

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

<b>MERLE E. NEWLAND</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 250,530
<b>FARMLAND INDUSTRIES, INC.</b>	)	
Respondent	)	
AND	)	
	)	
<b>WAUSAU UNDERWRITERS</b>	)	
	)	
<b>AND</b>	)	
	)	
<b>LIBERTY MUTUAL INSURANCE COMPANY</b>	)	
Insurance Carriers	)	

**ORDER**

Respondent appealed Administrative Law Judge Brad E. Avery's July 16, 2001, preliminary hearing Order for Compensation.

**ISSUES**

The Administrative Law Judge (ALJ) ordered respondent to pay claimant temporary total disability compensation and provide claimant with medical treatment for right knee and right shoulder injuries.

The ALJ found claimant's current right knee and right shoulder injuries were the natural and probable consequence of a previous July 7, 1998, work-related right knee injury.

On appeal, respondent contends claimant's current right knee and right shoulder injuries are not the natural and probable consequence of his original July 7, 1998, work-related right knee injury. Respondent argues these current injuries are the result of a new and separate accident that occurred on April 17, 2001, while claimant was at home performing duties not related to his employment. Thus, respondent argues it has no responsibility for these current injuries because claimant's accidental injury did not arise out of and in the course his employment with respondent. If the Board affirms the ALJ's finding that claimant's injuries are the natural consequence of his original July 7, 1998, injury, then the respondent argues the compensation rate should be \$366.08 per week

which is the compensation rate for a July 7, 1998, accident instead of \$401.00 per week as found by the ALJ.

In contrast, claimant requests the Appeals Board (Board) to affirm the preliminary hearing Order for Compensation. Claimant contends his current injuries are not the result of a new and separate accident but are the natural and probable consequence of his July 7, 1998, work-related right knee injury and subsequent surgeries.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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

Claimant originally severely injured his right knee while working for the respondent on July 7, 1998. As a result of that injury, claimant underwent two knee operations. Additionally, as a result of an altered gait caused by the injured right knee claimant developed a back injury that required surgery in 2000.

Claimant's back surgery was performed by orthopedic surgeon Daniel M. Downs, M.D., of Blue Springs, Missouri. Respondent authorized Dr. Downs to treat both claimant's right knee and back injuries. Claimant continued to have pain and discomfort in the right knee, which caused him to walk with an altered gait. Claimant also experienced weakness in the right knee that caused the knee to give way on several occasions without any independent trauma. Although Dr. Downs released claimant from treatment on February 5, 2001, claimant returned to see Dr. Downs on March 19, 2001, with continued complaints of right knee pain and discomfort due to the cold weather.

On April 17, 2001, claimant was at home and had just finished sweeping out the bed of his Chevrolet one ton pickup. The pickup truck bed is three feet from the ground. Claimant placed his right foot on the flat surface of the trailer hitch located halfway down between the truck bed and the ground in order to step down from the truck bed. As claimant put his weight on his right leg to lift his left leg over the truck bed his right knee collapsed. Claimant fell to the concrete sidewalk located on the right side adjacent to the pickup truck. Claimant suffered a lump on his head, injured his right shoulder and re-injured his right knee.

Claimant notified the respondent of the accident but respondent refused to provide claimant medical treatment. Claimant then went on his own to his family physician Mary C. Vernon, M.D. Claimant was seen by Dr. Vernon's physician assistant Heather E. Yates, who took claimant off work.

Claimant was then referred to orthopedic surgeon Mary Ann Hoffman, M.D., in Lawrence, Kansas, who had previously treated claimant for right shoulder pain. Dr. Hoffman saw claimant on May 4, 2001, with right shoulder and right knee pain. Claimant

gave Dr. Hoffman a history that he fell when his right knee gave away about three weeks before this appointment. Dr. Hoffman had claimant undergo an MRI examination that showed at least a partial rotator cuff tear. She determined claimant needed right shoulder surgery but claimant, at that time, had no authorization from respondent's insurance carrier for the surgery. In a May 16, 2001, letter to respondent's insurance carrier, Dr. Hoffman opined that claimant would not have sustained his right shoulder injury and the additional injury to his right knee if he had not had the "profound instability" to his right knee due to his preexisting anterior cruciate ligament rupture.

Claimant returned to see Dr. Downs on May 29, 2001, with right knee and right shoulder complaints. He gave Dr. Downs a history of his right knee giving out falling and injuring his right shoulder. Dr. Downs diagnosed claimant with a right rotator cuff tear and ordered claimant to undergo an MRI scan of his right knee. Dr. Downs took claimant off work.

Claimant returned to see Dr. Downs on June 19, 2001. At that time, Dr. Downs had the results of the MRI scan which showed what appeared to be a recurrent lateral meniscus tear. The doctor concluded that claimant was going to require surgery to repair the right rotator cuff tear and arthroscopy to repair the meniscal tear. Dr. Downs opined that claimant's current right shoulder and right knee injuries, "occurred because his right knee gave out and the right knee is work-related, hence the residual damage to his shoulder and knee should be work-related."

The respondent argues the facts, in this case, are similar to the facts in Stockman<sup>1</sup> and Wietharn<sup>2</sup> where the court found claimant's second injury was not the natural and probable consequence of a previous compensable injury because the increased disability or the new injury resulted from a new and separate accident. But the claimant argues that when the primary injury, as in this case the right knee injury, was a compensable injury, then every natural and probable consequence that flows from the primary injury, including a new and distinct injury, is compensable if it is a direct and natural consequence of the primary injury.<sup>3</sup>

Here, the Board concludes that the greater weight of the evidence, as established through claimant's testimony and Dr. Hoffman's and Dr. Downs' medical opinions prove that claimant's current right knee and right shoulder injuries are the direct and natural consequence of claimant's previous July 7, 1998, work-related right knee injury.

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<sup>1</sup> Stockman v. Goodyear Tire & Rubber Co., 211 Kan. 260, 505 P.2d 697 (1973).

<sup>2</sup> Wietharn v. Safeway Stores, Inc., 16 Kan. App. 2d 188, 820 P.2d 719, *rev. denied* 250 Kan. 808 (1991).

<sup>3</sup> See Reese v. Gas Engineering Construction Co., 219 Kan. 536, Syl. ¶4, 548 P.2d 746 (1976).

The ALJ also found that claimant's current injuries were the natural and probable consequence of claimant's July 7, 1998, work-related right knee injury. But the ALJ ordered the respondent to pay claimant temporary total disability compensation at the compensation rate of \$401.00 per week, which is the compensation rate for an April 17, 2001, accident instead of \$366.00 which is the compensation rate for a July 7, 1998, accident. The Board concludes, since claimant's current injuries are the natural and probable consequence of his compensable July 7, 1998, accident then the appropriate compensation rate for a July 8, 1998, accident is \$366.00 per week and temporary total disability compensation is ordered paid at that rate.

**WHEREFORE**, it is the finding, decision, and order of the Board that ALJ Brad E. Avery's July 16, 2001, preliminary hearing Order for Compensation should be, and is hereby affirmed, except the compensation rate should be changed from \$401.00 per week to \$366.00 per week.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of November 2001.

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BOARD MEMBER

c: Gary L. Jordan, Attorney for Claimant  
D'Ambra Howard, Attorney for Respondent  
Brad E. Avery, Administrative Law Judge  
Philip S. Harness, Workers Compensation Director