

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

VONA R. PRUTER)	
Claimant)	
VS.)	
)	Docket No. 241,765
LARNED STATE HOSPITAL)	
Respondent)	
AND)	
)	
STATE SELF INSURANCE FUND)	
Insurance Carrier)	

ORDER

This case comes before the Appeals Board on remand from the Kansas Supreme Court. The Supreme Court opinion was filed July 13, 2001.

ISSUES

Claimant suffered simultaneous injuries to two different scheduled extremities in a single accident. The Board originally awarded claimant permanent partial disability compensation based on a seven percent impairment to the body as a whole (general disability). In its decision, the Board held that claimant's six percent impairment of function to her right upper extremity from her wrist injury and her seven percent impairment of function to her right lower extremity from her ankle injury should be combined and compensated as a general disability under K.S.A. 1997 Supp. 44-510e rather than as two separate scheduled injuries under K.S.A. 1997 Supp. 44-510d. The Supreme Court disagreed and remanded with directions for a recalculation of the award.

Although the Board gave the parties an opportunity to submit additional written argument, neither used that opportunity to submit a suggested calculation. Likewise, neither party addressed how the reduction for the weeks of temporary total disability compensation paid should be applied to the two separate scheduled injury award calculations. Claimant, however, does argue that the scheduled injuries to the wrist and the ankle should be calculated as injuries to the arm and the leg, respectively. Although Respondent does not directly state a position on this issue, its letter brief suggests a concurrence by referring to the injured members simply as upper and lower extremities and requesting an Order be entered consistent with the findings recited above.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In its original February 23, 2000, Order, the Board found that ". . . claimant has a 6 percent impairment of function to the right upper extremity as a result of her wrist injury." This disability will be compensated pursuant to K.S.A. 1997 Supp. 44-510d(a)(12) as a loss of use of the forearm, or 200 weeks. It is considered a forearm under the schedule because the situs of the injury and resulting disability is at the wrist which is below the elbow and above the level of the hand. See K.A.R. 51-7-8.

In the original Order the Board also found that ". . . claimant has a 7 percent impairment of function to the right lower extremity as a result of her ankle injury." This disability will be compensated pursuant to K.S.A. 1997 Supp. 44-510d(a)(15) as a loss of use of the lower leg, or 190 weeks. The disability is considered a lower leg under the schedule because its situs is below the knee and above the foot. See K.A.R. 51-7-8(c) (4).

Finally, the Board will address the treatment of the temporary total disability compensation (TTD) in the computation of the two scheduled injury awards. K.A.R. 51-7-8(b)(1)(A) requires that the number of weeks of TTD paid be deducted from the maximum number of weeks of permanent partial disability compensation that is provided by the schedule. The parties stipulated that claimant was paid 27.14 weeks of TTD as a result of the two simultaneous injuries to claimant's wrist and ankle. But those 27.14 weeks of TTD paid were not separated as between claimant's fractured wrist and her fractured ankle injuries. Although the wrist fracture was the more severe and required surgery, as opposed to the ankle fracture that was simply casted, the record does not establish whether it was one or the other or both of the injuries that temporarily prevented claimant from returning to work. Neither the Supreme Court nor the parties addressed the question of how these 27.14 weeks of TTD are to be treated when computing claimant's award.

K.A.R. 51-7-8(a)(1) provides:

If a worker suffers a loss to a member and, in addition, suffers other injuries contributing to the temporary total disability, compensation for the temporary total disability shall not be deductible from the scheduled amount for those weeks of temporary total disability attributable to the other injuries.

The Board finds that both injuries contributed and caused claimant to be temporarily and totally disabled for those 27.14 weeks. Obviously K.A.R. 51-7-8(a)(1) contemplates that the TTD credit should not be duplicated or applied more than once where there are multiple injuries. Therefore, in the absence of a reasonable factual basis for apportioning the TTD, the Board will divide the weeks of TTD paid equally between the two injuries and apply 13.57 weeks to each.

AWARD

WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Vona R. Pruter, and against the respondent, Larned State Hospital, and its insurance carrier, State Self Insurance Fund, for an accidental injury which occurred March 24, 1998, for 27.14 weeks of temporary total disability compensation at the rate of \$282.95 per week or \$7,679.26 followed by 11.19 weeks of permanent partial disability compensation at the rate of \$282.95 per week or \$3,166.21 for a 6% loss of use of the forearm (200 weeks on the schedule, minus 13.57 weeks of temporary total disability compensation equals 186.43 weeks times 6 percent disability equals 11.19 weeks) and 12.35 weeks at the rate of \$282.95 per week or \$3,494.43 for a 7% loss of use of the lower leg (190 weeks on the schedule minus 13.57 weeks of temporary total disability compensation equals 176.43 weeks times 7 percent disability equals 12.35 weeks), making a total award of \$14,339.90, all of which is presently due and owing in one lump sum less amounts previously paid.

The Appeals Board also approves and adopts all other orders set forth in its original Order and in the Award entered by the Administrative Law Judge not inconsistent herewith.

IT IS SO ORDERED.

Dated this ____ day of January 2002.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Robert R. Lee, Attorney for Claimant
- Richard L. Friedeman, Attorney for Respondent
- Bruce E. Moore, Administrative Law Judge
- Philip S. Harness, Workers Compensation Director