

FINDINGS OF FACT

After reviewing the entire record, the Appeals Board finds as follows:

- (1) On December 7, 1992, Sally Duree slipped and fell and injured her left knee. The parties stipulated that the accident arose out of and in the course of her employment with Wesley Medical Center. Ms. Duree also alleges that as a natural consequence of the December 1992 accident, her left knee gave out in September 1995 causing additional injury. Further, Ms. Duree contends that she has developed impairment in her back as a natural result of her left knee injury.
- (2) After seeing two other physicians, in February 1993 Ms. Duree finally came under treatment of board certified orthopedic surgeon and knee specialist Bradley W. Bruner, M.D. Dr. Bruner diagnosed a medial meniscus tear with some chondromalacia in the left knee and initially prescribed crutches, a knee brace, cortisone injections, and physical therapy. In September 1993, the doctor performed arthroscopic surgery on the left knee and took Ms. Duree off work.
- (3) As of October 1993, Dr. Bruner believed that Ms. Duree had a 22 percent whole body functional impairment as a result of the left knee injury and that she might eventually require a total knee replacement.
- (4) In November 1993, a pickup truck broadsided Ms. Duree's sport utility vehicle. Ms. Duree's GMC Jimmy was totaled and she injured her back, both knees, neck, and fractured her right foot. After the truck wreck, Dr. Bruner treated both knees.
- (5) In August 1994, Dr. Bruner released Ms. Duree to return to work six hours per day with restrictions that she sit and limit her walking to 2 to 5 minutes per hour. In October 1994, the doctor further reduced Ms. Duree's work day to four hours per day.
- (6) In September 1995, Ms. Duree's left knee gave way while she was walking from the parking lot into work. Immediately after that incident, she noticed increased swelling and pain and again consulted Dr. Bruner who prescribed additional physical therapy and a second left knee arthroscopy. Dr. Bruner believes the 1995 incident was a direct and natural consequence of the December 1992 accident. During the arthroscopy, which was eventually performed in February 1996, the doctor found a medial meniscus tear, irritated joint lining from recurrent effusions, and some cartilage damage to the patella and the femoral trochlea cartilage underneath the knee cap.
- (7) Dr. Bruner gave Ms. Duree her final impairment rating in July 1996. He included a 5 percent functional impairment rating for the back that he apportioned 2 percent due to the accident at work and 3 percent due to the non-work related truck wreck.

(8) Board certified orthopedic surgeon Robert A. Rawcliffe, Jr., M.D., examined Ms. Duree in August 1996. He later testified that in the December 1992 accident Ms. Duree sustained a contusion, knee sprain, and torn medial meniscus that was superimposed upon pre-existing osteoarthritis in the left knee. He believes Ms. Duree has a 25 percent functional impairment to the left lower extremity as a result of her work injuries. He also testified that Ms. Duree sustained no permanent injury to her back that relates to the December 1992 accident.

(9) The Appeals Board finds Ms. Duree's back injury and complaints are the direct result of the of the truck wreck and not the natural and probable result of the December 1992 work related accident. According to Dr. Bruner, Ms. Duree's back complaints did not surface until after the 1993 wreck. To find that the work related left knee injury would have caused an altered gate that would have resulted in the impairment to the back, regardless of the truck wreck, requires too much speculation.

(10) Averaging the 25 percent and 75 percent lower extremity ratings provided by Drs. Rawcliffe and Bruner, the Appeals Board finds that Ms. Duree has a 50 percent permanent partial functional impairment to the left lower extremity.

CONCLUSIONS OF LAW

(1) Every natural and direct consequence that flows from a compensable injury is also compensable under the workers compensation act.¹ But Ms. Duree has failed to prove that her alleged back injury is a natural and direct result of her December 1992 work related accident. Instead, the Appeals Board concludes that the back injury was caused by the November 1993 truck wreck. Ms. Duree's workers compensation benefits are limited to those for a leg injury only. Therefore, Ms. Duree's permanent partial disability benefits are to be determined under the provisions of the "scheduled" injury statute.²

(2) The scheduled injury statute provides that a worker is entitled to a maximum of 200 weeks of permanent partial disability benefits for the loss of a leg. As provided by regulation, after allowing a 15 week healing period and subtracting 101.67 weeks of temporary total disability compensation, the resulting number is multiplied by the 50 percent functional impairment rating to yield 56.67 weeks of permanent partial disability compensation that Ms. Duree is entitled to receive as a result of her work related accident.³ Therefore, the Appeals Board modifies the Award dated April 21, 1998, to award benefits for a 50 percent functional impairment to the left lower extremity.

¹Jackson v Stevens Well Service, 208 Kan. 637, 493 P.2d 264(1972).

²K.S.A. 44-510d.

³K.A.R. 51-7-8

(3) At Dr Bruner's deposition, the parties admitted Ms. Duree's entire medical file consisting of several hundred pages. For future reference, counsel are requested to introduce only those medical records that are relevant and material to the issues before the Division.

AWARD

WHEREFORE, the Appeals Board modifies the Award entered by Administrative Law Judge Nelsonna Potts Barnes dated April 21, 1998.

Sally Duree is granted compensation from HCA Wesley Medical Center, for a December 7, 1992, accident and a 50 percent functional impairment to the lower extremity. Based upon a \$425.73 average weekly wage, Ms. Duree is entitled to 101.67 weeks of temporary total disability benefits at \$283.83 per week or \$28,857 followed by 56.67 weeks of permanent partial disability at \$283.83 per week, or \$16,084.65, making a total award of \$44,941.65 which is all due and owing less any amounts previously paid.

The Appeals Board hereby adopts the remaining orders set forth in the award to extent that they are not inconsistent with the above.

IT IS SO ORDERED.

Dated this ____ day of December 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Garry L. Howard, Wichita, KS
- Lyndon W. Vix, Wichita, KS
- Nelsonna Potts Barnes, Administrative Law Judge
- Philip S. Harness, Director