

Christopher D. Miller, M.D., taken on March 24, 1999, and the April 7, 1999, medical report of Kenneth A. Jansson, M.D. Claimant was examined and evaluated, on May 6, 1999, by Bradley W. Bruner, M.D. and his report of that date was offered and admitted into the preliminary hearing record.

On appeal, respondent contends that claimant's current need for medical treatment for her right knee did not arise out of and in the course of her employment with the respondent. Further, respondent contends the Administrative Law Judge exceeded his jurisdiction when he ordered the respondent to pay claimant weekly temporary total disability benefits, if claimant was taken off work. Respondent argues claimant failed to file an application requesting such benefits.

Claimant, on the other hand, requests that the Appeals Board to affirm the Administrative Law Judge's preliminary hearing Order.

The parties also stipulated that if the Administrative Law Judge found the claim to be compensable, then the authorized treating physician should be changed from Christopher D. Miller, M.D., to Kenneth A. Jansson, M.D.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board makes the following findings and conclusions:

Procedurally, the respondent did not file an Application for Preliminary Hearing, form E-3, with its Motion to Terminate Benefits, or in the alternative, Motion for Change of Authorized Treating Physician. But the Appeals Board finds the hearing and additional evidence admitted into the record is a continuation of the original preliminary hearing held on November 5, 1998. Therefore, the July 29, 1999, Order is a preliminary hearing order supplementing the original November 5, 1998, preliminary hearing Order.

After the November 5, 1998, preliminary hearing, the Administrative Law Judge found claimant had proven her right knee injury and need for medical treatment was the result of the September 3, 1998, work-related accident. The Order was appealed to the Appeals Board and was affirmed. The Appeals Board finds that it is not necessary to repeat in this Order those findings and conclusions. Therefore, the findings and conclusions contained in the Appeals Board's Order dated December 31, 1998, are adopted herein as if specifically set forth.

After Dr. Miller was ordered as the authorized treating physician in November 1998, he performed open exploratory surgery on claimant's right knee. Before the surgery, Dr. Miller had diagnosed probable partial patella tendon rupture. But he did not find a partial tendon rupture during the exploratory surgery. He did find inflammatory

granulomatous-type tissue that he gently debrided and he lightly roughened the distal most tip of the patella.

After the surgery, claimant's right knee remained symptomatic, she was unable to actively extend the knee, there was thickening of the soft tissue on the front of the knee, and swelling was found in the superior aspect of the knee. Dr. Miller testified he did not know the etiology of claimant's post-surgery persistent complains. But he clarified that it remained his opinion that the September 3, 1998, accident at work was the cause of claimant's right knee problems when he testified, "But in my opinion, more likely than not, the only thing in the history that precipitated all of this is the incident of September 3rd."

Respondent had claimant examined and evaluated by Kenneth A. Jansson, M.D., on April 7, 1999. Dr. Jansson diagnosed claimant with a severe injury to her patellar tendon, as documented by the March 2, 1999, MRI and his clinical examination. He further opined he did not feel that claimant's current severe patella tendon injury could have occurred when she hyperextended her knee at work on September 3, 1998.

On May 6, 1999, at claimant attorney's request, Bradley W. Bruner, M.D., examined and evaluated the claimant. Dr. Bruner opined that claimant actively injured her right knee at work on September 3, 1998, when she hyperextended the knee. It was Dr. Bruner's analysis that claimant did not have significant problems with her knee before that incident and there was no history of any significant intervening mechanism of injury.

The Appeals Board acknowledges that the respondent has obtained the opinion of a physician that claimant's current right knee condition does not have a casual relationship to the September 3, 1998, work-related accident. But both claimant's treating physician, Dr. Miller, and Dr. Bruner, the physician who examined claimant at the request of her attorney, are of the opinion that claimant's current right knee problems are related to the September 3, 1998, work-related accident. Therefore, when the preliminary hearing record is considered as a whole, the Appeals Board finds claimant's current need for medical treatment for her right knee problems is related to the September 3, 1998, work-related accident.

Respondent also contends the Administrative Law Judge exceeded his jurisdiction when he ordered respondent to provide claimant with weekly temporary total disability benefits, if she was taken off work. Respondent argues claimant failed to file an application requesting such benefits. In the Administrative Law Judge's original preliminary hearing Order dated November 5, 1998, he also ordered respondent to provide claimant with weekly temporary total disability benefits, if she was taken off work. As previously found above, the Appeals Board has determined the July 29, 1999, hearing was a continuation of the November 5, 1998, preliminary hearing. Accordingly, the Appeals Board finds, since this was respondent's request to terminate benefits, claimant was not required to file another application again requesting temporary total disability benefits.

Additionally, the Administrative Law Judge did not exceed his jurisdiction when he

made an order concerning temporary total disability benefits following a preliminary hearing. The preliminary hearing statute grants the Administrative Law Judge authority to order both temporary total disability benefits and medical treatment at a preliminary hearing. Accordingly, the Appeals Board does not have jurisdiction to review the issue of temporary total disability benefits appealed from a preliminary hearing order.¹

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Administrative Law Judge John D. Clark's July 29, 1999, preliminary hearing Order should be, and it is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of October 1999.

BOARD MEMBER

c: James B. Zongker, Wichita, KS
Jeff S. Bloskey, Overland Park, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director

¹See K.S.A. 1998 Supp. 44-534a.