

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

JAMES W. CORBETT)	
Claimant)	
V.)	
)	
SUPERIOR ESSEX, INC.)	AP-00-0475-537
Respondent)	CS-00-0469-981
AND)	
)	
SENTRY CASUALTY COMPANY)	
Insurance Carrier)	

ORDER

The respondent and its insurance carrier (respondent), through Joseph McMillan, requested review of Administrative Law Judge (ALJ) Bruce Moore's preliminary hearing Order, dated May 17, 2023. Jeff K. Cooper appeared for the claimant.

RECORD AND STIPULATIONS

The record provided to the Board consists of: (1) Report from Lowry Jones dated April 12, 2023, and filed in OSCAR (Online System for Claims Administration Research/Regulation) on May 9, 2023; (2); the ALJ's preliminary hearing Order; (3) pleadings; and (4) the parties' briefs.

A number of exhibits were uploaded into OSCAR under HE-00-0072-776. OSCAR does not state whether the exhibits were admitted into evidence or if the exhibits were considered by the ALJ. OSCAR does not contain a "Judge's File" pertaining to this case. No testimony was submitted into evidence.

ISSUE

Does the Board have jurisdiction to review the respondent's appeal?

FINDINGS OF FACT

As noted above, the record is very limited. The claimant's Application for Benefits alleged a work injury occurring on April 3, 2022.

A preliminary hearing was scheduled for October 21, 2022. On January 9, 2023, the court issued an order appointing Lowry Jones, M.D., to perform an independent medical evaluation (IME) and offer opinions as to the following: (1) diagnosis of injuries

suffered in, or as a result of the work accident of April 3, 2022; (2) whether the work accident of April 3, 2022 has caused a change in the physical structure of the body; (3) whether the work accident of April 3, 2022 represents the prevailing factor causing the injuries diagnosed; (4) recommendations for additional evaluation or treatment, if any; and (5) if additional treatment is recommended, appropriate temporary work restrictions. The Order specified the parties were to provide the court with written arguments or comments within seven days of receipt of the IME report.

The claimant saw Dr. Jones on April 12, 2023. The claimant reported a severe onset of right arm pain while reaching down to pull tickets off wires on April 3, 2022, with sharp pain and numbness from his hand all the way up his arm to the base of his neck.

Dr. Jones diagnosed the claimant with cervical degenerative disc disease with bilateral foraminal stenosis, severe carpal tunnel disease and ulnar neuropathy at the elbow, and chronic cervical root pain at C8. In response to the ALJ's Order, Dr. Jones stated:

1. Diagnosis of injuries suffered in, or as a result of the work accident of April 3, 2022.

[The claimant] had an acute cervical root impingement at C8 on the right. He also has developed severe carpal tunnel disease and right ulnar neuropathy in my opinion secondary to repetitive work activity over 23 years. Clinically he has some mild biceps tendinitis, he does not have evidence that it is limiting his function in the upper extremity. And I cannot state that the biceps tendinitis is related to the injury.

2. Whether the work accident of April 3, 2022 has caused a change in the physical structure of the body.

It is my opinion, within reasonable degree of medical certainty that he did have an acute change in his pathology, resulting in a cervical root impingement. I do not believe that he developed his ulnar neuropathy and/or carpal tunnel disease at the time of his injury on 4/3/2022. I believe that he had an acute cervical root impingement. I do believe that he has symptomatic severe carpal tunnel disease and ulnar neuropathy which in my opinion is caused by repetitive upper extremity use over 23 years.

3. Whether the work accident of April 3, 2022 represents the prevailing factor causing the injuries diagnosed.

It is my opinion as stated above, that the injury date of 4/3/2022 is the prevailing cause for his cervical root impingement. That pain has definitely decreased[.]

[H]e still has some symptoms, but his most significant symptoms are his severe carpal tunnel disease and ulnar neuropathy.

4. Recommendations for additional evaluation or treatment if any.

As stated above I would recommend that he undergo a right carpal tunnel release and right ulnar nerve transposition and/or decompression.

5. If additional treatment is recommended, appropriate work restrictions.

He does not require work restrictions at this time.¹

The ALJ stated:

After considering the medical exhibits and remarks of counsel, the court took the matter under advisement and Ordered an Independent Medical Examination with Dr. Lowry Jones.

The court has now received and reviewed Dr. Lowry Jones' IME report. The decision follows:

Claimant is entitled to medical care for right upper extremity complaints²

The respondent appealed.

PRINCIPLES OF LAW AND ANALYSIS

The respondent argues the claimant is not entitled to medical treatment for his right carpal tunnel and ulnar neuropathy. The respondent asserts the greater weight of the credible medical evidence shows the claimant's traumatic injury is not the prevailing factor in causing the claimant's right carpal tunnel and ulnar neuropathy. The claimant argues the appeal should be dismissed for lack of jurisdiction because the Order is for medical treatment and not subject to Board review.

The limited record impairs the Board's ability to conduct a meaningful review. The Workers Compensation Act states the Board's review shall be upon questions of law and fact as presented and shown by a transcript of the evidence and the proceedings as presented, had and introduced before the administrative law judge.³

¹ Jones Report at 4.

² ALJ Order.

³ See K.S.A. 44-555c(a).

Before the Board may exercise its power under K.S.A. 44-551(l), it must possess legal authority to conduct review of the administrative law judge's decision. The Board possesses the authority to review preliminary orders 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 defenses apply.⁴ "Certain defenses" are issues concerning the compensability of the injury under the Workers Compensation Act.⁵ If jurisdiction under K.S.A. 44-534a is not present, it is appropriate to dismiss the appeal.⁶

The undersigned understands the respondent is contesting compensability. However, the record does not establish the ALJ considered the issue of compensability or ruled on the compensability of the claim. Arguably, the ALJ impliedly ruled on compensability by ordering medical treatment, but this conclusion would be based on speculation. Without question, the preliminary hearing Order does not state the claimant sustained personal injury by accident or repetitive trauma arising out of and in the course of his employment, including the prevailing factor requirement. Absent a record showing compensability was at issue, and the ALJ ruled on any such disputed issue or issues, the Board lacks jurisdiction under K.S.A. 44-555c(a).

WHEREFORE, the undersigned Board Member dismisses the respondent's Application for Review. The preliminary hearing Order issued by ALJ Moore, dated May 17, 2023, remains in force and effect.

IT IS SO ORDERED.

Dated this _____ day of July, 2023.

JOHN F. CARPINELLI
BOARD MEMBER

c: (via OSCAR)

Jeff Cooper
Joseph McMillan
Hon. Bruce Moore

⁴ See K.S.A. 44-534a(a)(2).

⁵ See *Carpenter v. National Filter Service*, 26 Kan. App. 2d 672, 675, 994 P.2d 641 (1999).

⁶ See *id.* at 676.