

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

<b>RAMON RAMOS</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 228,062
<b>ALLEN DRILLING COMPANY</b>	)	
Respondent	)	
AND	)	
	)	
<b>LIBERTY MUTUAL INSURANCE COMPANY</b>	)	
Insurance Carrier	)	

**ORDER**

Claimant appealed the March 4, 2003 Decision entered by Administrative Law Judge Pamela J. Fuller. After reviewing the briefs submitted by the parties, the Board placed this proceeding on its summary calendar for disposition without oral argument. Gary M. Peterson of Topeka, Kansas, was appointed Board Member Pro Tem to participate in this proceeding.

**APPEARANCES**

Lawrence M. Gurney of Wichita, Kansas, appeared for claimant. Gregory D. Worth of Roeland Park, Kansas, appeared for respondent and its insurance carrier.

**RECORD AND STIPULATIONS**

The parties' stipulations and the record considered by the Board are listed in the July 25, 2000 Agreed Award and the March 4, 2003 Decision.

**ISSUES**

This appeal is before the Board on claimant's post-award request for additional medical treatment. By Agreed Award entered July 25, 2000, the parties stipulated claimant

sustained a July 10, 1997 accidental injury to his low back that resulted in a five percent whole body functional impairment. The Agreed Award reserved claimant's right to request additional medical treatment, which he is now requesting.

In the March 4, 2003 Decision, Judge Fuller denied claimant's request for additional medical treatment. The Judge specifically found that claimant had failed to prove that he presently needs medical treatment as a result of his July 10, 1997 work-related accident.

Claimant contends Judge Fuller erred. Claimant argues that he has established his need for medical treatment through his own testimony and that of Dr. Steven E. Albert. Accordingly, claimant requests the Board to reverse the March 4, 2003 Decision and award him medical benefits.

Conversely, respondent and its insurance carrier contend the March 4, 2003 Decision should be affirmed. They argue that any change either in claimant's condition or symptoms is more probably due to the work that he performs while being imprisoned by the State of Kansas.

The only issue before the Board on this appeal is whether claimant has proven that he presently needs medical treatment that is directly related to the July 10, 1997 accidental injury that he sustained while working for respondent.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and the parties' arguments, the Board finds and concludes that the March 4, 2003 Decision should be affirmed. The Board agrees with the Judge that claimant has failed to prove that he presently needs medical treatment that is directly related to the July 10, 1997 accident and resulting low back injury that he sustained while working for respondent.

From the older medical records and reports that are contained in the record it appears that claimant's July 1997 accident strained claimant's low back and/or aggravated preexisting degenerative disk disease in his lumbosacral spine. The parties stipulated in the July 25, 2000 Agreed Award that claimant sustained a five percent whole body functional impairment as a result of the 1997 accident.

Around the time the Agreed Award was entered, the State of Kansas imprisoned claimant. Claimant contends his symptoms have increased while imprisoned and contends that he now requires medical treatment, all of which he relates to the July 1997 accident. Conversely, respondent and its insurance carrier note that claimant has been performing some work activities while incarcerated and, therefore, any increased symptoms are more

probably due to those activities rather than the natural and probable consequence of the July 1997 accident.

When claimant testified in May 2002, he had begun receiving medications from correctional facility doctors. Additionally, the State had sent claimant for an x-ray and had provided claimant with an elevator pass so he could use the elevator. Claimant also testified that his symptoms were worsening as his left leg was now numb and that his right hip and low back were painful. In short, claimant testified that he is experiencing the same problems now as immediately following the accident but that those symptoms are now worse.

When he testified in May 2002, claimant described his work duties in the correctional facility as attending classes for two and one-half hours per day and mopping a hallway for an hour per day. Claimant also acknowledged that his work duties before that required him to work in the kitchen at a different correctional facility where he worked six hours per day and mopped floors. At some point in time during claimant's incarceration, for approximately three or four months claimant also performed yard work, including raking, painting, trimming trees, picking up little pieces of cement, and picking up fallen tree limbs.

In support of his request for additional medical treatment, claimant presented the testimony from Dr. Steven E. Albert, who is employed by Prison Health Services, Inc., which is a company that provides medical services to jails and correctional facilities. The doctor first saw claimant in December 2001. When asked whether claimant needed additional medical care, the doctor did not directly answer the question. The doctor stated, in part:

Q. (Mr. Gurney) As of the last time that you saw Mr. Ramos, or the last opportunity you had to see him, did you believe that he needed additional care and treatment with respect to his low back?

A. (Dr. Albert) He certainly appeared to be a person that had a chronic problem. And his quality of life was measurably affected by his current body habitus.

Q. Did you think that additional testing and/or treatment would be indicated given his situation?

A. I would have referred him very comfortably to somebody else for further evaluation, just because I hate to miss things.<sup>1</sup>

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<sup>1</sup> Albert Depo. at 11.

When asked if the doctor believed claimant's present symptoms were related to the July 1997 accident or some other incident, Dr. Albert stated that he believed claimant's 1997 back injury was being exacerbated by normal activities of daily living. The doctor testified:

Q. (Mr. Gurney) . . . But I guess my question is, and what I want to make sure is, you didn't have any reason to believe that after that work-related injury that there was some other intervening accident that was bringing about the need for treatment?

A. (Dr. Albert) No. I think -- well, my opinion is that he had had enough of an injury that normal activities of daily living seemed to exacerbate this to the point where he wasn't getting well yet.<sup>2</sup>

But Dr. Albert's opinions must be considered in light of the fact that the doctor's knowledge of the 1997 injury was limited to what claimant told him. The doctor could not remember whether he had ever received or reviewed any of claimant's medical records from the 1997 accident. Moreover, although Dr. Albert initially stated that he believed claimant was truthful in describing his symptoms in part due to consistent straight leg raising tests, on cross-examination the doctor acknowledged that his records indicate that he performed that test only once and that it yielded very inconsistent results of just 20 degrees lying down and 90 degrees while sitting.

When considering the entire record, the Board concludes that claimant has failed to prove that he presently needs medical care as a direct result of the July 10, 1997 accident. Consequently, the Judge appropriately denied claimant's request for additional medical benefits.

The Board adopts the findings and conclusions of the Judge in the Decision to the extent they are not inconsistent with the above.

**AWARD**

**WHEREFORE**, the Board affirms the March 4, 2003 Decision entered by Judge Fuller.

**IT IS SO ORDERED.**

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<sup>2</sup> Albert Depo. at 12.

Dated this \_\_\_\_ day of May 2003.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

- c: Lawrence M. Gurney, Attorney for Claimant  
Gregory D. Worth, Attorney for Respondent and its Insurance Carrier  
Pamela J. Fuller, Administrative Law Judge  
Director, Division of Workers Compensation