

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

MIKALA SMITH

Claimant,

vs.

CS-00-0435-201

AP-00-0451-700

HOME TOWN HEALTH CARE LLC

Respondent,

and

MIDWEST INSURANCE COMPANY

Insurance Carrier.

ORDER

Respondent requests review of the June 19, 2020, preliminary Order issued by Administrative Law Judge (ALJ) Ali Marchant.

APPEARANCES

Roger A. Riedmiller appeared for Claimant. Jackson D. Wagner appeared for Respondent and Insurance Carrier.

RECORD AND STIPULATIONS

The Board adopted the same stipulations and considered the same record as the ALJ, consisting of the transcript of Preliminary Hearing from May 12, 2020, with Claimant's Exhibit A and Respondent's Exhibits 1-3; the narrative report of Dr. Eyman concerning his Court-ordered independent psychological examination; and the pleadings and orders contained in the administrative file. The Board also considered the parties' briefs. Respondent's request for oral argument was denied.

ISSUES

1. Did Claimant's alleged psychological injury arise out of and in the course of her employment with Respondent?
2. Did the Administrative Law Judge exceed her authority or jurisdiction in awarding benefits, namely psychological treatment, for Claimant's alleged psychological injury?

FINDINGS OF FACT

Claimant works for Respondent providing care to patients in their homes. On May 21, 2018, Claimant was in a rollover motor vehicle accident while driving to a patient's home. Claimant lost consciousness during the accident and has no recollection of the actual accident. Claimant recalls being in a ditch after the event.

Claimant was transported to the emergency department of Sedan Hospital, where she received treatment for multiple physical injuries, including bursitis, tendinitis and a loose cartilage fragment of the left shoulder; a concussion with loss of consciousness; multiple contusions about the head, face, left clavicle, left chest wall and abdominal wall; right subconjunctival hemorrhage; cervical spine strain and the presence of blood in the maxillary sinus. Claimant received conservative treatment for her physical injuries at Sedan Hospital.

After Claimant was released from the hospital, she received conservative treatment from her personal physician, Dr. Mark Basham. Dr. Basham's notes indicate Claimant suffered from confusion, loss of concentration, headaches and cervical stiffness, as well as fear of crowds and flashbacks of the accident, and Claimant was referred to a neurologist. Apparently, it was thought Claimant's neck pain and headaches were caused by muscle tension, rather than the concussion. Claimant underwent an MRI of the brain on February 13, 2019, which was interpreted by the radiologist as normal. Claimant also reported she began feeling anxious when driving and due to problems she was having with her supervisor in the summer and fall of 2018. Claimant thought the motor vehicle accident also made her preexisting depression worse.

On May 16, 2019, Dr. Neal B. Deutch performed a neuropsychological assessment. According to Dr. Deutch, Claimant reported she remembered driving to a patient's home and awakening in a ditch. Claimant reported problems with memory, loud noises, crowds and driving. Claimant noted she was less patient with people, anxious and depressed. Claimant also reported problems concentrating, headaches, changes in vision and light-headedness. Claimant confirmed she was independent with activities of daily living, drove independently and returned to work with no restrictions in February 2019. Neuropsychological testing was notable for symptom over-reporting and mostly normal areas of neurocognitive functioning. Brain imaging was interpreted as normal. Dr. Deutch recommended additional treatment, but noted Claimant had a long-standing history of depression and anxiety unrelated to the motor vehicle accident. Dr. Deutch also noted recovery from post-concussion symptoms typically occurs in three months.

Claimant sought psychological treatment on her own with Dr. Molly Allen, who also wrote two letters to Claimant's counsel. On July 23, 2019, Dr. Allen stated she was seeing Claimant weekly for anxiety, depression and possible post-concussion syndrome. Dr. Allen thought the motor vehicle accident aggravated Claimant's preexisting anxiety and depression. Dr. Allen recommended Claimant see a neuropsychologist for her post-

concussion syndrome. On August 6, 2019, Dr. Allen stated she disagreed with the opinions of Dr. Deutch, and thought the motor vehicle accident was the prevailing factor causing Claimant's new symptoms of withdrawal and sudden irritable outbursts. Dr. Allen also noted Claimant continued to have headaches she thought were caused by post-concussion syndrome. Dr. Allen recommended a brain mapping referral and neurofeedback sessions.

On January 31, 2020, Claimant underwent a Court-ordered independent psychological examination by Dr. James R. Eyman. Dr. Eyman reviewed the history of the accident, noting Claimant did not recall much about the accident, as well as Claimant's course of treatment. Dr. Eyman noted after the accident, Claimant's working hours were cut, and Claimant was suspended because people did not like her and because she was not charting correctly. Claimant's social and psychological history was also reviewed. Claimant reported she had physical restrictions due to the left shoulder injury and her memory was back to normal. Claimant stated she was afraid of having another accident while driving, and she frequently thought about the accident while attempting to recall what happened. Claimant reported she got irritated quickly and felt anxious at work. A personality assessment indicated Claimant suffered from depression and anxiety. Neuropsychological assessment of Claimant's cognition was normal and brain imaging was interpreted as normal. Dr. Eyman thought Claimant's depression and anxiety were unrelated to the motor vehicle accident because those symptoms did not develop until after Claimant started having negative interactions with her supervisor after the accident. Dr. Eyman believed Claimant experienced mild anxiety while driving, which was caused by the motor vehicle accident. In particular, Dr. Eyman diagnosed Claimant with a specific phobia marked by fear and anxiety about driving, which was related to the motor vehicle accident. Dr. Eyman also stated Claimant's work injuries were the prevailing factor causing Claimant's specific phobia. Dr. Eyman recommended relaxation techniques and desensitization therapy for Claimant's specific phobia.

Claimant sought treatment for the specific phobia recommended by Dr. Eyman at the preliminary hearing held on May 12, 2020. Claimant stated she was not seeking treatment of her depression under workers compensation. Claimant reported her shoulders and neck got tight while she drove, and she developed headaches. Claimant thought she startled easily. Claimant thought her anxiety while driving was caused by her fear of being involved in another accident.

ALJ Marchant found Claimant met her burden of proving her specific phobia regarding driving was compensable, and Claimant was entitled to psychological treatment. ALJ Marchant also concluded Claimant's other psychological conditions were not compensable. In particular, ALJ Marchant found Claimant's physical injuries caused, among other problems, an inability to remember the motor vehicle accident causing Claimant's psychological problems and specific phobia regarding driving. ALJ Marchant concluded Claimant's specific phobia was directly traceable to her physical injuries, and the motor vehicle accident was the prevailing factor causing Claimant's specific phobia.

Respondent was ordered to provide Claimant with a list of two health care providers from which she may select one to serve as the authorized provider of psychological treatment limited to Claimant's specific phobia regarding driving.

PRINCIPLES OF LAW AND ANALYSIS

Respondent argues Claimant's alleged psychological injury did not arise out of and in the course of her employment with Respondent and the Board must rule ALJ Marchant exceeded her jurisdiction in ordering Respondent to provide treatment for Claimant's specific phobia. Claimant argues ALJ Marchant looked at the totality of the circumstances and concluded Claimant sustained a compensable psychological injury from the accident and injuries. Claimant asserts ALJ Marchant's Order of June 19, 2020, should be affirmed.

It is undisputed Claimant was involved in a motor vehicle accident on May 21, 2018, resulting in compensable physical injuries. The issue is whether Claimant also sustained a compensable psychological injury: the specific phobia related to driving. Because Claimant does not allege her depression is compensable, the Board will not address Claimant's depression. To prove a compensable psychiatric or psychological injury, the employee must prove (1) a work-related physical injury, (2) symptoms of a traumatic neurosis, (3) the neurosis is directly traceable to the physical injury, and (4) the accident was the prevailing factor causing the psychological injury.¹

Claimant clearly sustained multiple work-related physical injuries, including a concussion producing memory loss. Drs. Deutch, Allen and Eyman all diagnose Claimant with some form of anxiety, and Drs. Deutch and Eyman note Claimant has problems while driving, constituting symptoms of a traumatic neurosis. Dr. Deutch did not believe the motor vehicle accident was the prevailing factor causing Claimant's long-standing anxiety, and Dr. Allen thought the motor vehicle accident was the prevailing factor causing, among other problems, Claimant's anxiety. Neither Dr. Deutch, nor Dr. Allen, commented on whether Claimant's symptoms were directly traceable to Claimant's physical injuries. Dr. Eyman, the Court-appointed neutral examiner, thought the motor vehicle accident was the prevailing factor causing Claimant's specific phobia related to the driving, and he stated Claimant's work injuries of May 21, 2018, were the prevailing factor causing Claimant's specific phobia, albeit without elaboration. The Board finds the opinions of Dr. Eyman the most credible because he served as the Court-appointed neutral examiner. Based on the current record, particularly the opinions of Dr. Eyman, the Board finds Claimant's specific phobia related to driving is directly traceable to Claimant's physical injuries, and the motor vehicle accident was the prevailing factor causing Claimant's specific phobia and need for

¹ See *Heyen v. City of Wichita*, No. 1,064,079, 2013 WL 2455722, at *2 (Kan. WCAB May 29, 2013)(citing *Love v. McDonald's Restaurant*, 13 Kan. App. 2d 397, 771 P.2d 557 (1989); K.S.A. 2011 Supp. 44-508(d)).

further treatment. Accordingly, ALJ Marchant's conclusion Claimant sustained a compensable psychological injury should be affirmed.

Finally, the Board addresses whether ALJ Marchant exceeded her jurisdiction in awarding treatment to cure or to relieve the effects of Claimant's specific phobia. This is an appeal of a preliminary order, and appeals of preliminary orders are limited to findings on disputed issues of whether the employee suffered an accident, repetitive trauma or resulting injury; whether the injury arose out of and in the course of employment; whether notice was given; or whether certain procedural defenses pertaining to compensability apply.² The issue raised by Respondent is not listed in K.S.A. 44-534a(a)(2), and the Board does not have authority to consider the issue at this time. Therefore, the application for review must be dismissed as to that issue.

By statute, preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.³ This review of a preliminary hearing order has been determined by only one Board Member, as permitted by K.S.A. 2018 Supp. 44-551(l)(2)(A), as opposed to being determined by the entire Board.⁴

DECISION

WHEREFORE, it is the finding, decision and order of the undersigned Board Member the Order of Administrative Law Judge Ali Marchant dated June 19, 2020, is affirmed, and the application for review is dismissed in part.

IT IS SO ORDERED.

Dated this _____ day of August 2020.

WILLIAM G. BELDEN
APPEALS BOARD MEMBER

c: Via OSCAR
Roger A. Riedmiller
Jackson D. Wagner
Hon. Ali Marchant

² See K.S.A. 44-534a(a)(2).

³ See K.S.A. 44-534a.

⁴ See K.S.A. 2018 Supp. 44-555c(j).