need for medical treatment and her increased disability are the direct and natural consequence of claimant's earlier March 14, 1993, right knee injury. The Board concludes based on both of these physicians' opinions the greater weight of the

---

[7] See Dr. Philip R. Mills' evidentiary deposition, pp. 69-71.

medical evidence proves that as a result of claimant's March 14 1993, work-related accident, claimant either developed or permanently aggravated a chondromalacia condition of the right knee, which subsequently progressed and worsened causing the need for additional medical treatment and increased disability. This worsening of the chondromalacia condition of claimant's right knee remains compensable under the Kansas Workers Compensation Act as a direct and natural result of the primary compensable March 14, 1993, injury.[8]

4. What is the nature and extent of claimant's disability?

The ALJ found that as a result of claimant's worsening right knee injury, she started limping and the altered gait caused permanent aggravation to claimant's preexisting arthritic condition in her left knee. Based on Dr. Mills' opinion, the ALJ found claimant now has a whole body permanent injury and is also entitled to a work disability. The ALJ found claimant had a 7.6 percent whole body permanent functional impairment. That rating was based on Dr. Mills' opinion that claimant had sustained an 18 percent right lower extremity functional impairment and a 1 percent left lower extremity functional impairment, which converts to a 7.6 percent whole body functional impairment. The ALJ further found that claimant was entitled to a 29 percent work disability based on a 40 to 45 percent loss of ability to perform work in the open labor market and a 15 percent loss of ability to earn a comparable wage.

Wheat State argues that even if claimant has an increase in her disability, the increase is limited to her right knee only. Claimant's treating physician, Dr. Jansson, did not find claimant suffered a permanent injury to her left knee as a result of an altered gait. Dr. Jansson opined that claimant's right knee permanent functional impairment rating did increase but only from 8 percent in 1993 to 10 percent in 1999.

The Board concludes the ALJ's finding that claimant suffered a whole body injury should be affirmed. The ALJ's 7.6 percent permanent functional impairment rating should also be affirmed along with the ALJ's work disability finding of 29 percent.

The Board finds the ALJ's conclusions are supported first by claimant's testimony that after her right knee became symptomatic in 1997, she developed a limp and her left knee became symptomatic about two months before her June 9, 1998 surgery. After her surgery, her limp worsened which also increased her left knee symptoms. Claimant notified Dr. Jansson that she had developed symptoms in her left knee. But Dr. Jansson did not treat claimant's left knee. Dr. Jansson's medical records show that the claimant first mentioned left knee symptoms to him on January 6, 1999, and then again on March 17,1999. Dr. Jansson was never asked if claimant had a permanent impairment in her left knee. At the regular hearing, claimant was receiving medical treatment for her left knee symptoms from a Dr. Charles Pence.

---

[8] See Nance v. Harvey County, 263 Kan. 542, 549-550, 952 P.2d 411(1997).

Moreover, Dr. Mills' testimony supports a finding that claimant's disability increased to a whole body disability. It is Dr. Mills' opinion that claimant aggravated a preexisting arthritic condition in her left knee as a result of an altered gait caused by her right knee injury. Although not required for a March 14, 1993 injury, Dr. Mills utilized the AMA Guides and assigned claimant an 18 percent permanent functional impairment of the right knee and a 1 percent permanent functional impairment of the left knee.[9] He then converted those two ratings to whole body ratings and combined them for a 7.6 percent whole body permanent functional impairment.

Dr. Mills originally restricted claimant to avoid squatting and to use good body mechanics. During Dr. Mills' deposition testimony, however, he also determined that the restrictions imposed by Dr. Jansson were reasonable and Dr. Mills adopted Dr. Jansson's restrictions in addition to his original restrictions.

At her attorney's request, claimant was interviewed on August 24, 1999, by vocational expert Jerry D. Hardin. As found above, since claimant's increased disability is the direct and natural probable consequence of her original right knee injury, then claimant's accident date is March 14, 1993. On that date of accident, the work disability test was the average of claimant's loss of ability to earn a comparable wage with the loss of ability to perform work in the open labor market.[10] Based on the restrictions Dr. Mills imposed during his deposition testimony, Mr. Hardin determined claimant had a 40 to 45 percent loss of ability to perform work in the open labor market and a 15 percent loss of ability to earn a comparable wage. Averaging those opinions, the ALJ found claimant sustained a 29 percent work disability and the Board affirms that finding.

The ALJ found the effective date of claimant's review and modification Award was April 30, 1998, six months preceding the date claimant filed her application for review and modification on October 30, 1998.[11] But the Board finds the ALJ failed to take into consideration the parties' stipulation that Wheat State paid claimant 45.045 weeks of temporary total disability compensation in the total amount of $7,748.27.

The claimant was taken off work for surgery on June 9, 1998. Wheat State started paying claimant temporary total disability compensation benefits from June 9, 1998, and paid her for some 45.045 weeks through July 7, 1999. Also, sometime during that period from June 9, 1998, through July 7, 1999, although not specifically set out in the record, claimant testified she also returned to work for Newton earning a comparable wage.

---

[9] See K.S.A. 1992 Supp. 44-510e(a).

[10] See K.S.A. 1992 Supp. 44-510e and Hughes v. Inland Container Corp., 247 Kan. 407, 799 P.2d 1011 (1990).

[11] See K.S.A. 1992 Supp. 44-528(d).

The Board, therefore, concludes the appropriate effective date for the modification of the May 19, 1994, Award is June 9, 1998, the date Dr. Jansson performed the second right knee surgery and the date claimant was entitled to temporary total disability benefits because of increased disability resulting from the direct and natural consequence of the March 14, 1993, right knee injury. Thereafter, claimant was either paid temporary total disability or temporary partial disability benefits or returned to work at a comparable wage until July 7, 1999.[12]

Claimant failed to prove the weeks that she returned to work after her June 9, 1998, surgery and earned a comparable wage. Additionally, the claimant failed to prove the amount of increase in her functional impairment from the compromised 11.5 percent right lower extremity scheduled injury to the 7.6 percent whole body injury that would entitle claimant to a disability award based on functional impairment during the weeks claimant worked and earned a comparable wage sometime between June 8, 1998 and July 7, 1999. Thus, the Board concludes claimant's permanent partial general disability did not increase until she stopped working because of her increased disability. Therefore, she is entitled to a work disability beginning July 8, 1999, which is the day following the last day claimant was paid temporary total disability compensation. The Board finds claimant is entitled to a 29% work disability commencing July 8, 1999, for 85.57 weeks at the rate of $49.88 per week until February 26, 2001, which is the ending date of 415 weeks after claimant's March 14, 1993, accident date. An injured worker entitled to a permanent partial general disability shall be paid compensation not to exceed 415 weeks following the date of such injury.[13]

Docket No. 186,892

AWARD

WHEREFORE, it is the finding, decision, and order of the Board that ALJ John D. Clark's June 7, 2000 Award, should be, and the same is hereby, modified as follows:

WHEREFORE AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Deborah K. Zuercher, and against the respondent, Wheat State Manor, Inc. and its insurance carrier, Kansas Association of Homes for the Aging Insurance Group, Inc., for an accidental injury which occurred March 14, 1993, and based upon an average weekly wage of $258.

---

[12] See December 11, 2000, letter from Wheat State's attorney Jeffrey A. Chanay specifying the dates and the number of weeks claimant was either paid temporary total or temporary partial disability and converting the temporary partial disability weeks to temporary total disability weeks for a total of45.045 temporary total disability weeks paid.

[13] See 1992 Supp. 44-510e(a).

The May 19, 1994, Award is modified effective June 9, 1998, entitling claimant to 45.045 weeks of temporary total disability compensation at the rate of $172.01 per week or $7,748.27, followed by 85.57 weeks of permanent partial disability compensation at the rate of $49.88 per week or $4,268.23 for a 29 percent permanent partial general disability, making a total modified award of $12,016.50.

As of May 31, 2001, the entire modified award is due and owing in one lump sum less any amounts previously paid from the effective date of the modification of June 9, 1998.

All authorized medical expenses are ordered paid by the respondent Wheat State.

Claimant is entitled to the unauthorized medical expense up to the statutory maximum.

Future medical treatment will be considered upon proper application to and approval by the Director.

All remaining orders contained in the Award are adopted by the Board.

Docket No. 233,958

AWARD

The Board affirms the ALJ's finding that since all benefits were assessed against Wheat State Manor, Inc., under Docket No. 186,892, therefore, any and all issues under Docket No. 233,958 are moot.

IT IS SO ORDERED.

Dated this ____ day of May, 2001.

_____
BOARD MEMBER

_____
BOARD MEMBER

_____
BOARD MEMBER

c: Steven R. Wilson, Wichita KS
Jeffrey A. Chanay, Topeka, KS
Orval B. Mason, Arkansas City, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director