

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

LINDA S. TISSUE)	
Claimant)	
)	
VS.)	
)	
TECH, INC.)	
Respondent)	Docket No. 267,507
)	
AND)	
)	
COMMERCIAL UNION INS. CO.)	
Insurance Carrier)	

ORDER

Claimant requested review of the Post Award Medical Award by Administrative Law Judge Bruce E. Moore (ALJ) dated April 29, 2005.

APPEARANCES

Robert R. Lee, of Wichita, Kansas, represents the claimant. Kendall R. Cunningham, of Wichita, Kansas, represents respondent and its insurance carrier (respondent).

RECORD AND STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Post Award Medical Award.

ISSUE

Whether a motorized scooter (along with the mechanical lift and requisite ramps) is considered medical treatment reasonably necessary to cure and relieve the claimant from the effects of her work-related injury.¹

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs, the Board makes the following findings of fact and conclusions of law:

The ALJ's recitation of the facts is exceptionally thorough and the Board adopts them as its own. After reviewing those facts, the ALJ denied claimant's request for an Award directing respondent to provide her with a scooter, a mechanized lift and a trio of ramps to be installed in her home. In making this decision, he noted that the physician's prescription for the scooter was generated in response to a specific request by claimant. He also noted that she had a variety of other health complications that were wholly unrelated to her work injury, but nonetheless increased her complaints. The ALJ ultimately concluded that while the scooter will assist her with ambulation and was, in Dr. Dorey's view, a reasonable thing to enhance her quality of life -

. . . [t]hat enhancement, however, will neither cure [c]laimant nor relieve the effects of her injury. She will still have the pain that has persisted since her accident and subsequent surgeries. As the wheelchair/scooter will neither cure nor relieve the effects of the injury, it does not constitute reasonably necessary medical care and is not properly the obligation of [r]espondent and its insurance carrier.²

Claimant argues the scooter, which was prescribed by Dr. Lee Dorey, an orthopaedist, is medically necessary as she has "a lot of difficulty walking and standing. Even the most basic tasks are very difficult for her."³ In reality, Dr. Dorey's testimony was somewhat absolute. He was asked the following question:

Q. All right. In your opinion, Doctor, at the time that you last saw her, was it medically reasonable and necessary, in order to relieve her from the effects of her injury, to provide her with an electric wheelchair?

¹ Post-Award attorney's fees was an additional issue ruled upon by the ALJ. However, that issue is apparently not in dispute as neither party addressed that matter in their briefs.

² ALJ Post Award Medical Award (Apr. 29, 2005) at 5.

³ Claimant's Brief at 2 (filed May 24, 2005).

A. It would appear so. I've listed the same diagnoses that I listed before.⁴

Respondent points out that while such a scooter might make claimant's life more full (using Dr. Dorey's language) it does not satisfy K.S.A. 44-510h.

K.S.A. 44-510(h), provides as follows:

It shall be the duty of the employer to provide the services of a health care provider, and such medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, ambulance, crutches, apparatus and transportation to and from the home of the injured employee. . .as may be reasonably necessary to cure and relieve the employee from the effects of the injury.

In claimant's request for post-award medical treatment, she has the burden to prove her right to an award of compensation and prove the various conditions on which that right depends.⁵ In a post-award medical proceeding, an award for additional medical treatment can be made if the trier of fact finds that the need for medical care is necessary to relieve and cure the natural and probable consequences of the original accidental injury which was the subject of the underlying award.⁶

Not surprisingly, this is not the first dispute to arise out of the question of what constitutes reasonably necessary medical treatment under K.S.A. 44-510(h). In *Hedrick*,⁷ the Kansas Court of Appeals was asked whether a car fell within the definition of "medical treatment". The Court, in discussing K.S.A. 44-510(a),⁸ reasoned:

For purposes of this case, it is not necessary to devise a precise definition of "medical treatment." Certainly, examination, diagnosis, and application of remedies would not encompass the purchase of a car. The natural and ordinary meaning of "medical treatment" is not so broad as to include an automobile purchased to afford an individual "independence in transportation." Moreover, the purchase of a car goes far beyond the limited transportation authorized by 44-510(a). Under the facts of this case, we conclude that medical treatment does not include the purchase of a car.

⁴ Dorey Depo. at 11-12.

⁵ K.S.A. 44-501(a).

⁶ K.S.A. 44-510k(a).

⁷ *Hedrick v. U.S.D. No. 259*, 23 Kan. App. 2d 783, 935 P.2d 1083 (1997).

⁸ K.S.A. 44-510(a) is the predecessor statute to K.S.A. 44-510(h).

This conclusion is consistent with those cases which have applied another element of 44-510(a), the requirement that the medical treatment "be reasonably necessary to cure and relieve the employee from the effects of the injury." (Citing *Horn v. Elm Branch Coal Co.*, 141 Kan. 518, 41 P.2d 751 (1935)).

The Board has considered the parties' arguments and reviewed the record as a whole and concludes that the ALJ's Post Award Medical Award should be affirmed.

Admittedly claimant received a prescription for a motorized scooter and all the attendant items. And that prescribing physician testified that it seems "reasonable" for claimant to utilize this motorized scooter. However, a simple written prescription does not transform an item into a medically reasonable or necessary device.

Dr. Dorey's endorsement of the scooter is problematic. First, he gave claimant this prescription specifically in response to her request based upon what she had seen on TV. So, it was not as if the need for this wheelchair/scooter was something that came to the forefront of his mind when he evaluated her condition. Second, he provided this prescription on claimant's second visit, at a time when claimant was not experiencing as much difficulty as she had at the time of her initial visit with him. Dr. Dorey testified that claimant's presentation on this second visit was significantly improved while on her first visit she had difficulty getting up from a chair. It is troubling to the Board that Dr. Dorey would conclude that she was in need of this assistive device when she had so markedly improved.

Moreover, it does not appear that there is anything about this scooter that will cure or relieve the effects of claimant's injury. Claimant is presently able to ambulate, she merely does it with difficulty. She has described an incident where she experienced some health complications following a trip to a craft fair. Yet, the physicians who testified indicate that those complications are unrelated to her back pain and likely flow from her other significant health problems or dietary indiscretions. Like the ALJ, the Board finds the cost of the wheelchair/scooter and the mechanized lift and ramps are not properly the obligation of the respondent and its insurance carrier.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Post Award Medical Award of Administrative Law Judge Bruce E. Moore dated April 29, 2005, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of August, 2005.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

DISSENT

I respectfully disagree with the majority. I find the motorized chair would help relieve the sometimes severe back pain that claimant experiences due to her work-related injury. Accordingly, I believe claimant should be provided that device by respondent and its insurance carrier.

BOARD MEMBER

- c: Robert R. Lee, Attorney for Claimant
Kendall R. Cunningham, Attorney for Respondent and its Insurance Carrier
Bruce E. Moore, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director