

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

THOMAS LARSON (DECEASED))	
Claimant)	
)	
V.)	
)	
EXCEL INDUSTRIES, INC.)	CS-00-0372-357
Respondent)	AP-00-0443-134
)	
AND)	
)	
TRUMBULL INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

STATEMENT OF THE CASE

This matter is before the Board on remand from the Kansas Court of Appeals from its March 12, 2021, Opinion. The Board heard oral argument on June 10, 2021.

Terry J. Torline appeared for Pamela Larson, surviving spouse of Thomas Larson. Bruce L. Wendel appeared for respondent and its insurance carrier (respondent).

The Board considered the record and adopted the stipulations listed in its original Order of January 23, 2020, together with the March 12, 2021, Opinion of the Kansas Court of Appeals. The Board also considered the parties' briefs.

ISSUE

The Kansas Court of Appeals affirmed the Board's interpretation of K.S.A. 44-501(c)(1), also known as the heart amendment, and found sufficient evidence supported the Board's finding Mr. Larson's November 2016 trip was a part of his usual work in the regular course of his job. The Court of Appeals remanded the case to consider whether an external force caused Mr. Larson's myocardial infarction (heart attack).

The issue for the Board's review is: whether an external force caused Mr. Larson's heart attack of November 18, 2016, and resulting death.

FINDINGS OF FACT

The Board adopts the factual and procedural overview set forth by the Court of Appeals¹ and the Board's Findings of Fact in its Order of January 23, 2020.

PRINCIPLES OF LAW AND ANALYSIS

K.S.A. 44-501(c) states, in part:

(1) Except as provided in paragraph (2), compensation shall not be paid in case of coronary or coronary artery disease or cerebrovascular injury unless it is shown that the exertion of the work necessary to precipitate the disability was more than the employee's usual work in the course of the employee's regular employment.

To support finding a claimant's cardiac or vascular injury is the product of some extreme external force, (1) the presence of a substantial external force in the working environment must be established, and (2) there must be expert medical testimony the external force was a substantial causative factor in producing the injury and resulting disability.²

Mrs. Larson argues three external force factors were present. The first is Mr. Larson was required to go on the business trip against his best judgment. Second, the weather produced flight delays and cancellations, which caused undue stress. Third, the cancellations caused Mr. Larson to run out of his prescribed heart medications.

The Kansas Supreme Court (Court), in *Makalous*, noted when a claimant's disability is the product of some external force or agency, and not of the exertion of a claimant's work, the heart amendment is inapplicable: "Where exertion is not the agency which produces the workman's disability, the usual vs. unusual exertion test of the heart amendment is irrelevant."³ In *Makalous*, the Court stated:

[H]eat and cold in the working environment are recognized as external forces which can cause injury. Heat can cause heatstroke. Cold can cause frostbite and, after examining the record in the present case, there is expert medical evidence available

¹ See *Larson v. Excel Industries, Inc.*, 59 Kan. App. 2d 583, 597, 483 P.3d 1067 (2021).

² *Mudd v. Neosho Memorial Regional Med. Center*, 275 Kan. 187, 194, 62 P.3d 236 (2003), citing *Makalous v. Kansas State Highway Commission*, 222 Kan. 477, 484-85, 565 P.2d 254 (1977).

³ *Makalous, supra*, at 482.

that extreme cold coupled with outdoor exertion can cause a heart attack. Here, the trial court held that extreme cold was the cause which precipitated the heart attack.⁴

In *Dial*,⁵ the Court found when an external force other than exertion is the factor which precipitates a cerebrovascular accident, this could result in the disability becoming compensable as a result of that "external force."

In *Dial*, the medical testimony verified the heat to which claimant was subjected led to the disability. There was no mention in the medical evidence of exertion as a causative factor. The Court found the evidence indicated the enclosure of the mezzanine where Mr. Dial worked caused "progressively greater heat." The Court also found the cardiovascular injury in *Dial* did not bring the heart amendment into play because the agency which "precipitated" the disability was not the exertion of his work, but rather the external force; in Mr. Dial's instance the extreme heat. The Court stated:

Where the disability is the product of some external force or agency, and not of the exertion of the claimant's work, the heart amendment has no applicability. In such a case, where exertion is not the agency "necessary to precipitate the disability," the usual vs. unusual exertion test applied in our previous heart amendment cases is irrelevant. Instead, the customary standards are to be applied in determining whether the injury was accidental, and whether it arose out of and in the course of the workman's employment.⁶

The Court in *Makalous*, after analogizing *Dial*, found heat and cold in working environments are external forces which can cause injury. In *Makalous*, it was the extreme cold to which claimant was exposed that caused his heart attack.

In *Mudd*,⁷ the Court denied a claim the worker's cerebral aneurysm was work-related. In *Mudd*, the medical expert testified the stress was not external to the exertion, but actually combined with it. The Court found stress cannot, as a matter of law, be an external factor under the facts presented, because the stress was caused by work-related exertion. The Court added a person could get around the heart amendment by demonstrating the stress was caused by factors external to Mudd's work-related exertion, referring to being approached by an armed assailant, as in *Dial*.

⁴ *Id.* at 483.

⁵ *Dial v. Dome Co.*, 213 Kan. 262, 515 P.2d 1046 (1973).

⁶ *Id.* at 268.

⁷ 275 Kan. 187.

In addition, one of the required factors contained in *Mudd* to support finding a claimant's cardiac or vascular injury is the product of some extreme external force is expert medical testimony that the external force was a substantial causative factor in producing the injury and resulting disability.

Here, there must be medical evidence the substantial causative factor causing Mr. Larson's heart attack was an external force. There is insufficient expert medical testimony supporting external force as a substantial causative factor producing the injury and resulting disability. Dr. McMaster was the only medical expert who opined the trip-related stress was a significant causative factor. Dr. Reusser stated Mr. Larson's various conditions, including stress, could all be significant factors contributing to Mr. Larson's cardiac event. Dr. Farrar opined the prevailing factor in Mr. Larson's cardiac event was his underlying heart disease and not the November 2016 business trip. The weight of the medical evidence does not support Mr. Larson's heart attack was caused by an external force.

Travel was a part of Mr. Larson's job. Air flights, weather delays, and being prepared for delays, are a part of traveling by air. The stress experienced by Mr. Larson was brought about by factors involved in his usual employment. The Board finds no evidence of an external factor, like extreme temperatures or being robbed at gunpoint.

In the Board's January 23, 2020, decision, we wrote:

Claimant's wife and daughter both testified claimant knew, after he returned to work following his heart attack in Chicago, he would be performing the same job and would be required to do some travel. Mr. Lawson-Hetcheli testified claimant was excited to go on the November 2016 work-related trip. Mr. Lawson-Hetcheli also testified claimant volunteered to go to Minnesota on the trip. Claimant's job description, which was placed into the record without objection, included the duty of domestic travel when required.⁸

The Board finds Mr. Larson's business trip to Minnesota was a part of his usual work in the course of his regular employment. Mr. Larson did not prove his heart attack was due to any external force.

AWARD

WHEREFORE, it is the finding, decision and order of the Board the Award of Administrative Law Judge Thomas Klein, dated May 15, 2019, is affirmed.

⁸ *Larson v. Excel Industries, Inc.*, No. CS-00-0372-357, 2020 WL 719923 at 6 (Kan. WCAB Jan. 23, 2020).

IT IS SO ORDERED.

Dated this _____ day of July, 2021.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Terry J. Torline, Attorney for Mrs. Larson
Bruce L. Wendel, Attorney for Respondent and its Insurance Carrier
Hon. Thomas Klein, Administrative Law Judge