

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

PAULA K. SCHRODER)	
Claimant)	
VS.)	
)	Docket No. 227,185
MILLER TRUCK LINES, INC.)	
Respondent)	
AND)	
)	
GREAT WEST CASUALTY COMPANY)	
Insurance Carrier)	

ORDER

Claimant appeals from an Award entered by Administrative Law Judge Bruce E. Moore on February 24, 2000. The Appeals Board set this matter for oral argument July 14, 2000. Claimant, who is at this time pro se, did not appear for the argument. Respondent's counsel appeared but waived oral argument.

APPEARANCES

Vaughn Burkholder of Wichita, Kansas, appeared on behalf of respondent and its insurance carrier.

After the Award was entered in this case, E. L. Lee Kinch of Wichita, Kansas, entered his appearance for claimant and filed this appeal. The Board sent Mr. Kinch a schedule for filing briefs, but shortly after filing the application for Board review, Mr. Kinch filed a "Notice of Withdrawal" stating that he was withdrawing as claimant's counsel and was doing so by agreement with claimant. His notice also states that he had provided claimant with the dates for filing a brief. No other attorney entered an appearance and claimant did not file a brief. The Board then set the matter for oral argument and sent notice of the oral argument directly to claimant. Claimant did not appear for oral argument either in person or by counsel. As above indicated, respondent appeared but waived oral argument.

RECORD AND STIPULATIONS

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

ISSUES

Claimant seeks benefits for psychological problems that she contends are directly traceable to physical injury she suffered in a truck accident. The truck accident occurred in the course of claimant's employment for respondent. Claimant does not claim she has a permanent physical injury but does claim the psychological problems render her permanently and totally disabled. The Administrative Law Judge found claimant's current psychological/psychiatric complaints are not causally related to the truck accident. Claimant's application for review describes the issue as "The nature and extent of Claimant's disability and the amount of compensation owing."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes the decision by the Administrative Law Judge should be affirmed. Specifically, the Board finds claimant has not proven she suffered a compensable permanent disability.

Findings of Fact

1. Claimant makes no claim for permanent disability from the physical injuries she suffered in a truck accident on August 13, 1997.
2. Some consideration has been given by the various experts who saw claimant after her truck accident to the possibility she has disability from a closed head injury. However, the experts who testified in this case agreed, and the Board finds, claimant does not have a permanent impairment from a closed head injury.
3. The focus of the evidence, instead, concerns whether claimant has psychological/psychiatric problems directly traceable to the accident and initial temporary physical injuries. Claimant contends that she does and asks the Board to find that she is permanently and totally disabled from substantial gainful employment as a result. For the reasons given below, the Board finds claimant has not proven by a preponderance of the credible evidence that she has a psychological/psychiatric impairment or disability directly traceable to her physical injury. In summary, the Board finds most credible evidence and expert testimony that claimant's current mental condition is not traceable to her physical injury.

On August 13, 1997, claimant rolled the tractor trailer rig she was driving. Claimant was treated initially at a nearby emergency room and was ultimately transferred to the Via Christi Hospital/St. Joseph Hospital in Wichita, Kansas. At Via Christi, Dr. John L. Kiser, a general surgeon, became claimant's treating physician. He treated claimant for multiple rib fractures, bruising on the chest, a fractured scapula, and pneumothorax. Dr. Kiser also noted problems with headaches and problems with claimant's mental processes.

Claimant soon began exhibiting unusual, often infantile, behavior. Claimant had hit her head in the accident and the possibility of a closed head injury was considered as an explanation for headaches and the mental and behavioral problems.

Dr. Kiser referred claimant first to Dr. Leon R. Lapointe, a neurologist, for evaluation of the headaches. Dr. Lapointe saw claimant in August 1997. Dr. Lapointe considered claimant's behavior to be very unusual for a head injury case. Dr. Lapointe reviewed cerebral CT scan and x-rays of the cervical spine. Both were normal. He found no evidence of intercranial head injury or major brain damage. He administered a Mini-Mental Status Examination. Claimant scored the highest possible on this exam. He found no true neurological problems and recommended psychological evaluation.

Dr. Lapointe saw claimant a second time in September 1997. At the second visit, Dr. Lapointe noted claimant's description of the headaches had changed substantially. The headaches had moved to different locations. In addition, claimant described personality changes. He again recommended psychiatric evaluation. Dr. Lapointe opined that the origin of claimant's psychiatric problems was not organic.

Claimant also saw Dr. Jane K. Drazek in October 1997 to evaluate the sequelae of the head injury. Claimant presented with juvenile behavior, including juvenile clothes and stuffed animals. Dr. Drazek noted several factors that led her to the conclusion claimant's behavior was not the result of a closed head injury. Although claimant's husband advised claimant could no longer add, claimant was able to count backwards by sevens. Claimant stuttered and Dr. Drazek thought this was intentional. Dr. Drazek testified she was not aware of any medical explanation for claimant's behavior consistent with trauma. She further testified that she was not a psychiatrist but that claimant's behavior was not necessarily consistent with a psychiatric disease. Dr. Drazek nevertheless recommended claimant see a psychiatrist.

For psychiatric evaluation, Dr. Kiser first referred claimant to Dr. Brian Romalis. Claimant did not respond well to Dr. Romalis and Dr. Kiser eventually referred claimant to Dr. Jerald W. Leisy. Dr. Leisy began seeing claimant in October 1997 and continued to treat claimant on a regular basis throughout the period of this litigation. Dr. Leisy's initial impression was that claimant was psychotic. Claimant continued to exhibit juvenile behavior. In December 1997, Dr. Leisy asked for a consultation by Dr. Fred de Wit, a psychologist.

Dr. de Wit performed a series of tests. The tests included an IQ test, a personality test (MCMI-III) and a sentence completion test. Dr. de Wit noted several anomalies in the test results. The testing reflected, for example, an IQ of 71, just above mental retardation, but claimant had two years of college. Claimant answered more difficult questions correctly while giving an incorrect answer to simple questions. He considered the possibility claimant was purposefully answering the questions wrong but concluded it was more likely she simply was being impulsive or not paying attention to the test. Dr. de Wit testified the

testing reflected an Axis II personality disorder, narcissistic personality disorder practically paranoid. He described her as manipulative and willing to lie and cheat. The testing also reflected claimant was bipolar, an Axis I disorder. Claimant scored very low on the indicators of post traumatic stress syndrome, a separate diagnosis. Dr. de Wit testified the tests did not indicate claimant was malingering but there were anomalous results.

Dr. Leisy reviewed the results of testing done by Dr. de Wit and testified he does not like Axis II diagnoses in general. He did agree with the bipolar diagnosis. He further testified that claimant's psychosis is related to the vehicle accident. He concluded claimant is permanently and totally disabled due to severe mental illness aggravated or precipitated by the truck accident. He considered the possibly claimant was malingering because there had been very dramatic ebbs and flows to claimant's condition, but he ultimately concluded claimant is not malingering.

Claimant was also tested by Dr. Mitchel A. Woltersdorf, a neuropsychologist. Dr. Woltersdorf saw claimant on August 7, 1998, and again on September 2, 1998. Dr. Woltersdorf concluded claimant was manipulating her test responses. He testified claimant triggered all malingering tests. He gave an MMPI that indicated claimant was malingering. According to Dr. Woltersdorf, claimant's tests results were not possible. She gave a profile that would make you afraid to be in the same room with her. In summary, he concluded claimant is lying.

Finally, claimant was examined by Dr. Marie-Claude Rigaud. Dr. Rigaud reviewed records of previous evaluations and medical care. She prepared a detailed summary of the history of claimant's symptoms and treatment. She could not rule out the possibility that there was some adjustment disorder immediately following the injury but stated this was a condition that would have been short in duration and would have resolved long before. She did not agree with the bipolar diagnosis. She noted many inconsistencies in the historical information and complaints. In summary, she concluded and testified that claimant's current mental condition is not a consequence of the physical injuries she sustained in the accident of August 13, 1997.

The Board finds most convincing the conclusions of Dr. Rigaud. Her conclusions are supported by the unusual nature of the condition and the various inconsistencies in claimant's testing and otherwise in claimant's behavior. From the beginning of the medical treatment, the physicians have found her behavior inconsistent with known injuries. Malingering has been an option considered by nearly every expert who testified. Although there is evidence in this record that would support claimant's contention, the Board finds evidence to the contrary to be more convincing.

Conclusions of Law

1. Claimant has not proven and is not entitled to benefits for a permanent physical injury.

2. To be compensable, a psychological/psychiatric injury must be directly traceable to a compensable physical injury. *Love v. McDonald's Restaurant*, 13 Kan. App. 2d 397, 771 P.2d 557, rev. denied 245 Kan. 784 (1989). Claimant has not proven that she has permanent psychological or psychiatric impairment or disability directly traceable to her accident and injuries of August 13, 1997.

3. Benefits for claimant's psychological/psychiatric condition, including treatment and temporary total disability benefits after claimant recovered from her physical injury, are denied.

4. Claimant's request for permanent disability benefits is also denied.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Bruce E. Moore on February 24, 2000, should be, and the same is hereby, affirmed.

All other orders by the Administrative Law Judge are adopted, including the order for future medical treatment on application and approval by the Director.

IT IS SO ORDERED.

Dated this ____ day of September 2000.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Paula K. Schroder, Pro Se
- Vaughn Burkholder, Wichita, KS
- Bruce E. Moore, Administrative Law Judge
- Philip S. Harness, Director