

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

JAMES C. BENTLEY)	
Claimant)	
)	
VS.)	
)	
ENERGY ONE, INC.)	
Respondent)	Docket No. 196,708
)	
AND)	
)	
HARTFORD INSURANCE CO.)	
Insurance Carrier)	

ORDER

Claimant requested Appeals Board (Board) review of Administrative Law Judge (ALJ) Pamela J. Fuller's May 16, 2002, Decision. The Board heard oral argument on December 4, 2002.

APPEARANCES

Claimant appeared by his attorney, Seth G. Valerius of Topeka, Kansas. Respondent and its insurance carrier appeared by their attorney, Richard L. Friedeman of Great Bend, Kansas.

RECORD AND STIPULATIONS

The Board has considered the record and has adopted the stipulations listed in the Award.

ISSUES

The ALJ found claimant failed to prove that his need for medical treatment and major low back surgery in 1998 was the natural and probable consequence of his July 13, 1994, accident while employed by respondent. The ALJ denied claimant's request for permanent partial general disability or permanent total disability, temporary total disability and payment of certain 1998 medical expenses as authorized expenses.

Claimant appeals and contends that his testimony coupled with the expert medical opinion of orthopedic surgeon, John C. Medlen, M.D., prove that claimant's need for medical treatment and major surgery in 1998 was the natural and probable consequence of claimant's July 13, 1994, work-related accident. Additionally, claimant argues the residual effects of the 1998 surgery have rendered him permanently and totally disabled or in the alternative, he has sustained a 44 percent permanent functional impairment. Claimant also contends respondent should be ordered to pay as authorized medical expenses all the medical expenses for his 1998 medical treatment and major surgery, additional weeks of temporary total disability and future medical expenses.

In contrast, respondent requests the Board to affirm the Decision. Respondent contends claimant failed to prove his need for the 1998 medical treatment and major surgery was the natural result of his original July 13, 1994, work-related accident. Instead, respondent contends claimant was released from conservative medical treatment for his July 13, 1994, accident on February 5, 1995. Thereafter claimant worked physical labor jobs which caused a series of accidents resulting in claimant's need for the 1998 medical treatment, major surgery and permanent disability. Accordingly, respondent argues, because claimant suffered a new and separate accident, it has no responsibility for claimant's new injuries and resulting permanent disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

The Board concludes the ALJ's Decision should be affirmed. The Board finds, as did the ALJ, that the greater weight of the credible evidence contained in the record proves that claimant's need for medical treatment and the major surgery performed in October 1998 was a result of a new and separate accident. Accordingly, the Board finds claimant's 1998 need for medical treatment was not the natural and probable consequence of claimant's original compensable July 13, 1994, work-related accident.

The Board finds this conclusion is supported by the medical evidence that showed claimant did not have a herniated lumbar disk after the July 13, 1994, accident. But at the time claimant underwent major low back surgery on October 29, 1998, he had been diagnosed with two lumbar herniated disks. Claimant testified he had not suffered a new accident between February 5, 1995, when he was released from treatment with no permanent restrictions or no permanent injuries and October 1998 when he needed major surgery. But the claimant also established through his testimony that during that period of over three and a half years he worked heavy physical jobs such as rough necking in the oil fields that hurt his back.

Claimant's treating physician after the July 13, 1994, accident, was orthopedic surgeon, Michelle A. Klaumann, M.D., of Wichita, Kansas. She opined that the L3-4

bulging disk she had observed while treating claimant in 1994 probably could not have progressed to a herniated disk in 1998, without independent trauma. Additionally, Dr. Klaumann was asked whether the surgery performed in 1998 was the direct result of the original bulging disk. Dr. Klaumann answered, "Absolutely not. The two may have absolutely no causation."¹

Here, the Board finds the more likely and probable reason claimant became symptomatic to the point he needed major low back surgery in 1998 was that he aggravated his preexisting low back condition and made it worse by performing physical labor jobs. A preexisting condition aggravated by the strain of worker's usual work tasks may constitute an accident, and may be compensable.² The natural and probable consequence rule is limited to one accident. The rule was not intended to apply to a new and separate accidental injury such as occurred in the instant case.³

The Board further agrees with the findings and conclusions set out in the Decision. Therefore, the Board adopts those findings and conclusions as its own as if specifically set forth in this Order.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that ALJ Pamela J. Fuller's May 16, 2002, Decision should be, and is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this _____ day of March 2003.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

¹ Klaumann Depo. at 35.

² *Demars v. Rickel Manufacturing Corporation*, 223 Kan. 374, 573 P.2d 1036 (1978).

³ *Nance v. Harvey County*, 23 Kan. App.2d 899, 909, 937 P.2d 1245 (1997).

c: Seth G. Valerius, Attorney for Claimant
Richard L. Friedeman, Attorney for Respondent
Pamela J. Fuller, Administrative Law Judge
Director, Division of Workers Compensation