

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

GARRY CRAYNE)	
Claimant)	
VS.)	
)	Docket No. 262,836
MIAMI LUMBER, INC.)	
Respondent)	
AND)	
)	
ALLIED MUTUAL INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Respondent appeals Administrative Law Judge Robert H. Foerschler's July 30, 2002, Supplemental Preliminary Decision.

ISSUES

The Administrative Law Judge (ALJ) granted claimant's request for medical treatment and temporary total disability compensation for a November 20, 2000, work-related right knee injury.

Respondent appeals and contends that the ALJ's Supplemental Preliminary Decision should be reversed. Respondent argues claimant failed to prove he injured his right knee as a result of an accident while employed by the respondent. Furthermore, respondent argues that the claim should be denied because claimant failed to provide respondent with timely notice of the November 20, 2000, accident.

Conversely, claimant requests the Appeals Board (Board) to affirm the Supplemental Preliminary Decision. The claimant contends he proved that his November 20, 2000, right knee injury was related to his employment with respondent. Furthermore, claimant contends he provided respondent with timely notice of the November 20, 2000, accident.

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:

On November 20, 2000, claimant alleges he injured his right knee while at work performing his regular work duties as respondent's yard foreman. As a part of those work duties, on November 20, 2000, claimant was lifting large heavy laminated boards while relocating those boards to another part of the lumber yard. Claimant did not have right knee symptoms at the time he was relocating the laminated boards. But approximately one hour after lifting the boards, claimant was walking across the yard and suddenly felt his knee give away causing him to fall. Claimant immediately experienced excruciating pain in his right knee.

After claimant's right knee gave out, claimant testified he notified his supervisor Fred Cole, "...that my knee had went out and it was hurting me extremely."¹ Claimant also testified he told respondent's owner Pete Peterson, the day after the right knee accident that he thought his right knee problem was the result of a 1990 motorcycle accident.

Because of the continuing extreme right knee pain, after work on November 20, 2000, claimant sought medical treatment at the emergency department of the Miami County Medical Center. The emergency room physician diagnosed claimant with right knee pain and possible medial meniscus tear. Claimant's right knee was placed in a knee immobilizer and claimant was referred for a follow up with his primary care physician. Claimant was eventually referred to orthopedic surgeon Dr. Gregory P. Lynch, M.D.

Dr. Lynch first saw claimant on December 13, 2000. After examining claimant, he recommended that claimant undergo a MRI scan on December 19, 2000. The MRI scan demonstrated a right medial meniscus tear and an osteochondral defect of the medial femoral condyle.

On January 4, 2001, claimant underwent a right knee arthroscopy, a partial medial meniscectomy, debridement and a microfracture of osteochondral of the right knee. Up to the date of surgery, claimant had continued to work for the respondent. Dr. Lynch's January 4, 2001, operative report noted that claimant had a recent event at work which triggered the onset of right knee pain which was consistent with a medial meniscus tear.

After the January 4, 2001, surgery, claimant continued to have persistent pain in his right knee. Dr. Lynch placed claimant in a physical therapy program and gave claimant cortisone injections into the right knee for pain relief. Claimant also attempted to return to work on March 8, 2001, but had to stop after only working two hours because of continuing pain and discomfort in his right knee. In an effort to relieve claimant of his continuing right knee pain, on May 3, 2001, Dr. Lynch again performed arthroscopy of claimant's right knee with debridement.

¹ Cl. Depo. at 13.

As previously noted, claimant had suffered a preexisting right knee injury in a motorcycle accident that occurred in 1990. At that time, claimant's injured right knee required surgical intervention. Claimant testified he continued to have some right knee symptoms and problems after he was treated for the 1990 right knee accident. As recent as August 1, 2000, claimant was seen by one of his primary physicians Chris D. Wright, M.D. for chronic migraine headaches. At that time, Dr. Wright noted that over the weekend claimant had fallen as he was getting out of a recliner chair at home. As a result of the fall, claimant's right knee was swollen and uncomfortable. Claimant, however, testified that the fall was not the result of his right knee going out, but was caused as the result of his severe migraine headaches.

Here, there have been two preliminary hearings held and two preliminary hearing orders issued by the ALJ. The first preliminary hearing was held on April 19, 2001. As a result of that preliminary hearing, in an April 24, 2001, Preliminary Decision, the ALJ denied claimant's request for medical treatment and temporary total disability compensation. The ALJ found "there appears at this time too little correlation between the onset of complaints and any work-related cause to make a preliminary award."

Before the November 1, 2001, preliminary hearing, which is the subject of this appeal, claimant had been examined by P. Brent Koprivica, M.D. on May 7, 2001, at claimant's attorney's request. Respondent had obtained a medical report from claimant's treating physician Dr. Lynch. Respondent also had claimant on October 16, 2001, undergo an independent medical evaluation conducted by Steve L. Hendler, M.D. Those physicians' reports were admitted into the November 1, 2001, preliminary hearing record.

In addition, after the November 1, 2001, preliminary hearing, the ALJ ordered claimant to undergo an independent medical evaluation by a neutral physician. But the appointed neutral physician refused to perform the evaluation. Finally, Dr. Danny M. Gruba performed the independent medical evaluation on June 6, 2002. Dr. Gruba's report was filed June 19, 2002, and thereafter the ALJ entered the July 30, 2002, Supplemental Preliminary Decision.

The respondent contends that claimant's right knee problems and current need for medical treatment are not related to the work that he performed while he was employed by the respondent. Instead, respondent argues that claimant's right knee problems are the result of a personal risk, i.e., claimant's preexisting right knee condition caused by the 1990 motorcycle accident.

The Board, however, disagrees with the respondent and concludes that the ALJ's July 30, 2002, Supplemental Preliminary Decision should be affirmed. The Board finds this

conclusion is supported by claimant's testimony and the medical records and reports admitted into the preliminary hearing record.²

The Board acknowledges that in 1990 claimant had a right knee injury caused by a motorcycle accident. The Board also acknowledges that after the 1990 motorcycle accident, and treatment, claimant performed physical labor jobs with minimal difficulty. But after the November 20, 2000, accident, while claimant was employed by the respondent, claimant had to be taken off work. As of the date of the November 1, 2001, preliminary hearing, his right knee injury had required two surgical procedures and it needed further medical treatment and possible other surgical intervention. In fact, Dr. Gruba's June 6, 2002, Independent Medical Evaluation, the latest medical report contained in the preliminary hearing record, indicated that claimant was in need of either a unicompartmental knee replacement or a total knee replacement. Another alternative would be the procedure recommended by Dr. Lynch which was an osteochondral allograft.

At the November 1, 2001, preliminary hearing, there was also mentioned a claim for a second accidental injury arising from claimant's returning to work for respondent for two hours on March 8, 2001. But the Board finds the preliminary hearing record only indicates that claimant's work for those two hours of lifting windows was only a temporary exacerbation of the right knee injury suffered on November 20, 2000.

In regard to the timely notice issue, the Board concludes claimant satisfied the timely notice requirement when he told his supervisor his right knee gave out and he fell at work on November 20, 2000.³

WHEREFORE, the Board affirms the ALJ's July 30, 2002, Supplemental Preliminary Decision.

IT IS SO ORDERED.

Dated this ____ day of January 2003.

BOARD MEMBER

² The preliminary hearing record consists of the preliminary hearing transcript dated April 19, 2001, plus exhibits admitted therein, the preliminary hearing transcript dated November 1, 2001, plus exhibits admitted therein, the March 23, 2001, deposition of claimant, and Dr. Danny M. Gruba's June 6, 2002, Independent Medical Evaluation.

³ See K.S.A. 44-520.

c: Michael R. Lawless, Attorney for Claimant
John F. Carpinelli, Attorney for Respondent
Robert H. Foerschler, Administrative Law Judge
Director, Division of Workers Compensation