

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

<b>BRIAN S. JACKSON</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 231,779
<b>BOEING COMPANY</b>	)	
Respondent	)	
	)	
AND	)	
	)	
<b>INSURANCE COMPANY</b>	)	
<b>STATE OF PENNSYLVANIA</b>	)	
Insurance Carrier	)	

**ORDER**

Claimant appealed Administrative Law Judge's Jon L. Frobish's June 8, 2000, Award. The Appeals Board heard oral argument in Wichita, Kansas on November 17, 2000.

**APPEARANCES**

Claimant appeared by his attorney, David H. Farris of Wichita, Kansas. Respondent and its insurance carrier appeared by their attorney, Kirby A. Vernon of Wichita, Kansas.

**RECORD AND STIPULATIONS**

The Appeals Board (Board) has considered the record and has adopted the stipulations listed in the Award. In addition, Dr. Philip R. Mills' October 20, 1999, independent medical examination report should be included as part of the record. Also the parties filed a stipulation dated June 9, 2000, agreeing that claimant had a pre-injury average weekly wage of \$572.40 without fringe benefits and \$734.57 with fringe benefits. At oral argument before the Board, the parties agreed the Board should consider this stipulation as part of the record.

**ISSUES**

The Administrative Law Judge (ALJ) based on the court appointed independent medical examiner Dr. Philip R. Mills' 5 percent permanent functional impairment rating of claimant's right lower extremity, awarded claimant a 5 percent permanent partial disability of the right leg as found in the schedule at K.S.A. 1997 Supp. 44-510d(a)(16).

On appeal, claimant contends, in addition to the right knee injury, he suffered work-related permanent injuries to both his low back and his left knee. The claimant argues those injuries were either the result of separate work-related injuries or the result of claimant's altered gait caused by the work-related right knee injury. Thus, claimant contends he suffered a whole body permanent injury and is entitled, at a minimum, to a 68.5 percent work disability based on a 100 percent wage loss and a 37 percent work task loss.

In contrast, respondent requests the Board to affirm the Award. Respondent acknowledges that claimant suffered a scheduled right knee injury on February 18, 1998, while working for the respondent. But the respondent denies claimant proved he suffered permanent injuries to either his low back or left leg resulting in a whole body functional impairment and a work disability.

Thus, the single issue before the Board for review is the nature and extent of claimant's disability.

**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:

The Board finds the Award should be affirmed. Further, the Board finds the ALJ's Award sets out findings of fact and conclusions of law that are supported by the record. It is not necessary to repeat those findings and conclusions in this Order. Therefore, the Board adopts those findings and conclusions as its own.

In particular, the claimant testified his symptoms worsened while he was performing his regular work activities after he returned to work on May 4, 1998, after his March 31, 1998, right knee surgery. But the medical treatment records and the reports of examining and evaluation physicians, who later saw claimant, indicate that claimant's complaints were the result of his non-work related athletic activities of running, bicycling and weight lifting and not his work activities.

Furthermore, the Board finds that claimant's contention that Dr. Drazek's opinion that claimant's low back sprain and Dr. Murati's opinion that claimant's lumbosacral sprain and left knee injury are directly related to claimant's altered gait is not supported by the greater weight of the evidence. The only record that indicates claimant walked either with

a limp or an altered gait is respondent's Central Medical notes dated March 19, 1998, and March 24, 1998. Those notes were made after claimant injured his right knee on February 19, 1998, and before claimant underwent corrective surgery by Dr. Jansson on March 31, 1998. There are no medical treatment records or results of any physical examination by a physician after claimant's March 31, 1998, right knee surgery that indicates claimant walked with an altered gait. In fact, both Dr. Drazek's and Dr. Mills' physical evaluations of claimant specifically note that claimant's gait was normal. The Board concludes because claimant limped or walked with an altered gait for a short period of time, a total of 5 weeks between his right knee injury and surgery, this is not persuasive evidence to conclude that claimant's altered gait caused permanent injury to either his low back or left knee.

Claimant's right knee was treated by orthopaedic surgeon Kenneth H. Jansson, M.D. Claimant's left knee was treated by orthopaedic surgeon Robert E. Eyster, M.D. On March 31, 1998, Dr. Jansson reconstructed a torn anterior cruciate ligament and performed a partial medial meniscectomy of claimant's right knee. He treated claimant from March 2, 1998, through March 15, 1999. Dr. Jansson's final opinion was that claimant had made excellent progress from the surgery. He opined claimant had no permanent functional impairment and had no permanent work restrictions as the result of the right knee injury and subsequent surgery.

After claimant's left knee gave out at work on November 18, 1998, respondent referred claimant to Dr. Eyster. He saw claimant on November 19, 1998. Dr. Eyster diagnosed claimant with a bone contusion of the left knee. The doctor saw claimant on just two occasions and released claimant with no impairment rating and no permanent restrictions.

In contrast, claimant's attorney referred claimant for examination and evaluation to two physical medicine and rehabilitation physicians Pedro A. Murati, M.D. and Jane K. Drazek, M.D.. Dr. Murati found claimant had suffered permanent injury to his right knee, left knee, and lumbosacral spine resulting in a whole person functional impairment of 14 percent. Dr. Drazek found claimant had suffered permanent injury to his right knee and lumbosacral spine resulting in a 10 percent whole person functional impairment rating.

Because of these diverse opinions, the Board finds, as did the Administrative Law Judge, that the most unbiased and persuasive medical opinion contained in the record is that of Dr. Philip R. Mills, who was appointed by the ALJ to perform an independent medical examination of the claimant. Based on the AMA Guides to the Evaluation of Permanent Impairment, Fourth Edition, Dr. Mills found claimant sustained a 10 percent permanent functional impairment of the right lower extremity caused by the February 18, 1998, work accident. Dr. Mills also opined that 50 percent of the functional impairment rating was preexisting from claimant's 1996 right knee injury that claimant received while playing volleyball. Orthopaedic surgeon Robert L. Eyster, M.D., also treated the claimant for the 1996 right knee injury and on March 7, 1996, performed a partial menial meniscectomy.

Dr. Eyster did not rate claimant's right knee injury in 1996, but he testified the rating in 1996 would have been a 5 percent permanent functional impairment of the right leg.

The Board finds, based on Dr. Mills' and Dr. Eyster's opinions, that 5 percent of claimant's 10 percent permanent functional impairment of the right lower extremity was preexisting resulting in a 5 percent permanent functional impairment of the right lower extremity attributable to the February 18, 1998, work accident.<sup>1</sup>

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Board that ALJ Jon L. Frobish's June 8, 2000, Award, should be, and is hereby, affirmed.

All authorized medical expenses are ordered paid by the respondent.

The Board adopts all the remaining orders contained in the Award.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of April, 2001.

\_\_\_\_\_  
BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

- c: David H. Farris, Wichita, KS
- Kirby A. Vernon, Wichita, KS
- Jon L. Frobish, Administrative Law Judge
- Philip S. Harness, Director

<sup>1</sup> See K.S.A. 1997 Supp. 44-501(c)