

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

CHARLES E. BUTLER

Claimant

VS.

SUPERIOR INDUSTRIES INTERNATIONAL, INC.

Respondent

Self Insured

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Docket No. 242,512

ORDER

Respondent appeals from an Order entered by Administrative Law Judge Steven J. Howard on July 23, 2001.

ISSUES

The ALJ authorized Dr. Conrad to treat claimant's psychological anxiety through medications. On appeal, respondent acknowledges claimant suffered from a "heat-related illness" at work but denies claimant suffered an accidental or a physical injury. Respondent also contends the evidence does not support a finding that claimant is suffering from a psychological condition that is directly traceable to a work injury. For these reasons, respondent argues the Order should be reversed and benefits denied.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes the Order should be affirmed.

It is undisputed that on September 18, 1998, claimant became overheated and passed out while in the course of his duties for respondent. There was concern about whether claimant may have suffered a heart attack and so claimant was taken to the local hospital. The treating physician, Dr. Robert J. Stuppy, eventually determined claimant had an episode of heat stroke. Claimant later complained of a reoccurrence of symptoms when exposed to heat. Dr. John J. Cascone diagnosed an anxiety disorder induced by heat. Thereafter, Dr. Edgar Conrad IV likewise concluded claimant has an anxiety disorder. Claimant experiences a panic attack situation when exposed to heat and develops considerable anxiety that his heat stroke symptoms will reoccur. Dr. Conrad recommended claimant be treated with medication and respondent objects.

K.S.A. 44-508(d) defines "accident" as:

an undesigned, sudden and unexpected event or events, usually of an afflictive or unfortunate nature and often, but not necessarily, accompanied by a manifestation of force. The elements of an accident, as stated herein, are not to be construed in a strict and literal sense, but in a manner designed to effectuate the purpose of the workers compensation act that the employer bear the expense of accidental injury to a worker caused by the employment.

K.S.A. 44-508(e) defines "personal injury" and "injury" as:

"Personal injury" and "injury" mean any lesion or change in the physical structure of the body, causing damage or harm thereto, so that it gives way under the stress of the worker's usual labor. It is not essential that such lesion or change be of such character as to present external or visible signs of its existence. An injury shall not be deemed to have been directly caused by the employment where it is shown that the employee suffers disability as a result of the natural aging process or by the normal activities of day-to-day living.

It is clear from the record, and the Board finds, that claimant suffered at least a temporary injury by the work related accident on September 18, 1998. Heat has been held to be an external force that can cause injury. The argument that a condition caused by heat cannot constitute an accidental injury arising out of and in the course of employment is foreclosed by Taber v. Tole Landscape Co., 181 Kan. 616, Syl. ¶ 1, 313 P.2d 290 (1957).

With respect to an injury sustained by a workman resulting from exposure to natural elements, such as excessive heat, the general rule is that if the nature of his employment, that is, the work he is doing, subjects him to a greater hazard or risk from the elements than that to which he otherwise would be exposed, so that there may be said to be a causal connection between the conditions under which the work is performed and the resulting injury, the injury is deemed to be an accidental injury arising out of the employment within the meaning of the workmen's compensation act.

See *also*, Dial v. C.V. Dome Co., 213 Kan. 262, 515 P.2d 1046 (1973).

Respondent also argues that it should not, in any event, be responsible for the psychological or psychiatric care ordered by the ALJ. Psychological and psychiatric injury is not compensable unless it is directly traceable to a physical injury. Love v. McDonald's Restaurant, 13 Kan. App. 2d 397, 771 P.2d 557, *rev. denied* 245 Kan. 784 (1989). Respondent contends that even if claimant suffered a physical injury, the psychiatric problems are not directly traceable to that injury.

The Board has held in previous cases and holds here that whether a psychological or psychiatric injury is directly traceable to a physical injury is not a jurisdictional issue and is, therefore, not subject to review in an appeal from a preliminary hearing. K.S.A. 44-551 and K.S.A. 44-534a. In our view, this issue concerns the nature and extent of the disability and is a step removed from whether claimant suffered a compensable injury. The Board has, for this reason, declined to review the question at this stage of the proceedings. Eaton v. Coleman Company, Inc., WCAB Docket No. 205,158 (Sept. 1998); Gilman v. Olathe Medical Center, WCAB Docket No. 211,937 (June 1997).

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the finding by Administrative Law Judge Steven J. Howard that claimant suffered accidental injury arising out of and in the course of employment is affirmed. The Board dismisses the appeal from the finding that claimant suffers psychiatric or psychological problems that are directly traceable to the physical injury. The Order entered by the Administrative Law Judge on July 23, 2001, remains in effect as originally entered.

IT IS SO ORDERED.

Dated this ____ day of October 2001.

BOARD MEMBER

c: Patrick E. Smith, Attorney for Claimant
John I. O'Connor, Attorney for Respondent
Steven J. Howard, Administrative Law Judge
Philip S. Harness, Workers Compensation Director