

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

LEE E. PHILLIPS)	
Claimant)	
)	
V.)	
)	
LACROSSE FURNITURE COMPANY)	CS-00-0413-368
Respondent)	AP-00-0456-100
)	
AND)	
)	
KANSAS BUILDERS INSURANCE GROUP)	
Insurance Carrier)	

ORDER

Claimant requests review of the January 14, 2021, Post-Award Medical Award issued by Administrative Law Judge (ALJ) Bruce E. Moore. This is a post-award proceeding for medical benefits. The case has been placed on the summary docket for disposition without oral argument.

APPEARANCES

E. Thomas Pyle, III, appears for Claimant. Edward D. Heath, Jr., appears for Respondent and its insurance carrier (Respondent).

RECORD AND STIPULATIONS

The Board considered the post-award record and adopted the stipulations listed in the Award.

ISSUES

The ALJ found Claimant failed to sustain his burden of proving his December 4, 2015, work injury was the prevailing factor for his need for chiropractic treatment. Claimant argues he met his burden of proving the need for future medical treatment for his low back and legs, and the injuries he sustained on December 4, 2015, are the prevailing factor in his need for treatment in the form of chiropractic care. Respondent maintains the ALJ's Award should be affirmed. Respondent argues any need for chiropractic treatment arises from an intervening injury and not the work injury of December 4, 2015.

Is Claimant entitled to post-award chiropractic care for his low back and legs?

FINDINGS OF FACT

Claimant suffered a work accident on December 4, 2015, when he fell backwards over a railing while carrying a couch, causing the couch to fall on him. Claimant filed an Application for Hearing (E-1) with the Division on March 26, 2018, claiming injuries to his neck, low back, right arm, and lower legs.

Claimant eventually underwent three surgeries to his cervical spine as a result of the accident. He did not receive or seek treatment for his low back or his lower extremities through December 20, 2018, when he settled his claim, over three years later, leaving open the right to seek future medical care. Attached to the settlement transcript is an Independent Medical Evaluation report produced by Dr. David Hufford, who found Claimant to have reached maximum medical improvement and recommended the following future medical treatment:

Future medical treatment - This should include ongoing pain management with the avoidance of opioids. His current regimen of Meloxicam, Tizanidine and Gabapentin appears entirely appropriate and should be maintained in an ongoing pain management relationship with a qualified provider who performs these services. This appears to be provided for at the present time. He may also benefit from a series of 1-3 lumbar epidural corticosteroid injections for his low back pain and non-verifiable radicular complaints.¹

Claimant has and continues to treat with authorized treating physician Dr. Baoluan Nguyen for pain management. Dr. Nguyen did not testify in these proceedings, and his records are not in evidence. Claimant did not pursue the injections recommended by Dr. Hufford, nor did he seek any treatment related to his low back until April 3, 2020.

On April 3, 2020, Claimant went on his own to Oz Chiropractic for a visit with chiropractor Dr. Leslie Osborn. Claimant reported an increase in low back pain as a result of a fall at home a few weeks before the visit, and he believed he had further injured his back. Claimant described standing on a step stool while cleaning the blades of a ceiling fan, losing his balance, and falling backward onto his couch. Claimant attributed his loss of balance to his work injury of December 4, 2015. Both Claimant and Dr. Osborn stated treatment was only provided to Claimant's low back and legs because after three surgeries, it was dangerous to manipulate Claimant's neck.

Claimant indicated he wanted to see if chiropractic care would improve his movement and provide some relief to his low back and legs. He found it beneficial and

¹ S.H. Trans., Ex. 2 at 4.

asked Dr. Nguyen to authorize chiropractic care. Dr. Nguyen ultimately wrote a prescription for this care dated June 8, 2020.²

Dr. Osborn testified Claimant's work accident was the prevailing factor for his diagnosis and need for treatment. Dr. Osborn recommended Claimant undergo chiropractic maintenance care to cure or relieve the effects of his December 2015 work injury.

Claimant filed an Application for Post-Award Medical with the Division on June 30, 2020, requesting authorization of the treatment recommendation from his authorized treating physician, Dr. Nguyen, including the prescription for chiropractic care.

ANALYSIS AND CONCLUSIONS OF LAW

In cases where future medical remains open, the ALJ can award further medical care if it is found to be more probably true than not the injury is the prevailing factor in the need for further medical care, and the care requested is necessary to cure or relieve the effects of the injury.³ The ALJ denied Claimant's request for chiropractic care, stating, "From the evidence presented, the fall at home was the prevailing factor for the 'need' for chiropractic medical care, and there is insufficient evidence before the court to establish that the fall was the natural and probable consequence of the December 20, 2015 work injury."⁴ The Board agrees.

This is not an instance of an original injury leading to a secondary injury. Claimant filed an Application for Hearing on March 26, 2018, alleging injuries to his neck, low back, right arm and lower legs. The court-ordered evaluator Dr. David Hufford, in his November 8, 2018, report, recommended consideration of a series of epidural corticosteroid injections for low back pain and non-verifiable radicular components. Dr. Hufford's recommendation for injections were made prior to the fall suffered by Claimant at home. This course of treatment was not pursued by Claimant.

Claimant did not seek medical treatment for his low back until after the fall at home. Claimant acknowledged he had not sought any low back treatment associated with his December 2015 work-related injury until he saw Dr. Osborn on April 3, 2020. Since the fall, Claimant reported to Dr. Osborn he experienced increased back pain and has been unable to get comfortable. Claimant sought chiropractic care from Dr. Osborn to address his increased symptoms. Dr. Osborn testified Claimant's December 2015 accidental injury, and not the fall at home, was the prevailing factor for further medical care. Also, Dr.

² Osborn Depo., Ex. 3.

³ K.S.A. 2019 Supp. 44-510k(a)(2).

⁴ ALJ Post-Award Medical Award at 5.

Osborn testified the chiropractic care requested by Claimant was necessary to cure or relieve him from the effects of the work-related injury.

The Board is unpersuaded by Dr. Osborn's prevailing factor opinion in light of the absence of any low back treatment being provided or sought by Claimant until after the fall at home. Claimant reported to Dr. Osborn it was the fall at home that "further messed up his low back" and rendered him "uncomfortable."⁵ In addition, the medical records in Dr. Osborn's possession were limited to Dr. Hufford's November 8, 2018, report and the June 8, 2020, prescription written by Dr. Nguyen for chiropractic care. Dr. Osborn's limited knowledge of Claimant's treatment history and pain management received to date further undermines the credibility of her prevailing factor opinion.

Claimant failed to prove the December 4, 2015, work-related injury is the prevailing factor causing his need for chiropractic care, and the chiropractic care is reasonably necessary to cure or relieve the effects of the work-related injury.

As required by the Workers Compensation Act, all five members of the Board considered the evidence and issues presented in this appeal.⁶ Accordingly, the findings and conclusions set forth reflect the majority's decision and the signatures below attest this decision is of the majority.

AWARD

WHEREFORE, it is the decision of the Board the Award of Administrative Law Judge Bruce E. Moore dated January 14, 2021, is affirmed.

IT IS SO ORDERED.

⁵ Osborn Depo., Ex. 1 at 2.

⁶ K.S.A. 2019 Supp. 44-555c(j).

Dated this _____ day of April, 2021.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

e: E. Thomas Pyle, III, Attorney for Claimant
Edward D. Heath, Jr., Attorney for Respondent and its Insurance Carrier
Hon. Bruce E. Moore, Administrative Law Judge