

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

<b>EMILIO FACIO</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,014,006
<b>CREEKSTONE FARMS PREMIUM BEEF</b>	)	
Respondent	)	
AND	)	
	)	
<b>AMERICAN HOME ASSURANCE COMPANY</b>	)	
Insurance Carrier	)	

**ORDER**

Claimant appealed the March 7, 2005, Award entered by Administrative Law Judge John D. Clark. The Board heard oral argument on August 19, 2005, in Wichita, Kansas.

**APPEARANCES**

Claimant appeared pro se and with an interpreter. Kirby A. Vernon of Wichita, Kansas, appeared for respondent and its insurance carrier.

**RECORD AND STIPULATIONS**

The record considered by the Board and the parties' stipulations are listed in the Award. In addition, on January 13, 2005, the parties filed a written stipulation with the Division of Workers Compensation that admitted the following medical reports into the record: the January 28, 2004, report of Dr. Paul S. Stein; the April 5, 2004, report of Dr. Pedro A. Murati; and the June 30, 2004, report of Dr. Robert A. Rawcliffe, Jr. And on March 1, 2005, the parties filed a second written stipulation regarding claimant's average weekly wage.

**ISSUES**

This is a claim for a July 30, 2003, work-related accident and resulting back, neck, and shoulder injuries. The parties stipulated claimant's accident arose out of and in the course of his employment with respondent.

In the March 7, 2005, Award, Judge Clark denied claimant's request for additional workers compensation benefits. The Judge found the injuries claimant sustained in the July 2003 accident were only temporary in nature and that claimant suffered no permanent impairment as measured by the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (AMA Guides) (4th ed.).

Claimant contends Judge Clark erred. Claimant argues his injuries were permanent as he continues to experience pain in his back and shoulders. Accordingly, claimant requests the Board to reverse the March 7, 2005, Award and award him permanent partial disability benefits.

Conversely, respondent and its insurance carrier contend the Award should be affirmed. They argue the two independent medical examiners selected by the Judge opined that claimant sustained no permanent injury or impairment and their opinions should be given greater weight than the medical expert hired by claimant.

The only issue before the Board on this appeal is the nature and extent of claimant's injury and disability.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record and considering the parties' arguments, the Board finds and concludes the March 7, 2005, Award should be affirmed.

Claimant injured his back, neck, and shoulders on July 30, 2003, while working for respondent. But the greater weight of the medical evidence establishes that claimant did not sustain a permanent impairment as measured by the *AMA Guides* (4th ed.). Accordingly, claimant is not entitled to receive permanent partial general disability benefits as defined by K.S.A. 44-510e.

The Board is persuaded by the opinions of the two doctors chosen by the Judge to evaluate claimant. Dr. Paul S. Stein, who is a neurological surgeon, examined claimant in late January 2004 at the Judge's request and concluded claimant sustained no impairment of function despite his extensive pain complaints. Dr. Stein wrote, in part:

Mr. Facio has rather extensive complaints of pain including both shoulders, neck, thoracolumbar spine, and right hip. He also has a small mass in the subcutaneous tissues lateral to the thoracic spine on the right. He relates all of these symptoms to [the] injury at work on 7/30/03. Examination is unrevealing except for the subcutaneous nodule which is very unlikely to be directly related to the trauma and most likely represents a previously undetected lipoma or sebaceous cyst. Such

lesions can increase in size intermittently and the patient may not have been aware of its presence.

I do not believe that any further investigation or treatment is likely to be beneficial in this patient. Assuming he sustained a mild/moderate soft tissue injury, there is no spasm, focal tenderness or restriction of motion to suggest that physical therapy might be of benefit at this stage. The shoulders are his biggest complaint and range of motion is full without evidence of positive impingement signs or crepitus. There is no impairment of function present on today's examination.<sup>1</sup>

Dr. Robert A. Rawcliffe, Jr., who was also selected by the Judge to perform an independent medical evaluation, examined claimant in June 2004 and, likewise, concluded claimant sustained no permanent injury or permanent impairment from the July 30, 2003, accident. Dr. Rawcliffe wrote, in part:

Based on the available evidence and assuming the history obtained to be accurate, I conclude that this patient sustained a lumbar sprain and contusion as well as contusion and strain of the upper thoracic and cervical spine as a result of the injury sustained on July 30, 2003, now 11 months ago.

There has been adequate time from [*sic*] full recovery from these injuries with or without treatment.

There are numerous findings on physical examination that suggest magnification of symptoms. I refer specifically to the marked limitation of shoulder motion and the absence of any objective findings. The nonanatomic hypesthesia in the right upper extremity and the giving way phenomenon with muscle testing.

Likewise, there is discrepancy between straight leg raising in the sitting and supine position and nonanatomic distribution of sensory loss in the right lower extremity, as well as giving way with muscle testing in the lower extremities.

I conclude that this patient has no permanent injury and therefore no permanent impairment, resulting from the injury sustained on July 30, 2003.<sup>2</sup>

There is no reason to suspect that either Dr. Stein or Dr. Rawcliffe was biased or somehow inappropriately influenced. The Board is persuaded by their opinions and, consequently, the Board rejects Dr. Pedro A. Murati's opinion that claimant sustained a 25 percent whole person functional impairment in the July 2003 accident.

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<sup>1</sup> Stipulation (filed Jan. 13, 2005), Ex. A at 4.

<sup>2</sup> *Id.*, Ex. C at 4-5.

The Board adopts the findings and conclusions set forth by Judge Clark in the Award to the extent they are not inconsistent with the above.

**AWARD**

**WHEREFORE**, the Board affirms the March 7, 2005, Award entered by Judge Clark. The costs for the interpreter at the August 19, 2005, oral argument before the Board are assessed to respondent and its insurance carrier.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of September, 2005.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Emilio Facio, 1831 N. Jackson, Wichita, KS 67203  
Kirby A. Vernon, Attorney for Respondent and its Insurance Carrier  
Lawrence M. Gurney, Former Attorney for Claimant  
John D. Clark, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director