BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

KATHERINE A. EATON Claimant V. **EMPORIA U.S.D. No. 253** Respondent AND **HARTFORD INSURANCE CO. OF THE MIDWEST** Insurance Carrier	)	AP-00-0462-505 CS-00-0434-415

ORDER

The claimant, through Jeff Cooper, requested review of Special Administrative Law Judge (SALJ) Mark Kolich's Award dated November 22, 2021. Patricia Wohlford appeared for the respondent and insurance carrier (respondent). The Board heard oral argument on March 10, 2022.

RECORD AND STIPULATIONS

The Board considered the same record as the SALJ, consisting of the transcript of the regular hearing held February 11, 2021; documents of record filed with the Division; and the evidentiary depositions and exhibits of:

1. P. Brent Koprivica, M.D., taken March 17, 2021;

2. Kenneth Jansson, M.D., taken March 29, 2021;

3. Robert Barnett, Ph.D., taken June 1, 2021;

4. Pamela Harrison, M.D., taken June 9, 2021; and

5. Jarrod Steffan, Ph.D., taken July 6, 2021.

ISSUES

1. Did the claimant develop right ankle and psychological injuries as a direct and natural result of her left leg injury? If so, what is the nature and extent of the claimant's disability?

2. Is the claimant entitled to future medical treatment?

FINDINGS OF FACT

The claimant, a school teacher for over 30 years, began working for the respondent in January 2016, as a special education teacher. She taught life skills to seven or eight severely impaired children. The claimant requested additional help from the school district on numerous occasions for an extremely aggressive and violent student.

On August 24, 2017, this particular student kicked and hyperextended the claimant's left knee. The claimant required medical treatment. Conservative measures failed to provide relief. The respondent referred the claimant to Dr. Kenneth Jansson, an orthopedic surgeon.

The claimant saw Dr. Jansson on December 6, 2017. The doctor diagnosed a lateral meniscus tear, a tibial bone cyst and moderate arthritis. On January 16, 2018, Dr. Jansson performed knee surgery. The claimant soon returned to work with temporary work restrictions. On April 11, 2018, she was released to full duty. The claimant continued to have pain and received injections as needed until March 2020, when she stopped because of COVID. Dr. Jansson testified his records did not mention the claimant having right ankle pain.

Dr. Jansson assigned the claimant a 2% permanent partial impairment to the left leg and recommended future periodic injections as needed. When asked if he used the AMA *Guides* to formulate a rating, Dr. Jansson testified he referred to the *Guides*, but used his judgment as well. Dr. Jansson did not testify he used the AMA *Guides to the Evaluation of Permanent Impairment*, 6th edition (*Guides*, 6th ed.).

The claimant testified she began having right ankle and foot pain within five or six months following surgery. She also testified she developed depression and anxiety after her work injury. As for preexisting mental health issues, the claimant testified she had seasonal depression, but "[n]othing significant."[1] The claimant acknowledged having several disc herniations from a 2014 work injury in Oklahoma, with pain radiating down both legs. She agreed several physicians recommended she have low back surgery.

The claimant's family practice physician, Dr. Pamela Harrison, with the Cotton-O'Neil clinic, also testified. The claimant began treating with Dr. Harrison in June 2016, presenting with a dysphoric mood. The doctor noted anxiety and depression were reported several times in the claimant's past medical records. The claimant reported significant stress after moving, her husband being laid off and the cost of prescription medication without insurance. The claimant had increased her cigarette use and wanted help to quit smoking. Dr. Harrison prescribed Wellbutrin.

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[1] R.H. Trans. at 16.

Dr. Harrison possessed medical records concerning the claimant's prior treatment with Charles O'Leary, PA-C. Mr. O'Leary's records were offered and stipulated into evidence. The records documented the claimant's mental health complaints, as follows:

10/18/12: History of "depression . . . says she has been under a lot of stress as moved back to her[e] from Tulsa where she taught x 27 yrs to take care of elderly parents who are in poor health, has special needs child that is very demanding . . . ."[2] The claimant was advised to taper off Pristique and prescribed Citalopram and Buspirone (Wellbutrin).

01/02/13: "says her anxiety meds don't seem to be working, talked to pt about increasing the dose."[3]

12/04/13: "Anxiety yes, associated with job, family, special-needs son. Depression yes, bereavement associated with death of father."[4]

04/17/14: "Anxiety yes, associated with job, family, special-needs son. Depression yes, bereavement associated with death of father."[5]

07/23/14: "Anxiety yes, associated with job, family, special-needs son. Depression yes, bereavement associated with death of father."[6] Citalopram was discontinued, but Venlafaxine was prescribed.

08/25/14: "Anxiety yes, associated with job, family, special-needs son. Depression yes, bereavement associated with death of father."[7]

04/22/15: "Pt refused MH referal [sic] but wants some kind of MH med in a patch as she self-reports that she has experienced increased mood changes, irritability and difficulty getting along with others. . . . Anxiety yes. Depression yes previously on SSRI and SSRNI."[8] Buspirone and Venlafaxine were discontinued, but Paroxetine was prescribed.

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[2] *Id*., Ex. 1 at 235.

[3] *Id*., Ex. 1 at 241.

[4] *Id*., Ex. 1 at 255.

[5] *Id*., Ex. 1 at 263.

[6] *Id*., Ex. 1 at 266.

[7] *Id*., Ex. 1 at 269.

[8] *Id*., Ex. 1 at 276.

The aforementioned records documented the claimant was prescribed medication for anxiety and depression.

On November 29, 2017, the claimant presented to Dr. Harrison with anxiety, depression and fatigue. Dr. Harrison prescribed Wellbutrin "to see if this will help with her depression as well as help with her efforts to quit smoking."[9] The claimant reported stress at work and in her personal life, and her medication was not adequate any more. The claimant's work injury was not mentioned. Dr. Harrison testified if she felt a patient had severe anxiety and depression, she would encourage the patient to see a psychiatrist. She has not referred the claimant to a psychiatrist.

The claimant was asked if she had mental health issues in connection with several factors, and she responded as follows:

• stress from having to move from Tulsa, Oklahoma, to Hominy, Oklahoma, to take care of her parents – "I wouldn't say that."[10]

• dealing with an autistic son – "He has had his challenges, yes."[11]

• documentation of prior depression and anxiety within the Cotton-O'Neil records dating back to 2013 and 2014 – "I didn't even move to Kansas until 2016."[12]

• depression and anxiety in connection with being overweight and having gastric bypass surgery – "I don't think I agreed with that, no."[13]

• being diagnosed with depression and anxiety by doctors who were treating her low back – "I don't recall that."[14]

• stress after moving to Kansas – "I don't recall that."[15]

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[9] Harrison Depo., Ex. 1 at 97.

[10] R.H. Trans. at 27.

[11] *Id*. at 27.

[12] *Id*. at 28.

[13] *Id*. at 28.

[14] *Id*. at 32.

[15] *Id*. at 33.

• if she recalled stressors in connection with her husband being laid off and lack of health insurance – "No."[16]

• discussing anxiety and stress with her family doctor in 2016 – "I don't recall that."[17]

• telling her family doctor she would be happier and healthier if her low back was fixed – "I don't recall that exact conversation."[18]

The claimant's medical records from Dr. Harrison's office indicate the claimant hurt her right ankle in June 2016. The claimant testified a log hit the top of her right foot when she was in a river. She was provided an ankle brace thereafter. The claimant also broke her right ankle in August 2019 when falling about three feet while getting into a recreational vehicle.

At her attorney's request, the claimant saw Dr. Robert Barnett, a clinical psychologist. Dr. Barnett reviewed some medical records, performed a clinical interview and a background social history and administered psychological testing. Dr. Barnett did not review records from Dr. Harrison or Mr. O'Leary. Dr. Barnett was unaware of the claimant's 2014 low back injury. He was unaware the claimant had been taking psychotropic medication since 2012.

Dr. Barnett diagnosed the claimant with dysthymic disorder and post traumatic stress disorder due to the claimant's work injury, which he described as an assault. He testified he spends 5-10% of his practice providing treatment for anxiety, depression or posttraumatic stress disorder. Regarding prior psychological issues, Dr. Barnett's report stated the claimant had "no pre-existing concerns."[19] Dr. Barnett opined the claimant had some intermittent preexisting psychological concerns, but felt her prior symptoms were treated appropriately and did not play a role in her work injury. The doctor recommended psychological treatment, to include psychotherapy and psychiatric medication. There is no evidence the claimant pursued mental health treatment through workers compensation.

Using the *Guides,* 6th ed., "as a starting point," Dr. Barnett assigned the claimant a 10% whole person impairment.[20] Under the *Guides*, 4th ed., the doctor opined the claimant had a 15% whole person impairment.

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[16] *Id*. at 33.

[17] *Id*. at 34.

[18] *Id*. at 36.

[19] Barnett Depo., Ex. 2 at 9.

[20] *Id*. at 13.

At her attorney's request, the claimant saw Dr. P. Brent Koprivica, who is board certified in occupational medicine. The claimant complained of constant aching in her left knee and pain in the lateral right ankle and dorsal midfoot. She further described increased depression and stress following her work injury, crying during their interview. Dr. Koprivica did not have any of the claimant's pre-accident medical records.

Dr. Koprivica opined the claimant had work-related permanent impairment to her left leg, and she further developed right ankle impairment from changing her gait pattern to protect her left knee. Using the *Guides*, 6th ed., Dr. Koprivica gave the claimant a 4% whole person impairment, which represents 8% of the left leg and 2% of the right ankle. The doctor opined the claimant had an overall 8% impairment to the body as a whole under the AMA *Guides to the Evaluation of Permanent Impairment*, 4th edition (*Guides*, 4th ed.). Dr. Koprivica also testified using the *Guides*, 6th ed., as a starting point and based on competent medical evidence, his training, education and experience, the claimant had an 8% whole person impairment for her physical injuries.

Also, Dr. Koprivica wrote the claimant had "separate potential treatment needs flowing psychologically from the August 24, 2017, injury as well."[21] Dr. Koprivica opined the claimant's work injury was the prevailing factor for her psychological impairment. His report indicated the claimant had a 5% whole person rating for behavioral impairment. Dr. Koprivica later testified he deferred assignment of an impairment to a mental healthcare expert and testified combining a 15% rating from Dr. Barnett with his 8% whole person rating equals a 22% whole person rating. Dr. Koprivica did not provide any permanent restrictions because the claimant was back to work earning comparable wages. He testified the claimant will require ongoing medical treatment.

The claimant saw Dr. David Hufford for a court-ordered independent medical examination. The claimant complained of continued left knee pain and a gradual, insidious onset of right ankle pain which she attributed to altered gait. The claimant also described: (1) a prior work-related low back injury in Oklahoma causing two collapsed discs and three bone fragments in her lumbar spine, which caused her significant stress; and (2) a history of seasonal affective depression. Dr. Hufford wrote the claimant's left knee injury "appears to have created significant psychological stress in Ms. Eaton's life and her ongoing symptoms of pain directly in the knee and secondarily in the right ankle have caused her to alter her activities of daily living including her ability to exercise effectively."[22] Dr. Hufford diagnosed the claimant with anterior left knee contusion with lateral meniscus tear and contusion of the fat pad and tibial plateau.

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[21] *Id.*, Ex. 2 at 10.

[22] Hufford Report at 3.

Using the *Guides*, 6th ed., Dr. Hufford assigned the claimant a 3% impairment to the left lower extremity, and a 2% under the *Guides*, 4th ed. The doctor's report stated:

> In an independent medical examination performed at the request of claimant attorney Cooper Dr. Koprivica has provided an extremely high whole person impairment which I do not believe can be justified by the methodology in either edition of the AMA Guides. Specifically he has provided impairment for cartilage loss following the chondroplasty of the patella. Her MRI showed significant pre-existing degenerative changes at the patellofemoral joint and the chondroplasty performed by Dr. Jansson did not significantly alter the cartilage interval. He also provided an impairment for sinus tarsi syndrome in the right ankle. This is a diagnosis of dubious validity and is not substantiated by her current symptomatology or physical findings. This condition is not caused by alteration of gait and there is no means in the 4th or 6th editions of the AMA Guides to rate her current right ankle pain in a valid manner even if it is, indeed, caused by alteration of gait which is a controversial topic. Dr. Koprivica also assigned impairment for her post-traumatic depressive symptomatology and selected a value that "appears about right". This is an improper interpretation of the AMA Guides and the arbitrary assignment of impairment should not be made except by a psychologist or psychiatrist who is familiar with and trained in utilization of the AMA Guides. Given her history of seasonal depression and co-morbid lumbar pathology from a separate occupational injury impacting her overall state of mind and sense of well-being, the only appropriate manner to provide impairment for any psychological consequence of the occupational injury in question would be a formal psychological evaluation taking all of these factors into account.[23]

Dr. Hufford did not provide permanent restrictions, but he recommended a series of viscous supplementation injections.

At respondent's request, the claimant saw Dr. Jarrod Steffan, a psychologist, on May 3, 2021. The doctor reviewed medical records, performed a psychological evaluation and administered psychological tests. The doctor has never provided psychological treatment for any patients. Dr. Steffan diagnosed the claimant with unspecified depressive disorder and unspecified anxiety disorder. He did not support diagnosis of a specific depressive disorder or anxiety disorder under the DSM. The doctor believed the claimant's diagnoses predated her work injury. According to Dr. Steffan, the claimant did not qualify for a posttraumatic stress disorder diagnosis based on the work injury because she was exposed to "enumerable instances of verbal and physical aggression and violence from the students"(as opposed to the single alleged event), she was not avoiding things associated with the traumatic event (such as continuing to teach in the same environment), she did not have significant distress or impairment in function in terms of her employment, she had difficulty identifying specific symptoms of depression and anxiety, she did not have true flashbacks to or dwelling on the classroom assault (just thoughts that quickly dissipated),

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[23] *Id*. at 3-4.

and psychological testing was negative for PTSD symptoms.[24] Dr. Steffan also stressed the claimant downplayed her prior mental health history ("the information in the records is noticeably discrepant from how she recounts her background . . . it's a watered down version of what had actually happened in the past."[25] Dr. Steffan acknowledged the claimant had a serious knee injury and further noted part of the claimant's emotional issues dealt with the respondent not providing adequate assistance in the classroom.

Dr. Steffan opined different stressors the claimant experienced "throughout her adulthood have contributed to the anxiety and depression. And those stressors have been separate from the work comp incident."[26] Dr. Steffan noted a "clear pattern of mental health difficulties and related treatment from . . . before October 2012, because at that time she reported a history of depression before then."[27] The doctor testified:

> It's my opinion that the - - her conditions involving depression, anxiety have not arisen through the work comp incident. In other words, the work comp incident hasn't been the prevailing factor. At best, the work comp incident has been no more than an aggravated factor and a continuation of her anxiety and depression.
>
> But also, as we discussed earlier, the medical records make clear that there were other stressors going on at the same time that contributed to her anxiety and depression. So it was - - it was clear that the work comp incident was unable to be identified as the primary factor or a significant factor in the development of those conditions.[28]

In addition to his prevailing factor opinion, Dr. Steffan opined the claimant sustained no permanent mental or behavioral impairment using the *Guides*, 6th ed. The doctor stated, "The work-related incident and ensuing limitations in her functioning have not resulted in the development of a constellation of psychiatric symptoms and problems separable from her pre-existing mental health conditions. As a result, Ms. Eaton's work-related incident has been no more than an aggravating factor in the continuation of her chronic problems with depression and anxiety."[29]

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[24] Steffan Depo. at 34; see also pp. 35-37, 39-40, 56.

[25] *Id*. at 58.

[26] *Id*. at 61.

[27] *Id*. at 20.

[28] *Id*. at 61-62.

[29] *Id*., Ex. B at 13.

The claimant testified she continues to experience depression and anxiety. She is not currently taking any prescription medication for depression or anxiety. The claimant continues to work for the respondent. She still has left knee and right ankle pain.

The SALJ ruled:

LEFT KNEE

Compensability of the left knee injury has been admitted leaving only the extent of impairment and the probable need for future medical care (discussed later) for determination. As noted earlier, Dr. Jansson did not say he consulted the 6th Edition and therefore, his rating is not helpful. The 6th Edition ratings from Dr. Koprivica and Dr. Hufford are 8% and 3%, respectively. Giving weight to both opinions, it is found claimant has a 6% permanent impairment of the left leg resulting from her work injury.

RIGHT ANKLE

Claimant testified symptoms affecting her right ankle "began within five or six months after my knee surgery," making the onset around June or July 2018. Dr. Jansson denied any record or recollection of ankle complaints, but that is expected since his release of claimant was in advance of the alleged onset.

The first documentation of ankle complaints appears in the June 5, 2018 office note of Dr. Harrison. The reported history, however, does not reference an altered gait or the knee injury. Instead, the mechanism of injury is described as "a fall." Claimant denied falling, but admitted her foot was struck by a log when she was standing in a river. Claimant also denied injury to her ankle, but conceded she was provided an ankle brace per Dr. Harrison's order. She wore the ankle brace to her examination by Dr. Koprivica that took place about a month later.

According to Dr. Koprivica, claimant developed sinus tarsi syndrome from overcompensating for the knee injury. Dr. Hufford was critical of the diagnosis and rejected the notion of a causal connection to gait disturbance.

Dr. Hufford's causation opinion is persuasive and when combined with the negative history recorded by Dr. Harrison it is determined that any injury sustained to claimant's right foot and ankle is unrelated to her knee injury.

Even if a causal relationship existed, Dr. Koprivica's rating was premature. Symptoms had only been present for slightly more than a month and very little medical treatment had been received. In fact, Dr. Koprivica observed, "Ms. Eaton is already seeking orthopedic care and treatment for the right foot and ankle pain." (Koprivica depo, p. 10 of Exh. 2) Maximum medical improvement at the time of Dr. Koprivica's evaluation is doubtful.

P[SY]CHOLOGICAL INJURY

Dr. Harrison's November 29, 2017 office note states, "Patient comes in today because she is really struggling with her anxiety and depression. She's had a lot of stress at both work and in her personal life and just feels her medicines aren't adequate anymore." This suggests her psychological conditions were not of recent origin. Of more significance is the lack of reference to the knee injury as being a contributing factor.

Other than her self-serving testimony, the only evidence claimant has presented to support her claim for psychological injuries is the report and testimony of Dr. Barnett. The evaluation by Dr. Barnett, however, was significantly flawed because he did not review any records pertaining to claimant's past medical and psychological history. Dr. Barnett admitted he only read reports from Dr. Jansson, Dr. Koprivica and Dr. Hufford. He also admitted claimant was the sole source of information regarding her past history and according to his report she merely told him "she may have been prescribed an antidepressant for seasonal affective disorder, but could not recall for sure." (Barnett depo, p. 4 of Exh. 2) Based on this incomplete and inaccurate history he concluded, "There are no pre-existing concerns." (Barnett depo, p. 9 of Exh. 2)

Additionally, the "medical history" contained in Dr. Barnett's report does not mention claimant's back injury and the chronic complaints. (Barnett depo, p. 4 of Exh. 2) During cross-examination he admitted he was unaware of the back injury. Isolation of the knee pain as the cause of the psychological conditions is difficult to accept given claimant's own description in her letter to Dr. Harrison of "constant leg and back spasms."

Dr. Hufford observed, "Given her history of seasonal depression and comorbid lumbar pathology from a separate occupational injury impacting her overall state of mind and sense of well-being, the only appropriate manner to provide impairment for any psychological consequences of the occupational injury in question would be a formal psychological evaluation taking all of these factors into account." (Hufford report, p. 4) This was not done by Dr. Barnett and consequently, his opinion lacks probative value.

It is acknowledged that Dr. Barnett's diagnosis included PTSD and there is no evidence of any pre-existing symptoms related to this condition. Dr. Steffan explained that a diagnosis of PTSD requires a traumatic event which claimant had, but other diagnostic criteria which claimant does not have are also necessary. Therefore, Dr. Steffan did not believe claimant suffers from PTSD. It is also noteworthy that claimant's regular hearing testimony did not include any allegations that she has PTSD nor did she describe flashbacks, nightmares, panic attacks or any other symptoms associated with the diagnosis.

Claimant failed to meet her burden of proving her psychological conditions are a consequence of the knee injury.

FUTURE MEDICAL

Dr. Jansson's recommendation for periodic injections supports an award for future medical treatment. In its submission letter respondent essentially argues any award for future medical must be limited to the recommended injections. There is no statutory support for a future medical award to be made for a specific type of treatment. In the event of a request or application for future medical a determination will be made then as to whether any proposed treatment is reasonably necessary to cure and relieve the effects of claimant's injury.

This appeal followed.

PRINCIPLES OF LAW AND ANALYSIS

The claimant argues her psychological condition and right ankle injury are a direct consequence of her left knee injury. The claimant further argues she proved it is more likely than not she will require future medical treatment. The respondent maintains the claimant should be limited to recovering benefits based on Dr. Jansson's 2% left lower extremity impairment rating, but the Award should be otherwise affirmed.

K.S.A. 44-501b provides that the burden of proof is on the claimant to establish his or her right to an award of compensation based on the whole record.

K.S.A. 44-508 provides, in part:

(f)(2) An injury is compensable only if it arises out of and in the course of employment. An injury is not compensable because work was a triggering or precipitating factor. An injury is not compensable solely because it aggravates, accelerates or exacerbates a preexisting condition or renders a preexisting condition symptomatic.

. . .

(B) An injury by accident shall be deemed to arise out of employment only if:

(i) There is a causal connection between the conditions under which the work is required to be performed and the resulting accident; and

(ii) the accident is the prevailing factor causing the injury, medical condition, and resulting disability or impairment.

. . .

(g) "Prevailing" as it relates to the term "factor" means the primary factor, in relation to any other factor. In determining what constitutes the "prevailing factor"

> in a given case, the administrative law judge shall consider all relevant evidence submitted by the parties.
>
> (h) "Burden of proof" means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record unless a higher burden of proof is specifically required by this act.

K.S.A. 44-510d states, in part:

> (b) If there is an award of permanent disability as a result of the injury . . . compensation is to be paid for not to exceed the number of weeks allowed in the following schedule:
>
> . . .
>
> (16) For the loss of a leg, 200 weeks.
>
> . . .
>
> (23) Loss of or loss of use of a scheduled member shall be based upon permanent impairment of function to the scheduled member as determined using the fourth edition of the American medical association guides to the evaluation of permanent impairment, if the impairment is contained therein, until January 1, 2015, but for injuries occurring on and after January 1, 2015, shall be determined by using the sixth edition of the American medical association guides to the evaluation of permanent impairment, if the impairment is contained therein.

Employees are entitled to compensation for secondary injuries which are the natural and probable result of the primary injury.[30] "[A]ll injuries, including secondary injuries, must be caused primarily by the work accident."[31] Under the law in effect from May 15, 2011, forward, secondary injuries are compensable if caused primarily by the original work accident and are the natural and probable consequence of the original injury.[32]

In *Love*,[33] the Kansas Court of Appeals stated:

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[30] See *Casco v. Armour Swift-Eckrich*, 283 Kan. 508, 515-16, 154 P.3d 494 (2007).

[31] *Buchanan v. JM Staffing*, LLC, 52 Kan. App. 2d 943, 951, 379 P.3d 428 (2016).

[32] See *id.*

[33] *Love v. McDonald's Restaurant*, 13 Kan. App. 2d 397, Syl., 771 P.2d 557, *rev. denied* 245 Kan. 784 (1989).

> In order to establish a compensable claim for traumatic neurosis under the Kansas Workers' Compensation Act, . . . the claimant must establish: (a) a work-related physical injury; (b) symptoms of the traumatic neurosis; and (c) that the neurosis is directly traceable to the physical injury.

Given the change in the law in 2011, the Board has added a fourth requirement – the accident must be the prevailing factor causing the psychological injury.[34]

The Kansas Supreme Court in *Berger*[35] cautioned:

> Even though this court has long held that traumatic neurosis is compensable; we are fully aware that great care should be exercised in granting an award for such injury owing to the nebulous characteristics of a neurosis. An employee who predicates a claim for temporary or permanent disability upon neurosis induced by trauma, either scheduled or otherwise, bears the burden of proving by a preponderance of the evidence that the neurosis exists and that it was caused by an accident arising out of and during the course of his employment.

1. As a result of her work-related accidental injury, the claimant sustained a 6% impairment of function to her left lower extremity. The claimant did not prove she sustained a compensable psychological injury or a compensable right ankle injury as a direct and natural result of her left leg injury.

The Board affirms the SALJ's award of permanent partial disability benefits based on a 6% impairment of function to the claimant's left lower extremity. The Board agrees with the SALJ's opinion Dr. Jansson's opinion is not helpful because he did not state he used the *Guides*, 6th ed. Both Dr. Hufford and Dr. Koprivica provided impairment ratings using the *Guides*, 6th ed., consistent with the strict language of K.S.A. 44-510d. There is little reason to disregard or question either rating opinion. The ratings have been added together and divided by two before being rounded up to the nearest whole number.

The claimant alleges a right ankle injury due to altered gait. The claimant's right ankle injury was simply rejected by the court-ordered physician, Dr. Hufford. In fact, Dr. Hufford not only noted Dr. Koprivica's diagnosis for the claimant's right ankle was dubious, but also stated the claimant's physical findings did not demonstrate sinus tarsi syndrome, in addition to finding the right ankle condition was not caused by altered gait whatsoever.

Moreover, the cause of the claimant's right ankle pain is more logically related to her 2016 injury from being struck by a log in a river (and being placed in an ankle brace) or her

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[34] See *Wolgamuth v. Catholic Diocese of Wichita*, No. AP-00-0456-859, 2021 WL 3433273, at *6 (Kan. WCAB July 28, 2021).

[35] *Berger v. Hahner, Foreman & Cale, Inc.*, 211 Kan. 541, 550, 506 P.2d 1175 (1973).

2019 injury from falling down the stairs of a recreational vehicle (causing her ankle to break and be placed in a cast). The SALJ's denial of a compensable right ankle injury is affirmed.

The claimant did not prove a permanent traumatic neurosis or psychological injury or impairment under the *Guides*, 6th ed., arising out of and in the course of her employment. Dr. Barnett's opinion is questionable because he relied largely on the claimant's self-reported history, as did Dr. Koprivica. Dr. Barnett's statement the claimant had "no pre-existing concerns" is incorrect. The claimant greatly downplayed her prior mental health issues, as demonstrated by her testimony and what she told her retained experts. Dr. Hufford questioned how the claimant's 2014 low back injury factored into her mental distress and recommended a formal psychological evaluation. Dr. Barnett suggested psychotherapy and Dr. Koprivica suggested potential psychological treatment. No such evaluation occurred and the claimant did not pursue psychological treatment during the pendency of the claim. The Board agrees with Dr. Steffan's analysis because he had an accurate accounting of the claimant's prior medical records showing the claimant's prior psychological history and stressors. The Board concludes: (1) the claimant has longstanding problems with anxiety and depression; (2) she did not sustain posttraumatic stress disorder due to her injury; (3) she did not sustain a psychological injury due to her work injury; (4) the work injury was not the prevailing factor in any psychological insult to the claimant; (5) at worst, the injury was an aggravation of the claimant's preexisting anxiety and depression; and (6) the claimant failed to prove any psychological impairment stemming from her work injury under the *Guides*, 6th ed.

2. The Board affirms the SALJ's award permitting the claimant to pursue future medical treatment.

K.S.A. 44-510h(e) states, in part:

> (e) It is presumed that the employer's obligation to provide . . . [medical treatment] . . . shall terminate upon the employee reaching maximum medical improvement. Such presumption may be overcome with medical evidence that it is more probably true than not that additional medical treatment will be necessary after such time as the employee reaches maximum medical improvement. As used in this subsection, "medical treatment" means only that treatment provided or prescribed by a licensed healthcare provider and shall not include home exercise programs or over-the-counter medications.

To varying degrees, Drs. Hufford, Jansson and Koprivica all recommended some potential future medical treatment for the claimant's left knee. The Board agrees. The claimant is awarded the right to seek future medical treatment.

AWARD

WHEREFORE, the Board affirms the November 22, 2021 Award.

IT IS SO ORDERED.

Dated this _____ day of March, 2022.

_____
BOARD MEMBER

_____
BOARD MEMBER

_____
BOARD MEMBER

c: (via OSCAR)
Jeff Cooper
Patricia Wohlford
Hon. Mark Kolich