

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

SCOTT D. RONSSE)	
Claimant)	
VS.)	
)	Docket No. 237,693
GOODYEAR TIRE & RUBBER COMPANY)	
Respondent)	
AND)	
)	
CONSTITUTION STATE INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Claimant appeals the August 9, 2000, Award of Administrative Law Judge Bryce D. Benedict. Claimant was denied benefits after the Administrative Law Judge found that claimant's accidental injury did not arise out of and in the course of his employment with respondent. Oral argument before the Board was held on January 24, 2001.

APPEARANCES

Claimant appeared by his attorney, Mitchell D. Wulfekoetter of Topeka, Kansas. Respondent and its insurance carrier appeared by their attorney, John A. Bausch of Topeka, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and adopted the stipulations of the parties as contained in the Award.

ISSUES

- (1) Did claimant suffer personal injury by accident on the date or dates alleged?

- (2) Did claimant's accidental injuries arise out of and in the course of his employment with respondent on the dates alleged?
- (3) What is the nature and extent of claimant's injuries?
- (4) Is claimant entitled to temporary total disability compensation?
- (5) Is claimant entitled to past and future medical treatment?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary record filed herein, the Appeals Board finds the Award of the Administrative Law Judge should be modified.

Claimant is a long-term employee of respondent, with a substantial history of preexisting left knee problems. Claimant first underwent arthroscopic surgery to the left knee under the hand of Kurt R. Knappenberger, M.D., on December 27, 1990, after claimant suffered a partial tear of the anterior cruciate ligament. Dr. Knappenberger, at that time, arthroscopically trimmed away the frayed edges of the partially torn ligament. Claimant said he had no problems with his knee after this incident until March 1995, when he slipped in the shower at respondent's plant and reinjured his left knee. He was again referred to Dr. Knappenberger and a second arthroscopic surgery was performed on July 20, 1995. Dr. Knappenberger found no major changes in the knee from that found in 1990. He prescribed physical therapy and ultimately released claimant in November 1995. Claimant did indicate at that time he had some hyperextension instability in his left knee. However, Dr. Knappenberger released claimant with no restrictions. He testified that claimant continued to have a partial anterior cruciate deficiency in his left knee which would make the knee more susceptible to injury.

Claimant continued working for respondent without restriction until March 5, 1998, when he again slipped in respondent's shower. Claimant advised his supervisor, Glenn Covers, of the incident and was referred to Deborah T. Mowery, M.D., in the dispensary the next day. Claimant returned to the dispensary on two additional occasions, on March 20, and again on April 3, 1998, when he was released to work by Dr. Mowery to return for treatment on an as-needed basis. Claimant was experiencing swelling and pain in his left knee at that time. However, it did gradually improve.

Over Memorial Day weekend 1998, claimant began experiencing new symptoms in his left knee. One symptom he described as a locking up, meaning the leg would lock straight and claimant would have to spend 15 to 20 seconds shaking the leg in order to release the knee joint. Claimant's knee would also pop, similar to what happens when one

pops one's knuckles. Each of these symptoms occurred three to four times between Memorial Day weekend and August 23, 1998.

On August 23, 1998, claimant was ascending a stairway in respondent's plant, prior to beginning work. Claimant testified that, while he was pushing up with his left leg to go to the next step, as his leg straightened out, he felt excruciating pain in the knee. He also testified he heard the knee pop, and his knee swelled. He returned to Dr. Mowery in the dispensary and was then referred back to Dr. Knappenberger, who performed an MRI and diagnosed a complete tear of the anterior cruciate ligament (ACL). Dr. Knappenberger recommended claimant undergo an anterior cruciate reconstruction which was performed on January 4, 1999. Claimant was referred for physical therapy and work hardening, and ultimately released on August 3, 1999, to return to work without restriction. Dr. Knappenberger opined that, after the second surgery in 1995, claimant's percentage of impairment was at 10 percent to the body or 25 percent to the lower extremity. However, with the reconstruction performed after the August 23, 1998, injury, he felt claimant's impairment was reduced to 7 percent of the lower extremity, with one half of that being preexisting.

Dr. Knappenberger was provided a description of the catching and locking in claimant's knee, which occurred prior to the August 23, 1998, injury on the steps. The doctor testified that, since the locking and catching sensations did not occur prior to the March 5, 1998, fall in the shower, it was very probable that claimant sustained the injury in the shower which led to the locking and catching sensations in the knee. He opined that the injury in March 1998 could have further frayed the ACL and that floating fibers from the ACL would catch in the knee joint, causing the locking to occur. Once the fibers would move out of the joint, motion would be reestablished. He also opined that the locking could be due to an acute onset of pain which could cause claimant's hamstring to go into spasms.

Dr. Knappenberger agreed that going up stairs, especially in a hurried fashion, would increase stress on the ACL. He testified that the best he could determine was that it was the act of going up the stairs that finished off the ACL tear.

Claimant was referred by his attorney to orthopedic surgeon Edward J. Prostic, M.D., on September 14, 1999. Dr. Prostic was provided an accurate history of claimant's injury, including the difficulties encountered while claimant hurried up the stairs at the respondent's plant. Dr. Prostic testified that the earlier injuries in 1990 and 1995 resulted in a partial tear of claimant's anterior cruciate ligament in his left knee. He testified that, while a partially torn ACL would not necessarily result in any restrictions, it would, however, make the knee susceptible to additional injury. He felt the incident of August 23, 1998, while claimant was climbing the stairs, resulted when claimant's knee hyperextended, which caused the complete tear of the ACL. He went on to testify that the function of the hamstring is to decelerate the tibia as the leg is being thrust forward and that, for whatever

reason, claimant's hamstring malfunctioned, allowing the leg to straighten without deceleration and, thus, caused the ACL injury. He testified that ordinary walking up or down stairs would not commonly cause an ACL injury. But there is some additional mechanism required, such as a stumble, a twist or a hyperextension, in order for the ACL injury to occur. Dr. Prostic agreed with Dr. Knappenberger that going up the stairs in a hurried fashion would increase the stress on the ACL, but Dr. Prostic also felt something additional was required. The history of the injury provided to Dr. Prostic from claimant's testimony was that, as he straightened the left leg to raise the right leg to the next step, he experienced excruciating pain. That was the point Dr. Prostic stated when the hamstring failed, causing the hyperextension of the knee and causing the final tear to the ACL. Dr. Prostic also noted that claimant, at 5'10" and 240 pounds, placed additional weight and, thus, more stress than the average person on the knee, which could also contribute to the injury of a previously compromised ACL.

Claimant's description of the accidents occurring on March 5 and August 23, 1998, are uncontraverted.

Claimant's slip and fall in the shower on March 5, 1998, occurred while claimant was working for respondent. Claimant testified that it was common for workers to take showers in the middle of their shift, as the production process would cause the employees to get very dirty. K.S.A. 44-508(e) defines personal injury as any lesion or change in the physical structure of the body, causing damage or harm thereto.

The Appeals Board finds claimant has proven that he suffered accidental injury arising out of and in the course of his employment on March 5, 1998, while in the shower.

The injury occurring on August 23, 1998, while claimant was hurrying up the stairs is not so easily decided. There is no dispute that claimant suffered a personal injury as he ascended the stairs on that date, resulting in a complete tear of claimant's ACL and requiring surgery. The question is whether claimant's accident of that date arose out of and in the course of his employment with respondent.

The phrase "in the course of employment" relates to the time, place and circumstances under which an accident occurred and means the injury happened while the worker was at work in his employer's service. Hormann v. New Hampshire Ins. Co., 236 Kan. 190, 689 P.2d 837 (1984). In this instance, claimant was at work and proceeding to his work station when the incident occurred. The Appeals Board, therefore, finds that claimant did suffer injury in the course of his employment.

The phrase "out of employment" points to the cause or the origin of the accident and requires some causal connection between the accidental injury and the employment. An injury arises out of employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under

which the work is required to be performed and the resulting injury. An injury arises out of employment if it arises out the nature, conditions, obligations and incidents of the employment. Newman v. Bennett, 212 Kan. 562, 512 P.2d 497 (1973).

Before an injury can be said to arise out of the employment, the risk must be incidental to the work. A risk is incidental to the employment when it belongs to or is connected with what the worker has to do in fulfilling his duties. Martin v. United School Dist. No. 233, 5 Kan. App. 2d 298, 615 P.2d 168 (1980).

In Martin, the claimant suffered an injury to his back as he was exiting his truck in the parking lot. The Court found that neither claimant's vehicle nor the condition of the premises had anything to do with the injury and that there were no intervening or contributing causes to the accident except for claimant's own actions in exiting from the truck. The Court went on to state that, considering the history of claimant's back problems, it was obvious that almost any everyday activity would have a tendency to aggravate claimant's condition, even something so minor as bending over to tie his shoes, getting up to adjust the television or exiting his own truck while on a vacation trip. The Court found this to be a risk personal to the worker and not compensable. *Id.* at 299. The Martin court went on to discuss the Supreme Court's analysis of the three general categories of risks associated with workplace hazards. Those include (1) those distinctly associated with the job; (2) risks which are personal to the worker; and (3) the so-called neutral risks which have no particular employment or personal character. Hensley v. Carl Graham Glass, 226 Kan. 256, 597 P.2d 641 (1979). Only those risks falling in the first category are universally compensable. Personal risks do not arise out of the employment and are not compensable. Martin at 299.

Respondent also argues the case of Boeckmann v. Goodyear Tire & Rubber Co., of Kansas, Inc., 210 Kan. 733, 504 P.2d 625 (1972), is controlling. In Boeckmann, the claimant suffered from a degenerative arthritic condition of the hips which progressed over a period of several years. The Court, in Boeckmann, found the claimant's hip condition to be a progressive process which almost any everyday activity had a tendency to aggravate, and that the claimant's work did not accelerate the degenerative process any more than would have occurred regardless of claimant's employment.

However, the Appeals Board finds both Martin and Boeckmann can be distinguished under these circumstances. The activities by claimant, i.e., climbing stairs, were acknowledged by both Dr. Prostic and Dr. Knappenberger to place substantially more stress on the ACL than merely standing or walking down a level hallway. Dr. Knappenberger went on to testify that it was the additional stress on the ACL while claimant was going up the stairs that finished tearing the ACL. Dr. Prostic testified that, when a person is climbing stairs in a hurried fashion, it places additional stress on the ACL. However, both agreed that merely the act of climbing the stairs would not be sufficient to cause a full tear of the ACL. Dr. Prostic felt that an additional mechanism, a stumble, a

twist or a hyperextension, would be required in order to cause the type of damage suffered by claimant. In this instance, Dr. Prostic testified that claimant's hamstring, for some reason, failed to work properly, thus allowing the tibia to accelerate forward out of control. This hyperextension of the knee actually caused the tearing of the ACL.

Dr. Knappenberger, when questioned about the March 5, 1998, accident, testified that he felt claimant had suffered additional tearing of the ACL at that time, causing free floating fibers from the ACL to result. He stated that sometimes these fibers can flip into the knee joint, causing the joint to catch. This would explain the periodic catching claimant experienced after Memorial weekend in the summer of 1998.

Dr. Knappenberger also testified that it was very probable that claimant suffered these fiber tears as a result of the March 5, 1998, slip and fall in the shower. His opinion was based upon the fact that claimant began suffering the catching and popping in the knee after the fall in March of 1998, but not during the nearly three years after the July 1995 surgical procedure on claimant's ACL which preceded claimant's March 1998 fall.

Considering the three general categories of risks above discussed, it is obvious claimant's knee is not a risk solely associated with claimant's job. The risk to claimant's knee was, in part, personal. However, in this instance, claimant's knee has been injured on at least two separate occasions while claimant was working. In both 1995 and 1998, claimant suffered falls in respondent's shower, resulting in injuries to claimant's knee. In Martin, the Court found that neither claimant's vehicle nor the conditions of the premises had anything to do with the injury. That is not the case in this instance. Here, there is a direct causal connection between the added stress of hurrying up the stairs and the injury.

Although walking up stairs could be described as a normal activity of day-to-day living, K.S.A. 44-508(e) does not exclude "accidents" that are the result of such activity, but rather excludes injuries where the "disability" is a result of the natural aging process or the normal activities of day-to-day living. Corbett v. Schwan's Sales Enterprises, WCAB Docket No. 216,787 (May 1998).

In this case there was a specific onset of injury caused by an accident at work. There is no allegation in this case that claimant's disability resulted from the wear and tear common to acts of everyday living combined with a preexisting condition, as was the case in Boeckmann. Neither is this a case where claimant had a preexisting condition which was worsened or made symptomatic by a solely personal risk as in Martin. Accordingly, the Appeals Board finds the injury that occurred from the act of walking down stairs does constitute an injury that arose out of the employment.

The Appeals Board finds, based upon the above analysis, that the accidents suffered on March 5, 1998, and August 23, 1998, resulted in injuries to claimant's left knee which arose out of and in the course of claimant's employment with respondent.

As a result of those accidental injuries, claimant was off work and recuperating from surgery from January 4, 1999, through June 1, 1999, a period of 21.29 weeks. The Board finds claimant entitled to temporary total disability compensation at the maximum rate of \$366 per week for that period.

Claimant, in his brief, argues that certain medical bills be deemed authorized because they were necessary for both the diagnosis and treatment of claimant's knee. The Appeals Board agrees and orders all reasonable and necessary medical treatment provided to claimant through Dr. Knappenberger and his referrals be paid as authorized medical treatment. Additionally, claimant is awarded future medical treatment upon application to and approval by the Director of the Kansas Workers Compensation Division.

With regard to the nature and extent of claimant's injury, the Appeals Board considered both the opinions of Dr. Knappenberger and Dr. Prostic. Dr. Knappenberger found claimant to have a 7 percent impairment to the lower extremity, of which 50 percent preexisted claimant's most recent injuries. Dr. Prostic found claimant to have suffered a 20 percent impairment to the left leg, of which he opined 5 to 10 percent was preexisting. The Appeals Board finds, as a result, claimant has suffered a 14 percent impairment to the lower extremity at the knee, of which 7 percent preexisted, resulting in a 7 percent impairment of the leg for this accident.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Bryce D. Benedict dated August 9, 2000, should be, and is hereby, reversed, and claimant, Scott D. Ronsse, is granted an award against the respondent, Goodyear Tire & Rubber Company, and its insurance carrier, Constitution State Insurance Company, for injuries occurring to claimant's left knee on March 5, 1998, and August 23, 1998. For the injury occurring on March 5, 1998, claimant is awarded all reasonable and necessary medical treatment. For the injury occurring on August 23, 1998, claimant is awarded 21.29 weeks temporary total disability compensation at the rate of \$366 per week totaling \$7,792.14. Thereafter, for the injuries occurring on March 5, 1998, and August 23, 1998, claimant is awarded a 7 percent impairment to the left lower extremity which constitutes 12.51 weeks permanent partial compensation at the rate of \$366 per week in the amount of \$4,578.66, for a total award of \$12,370.80, all of which is due and owing at the time of this award and ordered paid in one lump sum minus any amounts previously paid.

Claimant is further awarded past and future medical treatment pursuant to the above award.

The fees necessary to defray the expense of the administration of the Kansas Workers Compensation Act are assessed against the respondent and its insurance carrier to be paid as follows:

Nora Lyon & Associates	
Regular Hearing - May 11, 2000	\$129.00
Preliminary Hearing - December 2, 1998	\$146.40
Gene Dolginoff Associates, LTD	
Deposition - January 25, 2000	\$234.30
Owens, Brake, Cowan & Associates	
Deposition - December 10, 1999	\$228.20
Curtis, Schloetzer, Hedberg, Foster & Assoc.	
Deposition - June 22, 2000	\$224.90

IT IS SO ORDERED.

Dated this ____ day of February 2001.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Mitchell D. Wulfekoetter, Topeka, KS
- John A. Bausch, Topeka, KS
- Bryce D. Benedict, Administrative Law Judge
- Philip S. Harness, Director