

**BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD**

<b>BRANDON SPEAR</b>	)	
Claimant	)	
	)	
V.	)	
	)	
<b>ALPHA MOWING &amp; LANDSCAPING, LLC</b>	)	CS-00-0452-500
Respondent	)	AP-00-0455-926
	)	
AND	)	
	)	
<b>ACUITY A MUTUAL INS. COMPANY</b>	)	
Insurance Carrier	)	

**ORDER**

**STATEMENT OF THE CASE**

Respondent and its insurance carrier (respondent) requested review of the January 14, 2021, preliminary hearing Order entered by Administrative Law Judge (ALJ) Steven M. Roth. William L. Phalen, of Pittsburg, Kansas, appeared for Brandon Spear. Brent A. Jepson, of Kansas City, Missouri, appeared for respondent.

The ALJ found Mr. Spear was entitled to medical care for his work-related injuries. The ALJ determined Mr. Spear has suffered either a direct injury or loss of functional ability to his ureteropelvic junction due to his work accident, and the work accident was the prevailing factor causing Mr. Spear's injury and need for treatment. The ALJ ordered Dr. Sean Michael Doyle to remain the designated authorized treating physician and approved his treatment plan, along with any other reasonable and medically necessary care to treat or relieve Mr. Spear's work-related injuries.

The record on appeal is the same as considered by the ALJ and consists of the transcript of the January 11, 2021, Preliminary Hearing and the exhibits, and the pleadings contained in the administrative file.

**ISSUES**

Respondent argues Mr. Spear's condition is congenital and did not arise out of and in the course of his employment. Further, respondent maintains the work accident is not the prevailing factor causing the ureteropelvic junction condition for which Mr. Spear seeks treatment.

Mr. Spear argues the Board lacks jurisdiction to review respondent's appeal pursuant to K.S.A. 44-534a. Alternatively, Mr. Spear contends the ALJ's Order should be affirmed in all respects.

The issues for the Board's review are:

1. Does the Board have jurisdiction to review respondent's appeal?
2. Did Mr. Spear suffer an injury by accident arising out of and in the course of his employment and, if so, what is the prevailing factor causing Mr. Spear's injury, medical condition, and need for treatment?

### FINDINGS OF FACT

Mr. Spear suffered a serious work-related motor vehicle accident on May 12, 2020, resulting in multiple injuries, including injury to his kidneys. Mr. Spear was immediately treated in the hospital by a team of physicians for some time following the accident. Dr. Doyle was authorized to provide medical care for Mr. Spear's kidneys. Dr. Doyle treated Mr. Spear for a hematoma in his renal collecting system, gross hematuria, and chronic right hydronephrosis. Dr. Doyle concluded:

The patient likely had a congenital ureteropelvic junction obstruction which was asymptomatic until the time of his motor vehicle accident when the deceleration caused a trauma resulting in hemorrhage into his renal collecting system.

The patient is currently in need of additional treatment resulting from the decelerating trauma he sustained. Specifically, to cure and relieve the effects from the motor vehicle collision, the patient will need a robotic assisted laparoscopic dismembered pyeloplasty. He would also benefit from a DMSA renal scan to assess the relative function of his kidneys. This testing and treatment is medically necessary to cure and relieve the effects of the motor vehicle accident of May 12, 2020. Additionally, further imaging studies after pyeloplasty, including at least a renal ultra sound and possibly CT scan, may be required after reconstruction. further procedures including cystoscopy with ureteral stent removal will be required after reconstruction as well.<sup>1</sup>

Dr. Doyle opined Mr. Spear's May 12, 2020, motor vehicle accident was the prevailing factor causing the diagnosed decelerating trauma injury.

Dr. Peter Trinca evaluated Mr. Spear at respondent's request on July 29, 2020. After a review of Mr. Spear's medical records, history, and a physical examination, Dr. Trinca found:

---

<sup>1</sup> P.H. Trans., Cl. Ex. A1 at 1.

The patient has requested a 2nd opinion for worker's compensation, right hydronephrosis, right renal calculi, minimal right renal function on nuclear medicine renal scan elsewhere, scheduled for right nephrectomy in the near future. I have reviewed all of his imaging, findings strongly suggestive of congenital right UPJ obstruction, some apparent clot within the right renal collecting system after trauma and bleeding from trauma, although the underlying hydronephrosis appears to be congenital.<sup>2</sup>

Dr. Trinca noted Mr. Spear's poor renal function did not appear to be related in any way to his trauma, and was likely congenital. He opined the scheduled right nephrectomy was appropriate treatment.

### PRINCIPLES OF LAW

K.S.A. 2019 Supp. 44-534a(a)(2) states, in part:

A finding with regard to a disputed issue of whether the employee suffered an accident, repetitive trauma or resulting injury, whether the injury arose out of and in the course of the employee's employment, whether notice is given, or whether certain defenses apply, shall be considered jurisdictional, and subject to review by the board. Such review by the board shall not be subject to judicial review. If an appeal from a preliminary order is perfected under this section, such appeal shall not stay the payment of medical compensation and temporary total disability compensation from the date of the preliminary award.

K.S.A. 2019 Supp. 44-501b(c) states:

The burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends. In determining whether the claimant has satisfied this burden of proof, the trier of fact shall consider the whole record.

K.S.A. 2019 Supp. 44-508(h) states:

"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. 2019 Supp. 44-508(g) states:

---

<sup>2</sup> P.H. Trans., Resp. Ex. B2 at 1.

"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.

K.S.A. 2019 Supp. 44-508(f) states, in part:

(2)(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.

By statute, preliminary hearing findings and conclusions are neither final nor binding, as they may be modified upon a full hearing of the claim.<sup>3</sup> Moreover, this review of a preliminary hearing order was determined by only one Board Member, as permitted by K.S.A. 2019 Supp. 44-551(l)(2)(A), as opposed to being determined by the entire Board when the appeal is from a final order.<sup>4</sup>

### ANALYSIS

#### **1. Does the Board have jurisdiction to review respondent's appeal?**

K.S.A. 44-534a grants authority to an ALJ to decide issues concerning the furnishing of medical treatment, the payment of medical compensation, and the payment of temporary disability compensation. K.S.A. 44-534a also specifically gives the ALJ authority to grant or deny the request for medical compensation pending a full hearing on the claim. K.S.A. 2019 Supp. 44-551(l)(2)(A) gives the Board jurisdiction to review decisions from a preliminary hearing where one of the parties alleged the ALJ exceeded his or her jurisdiction. K.S.A. 44-534a(a)(2) limits the jurisdiction of the Board to specific jurisdictional issues; accidental injury, injury arising out of and in the course of employment, timely notice, and certain other defenses. The Court of Appeals, in *Carpenter v. National Filter Service*, stated "[b]ecause in 44-534a jurisdiction means coverage by the Act, 'certain defenses' are subject to review only if they dispute the compensability of the injury under

---

<sup>3</sup> K.S.A. 44-534a.

<sup>4</sup> K.S.A. 2019 Supp. 44-555c(j).

the Act.”<sup>5</sup> The Board has held the term “certain other defenses” refers to defenses which dispute the compensability of the injury under the Workers Compensation Act.<sup>6</sup>

The prevailing factor argument goes to the core of compensability. The Board has jurisdiction to review respondent’s appeal.

## **2. Was Mr. Spear’s injury by accident the prevailing factor causing his injury, medical condition, and need for treatment?**

Respondent argues the medical treatment obtained and sought by Mr. Spear is solely the result of a preexisting, yet asymptomatic, renal condition. An accidental injury is not compensable if work is a triggering factor or if the injury solely aggravates, accelerates, or exacerbates a preexisting condition or renders a preexisting condition symptomatic.<sup>7</sup>

The Board has found accidental injuries resulting in a new physical finding or a change in the physical structure of the body are compensable, despite the claimant also having a preexisting condition. Several prior Board decisions tend to show compensability where there is a demonstrated new physical injury above and beyond a sole aggravation of a preexisting condition:

- A claimant's accident did not "solely" cause an aggravation of preexisting carpal tunnel syndrome when the accident also caused a triangular fibrocartilage tear.<sup>8</sup>
- A low back injury resulting in a new disk herniation and new radicular symptoms was not solely an aggravation of a preexisting lumbar condition.<sup>9</sup>
- A claimant's preexisting ACL reconstruction and mild arthritic changes in his knee were not solely aggravated, accelerated, or exacerbated by an injury where his repetitive trauma resulted in a new finding, a meniscus tear, that was not preexisting.<sup>10</sup>

---

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

<sup>6</sup> *Williams v. Durham School Services*, No. 1,027,861, 2006 WL 3891445 (Kan. WCAB Dec. 22, 2006); *Rivera v. Beef Products, Inc.*, No. 1,062,361, 2013 WL 3368492 (Kan. WCAB June 18, 2013).

<sup>7</sup> K.S.A. 2019 Supp. 44-508(f)(2).

<sup>8</sup> *Homan v. U.S.D. #259*, No. 1,058,385, 2012 WL 2061780 (Kan. WCAB May 23, 2012).

<sup>9</sup> *MacIntosh v. Goodyear Tire & Rubber Co.*, No. 1,057,563, 2012 WL 369786 (Kan. WCAB Jan. 31, 2012).

<sup>10</sup> *Short v. Interstate Brands Corp.*, No. 1,058,446, 2012 WL 3279502 (Kan. WCAB July 13, 2012).

- An accident did not solely aggravate, accelerate, or exacerbate claimant's preexisting knee condition where the court ordered doctor opined that the accident caused a new tear in claimant's medial meniscus.<sup>11</sup>
- Claimant had a prior partial ligament rupture, but a new accident caused a complete rupture, "a change in the physical structure" of his wrist, which was compensable.<sup>12</sup>

Dr. Trinca noted some apparent clot within the right renal collecting system after trauma and bleeding from trauma, which suggests a change in physical condition. Dr. Doyle opined Mr. Spear's accident caused a deceleration trauma, resulting in a hemorrhage into his renal collecting system. Dr. Doyle went further and stated Mr. Spear's accident was the prevailing factor causing the deceleration trauma injury and need for medical treatment.

The undersigned places greater weight on the opinions of the treating physician, Dr. Doyle, and finds Mr. Spear's motor vehicle accident is the prevailing factor causing his ureteropelvic junction pathology and need for medical treatment, and is not a sole aggravation of a preexisting condition.

#### ORDER

**WHEREFORE**, it is the finding, decision and order of this Board Member the Order of Administrative Law Judge Steven M. Roth, dated January 14, 2021, is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of March, 2021.

---

HONORABLE SETH G. VALERIUS  
BOARD MEMBER

c: William L. Phalen, Attorney for Mr. Spear  
Brent A. Jepson, Attorney for Respondent and its Insurance Carrier  
Hon. Steven M. Roth, Administrative Law Judge

---

<sup>11</sup> *Folks v. State of Kansas*, No. 1,059,490, 2012 WL 4040471 (Kan. WCAB Aug. 30, 2012).

<sup>12</sup> *Ragan v. Shawnee County*, No. 1,059,278, 2012 WL 2061787 (Kan. WCAB May 30, 2012).