

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

DELIA STAFFORD

Claimant

v.

AP-00-0457-925

CS-00-0436-625

MEDICALODGES, INC.

Respondent

AP-00-0457-926

CS-00-0434-703

and

UNITED WISCONSIN INSURANCE CO.

Insurance Carrier

ORDER

Claimant requests review of the May 12, 2021, Preliminary Hearing Order issued by Administrative Law Judge (ALJ) Steven M. Roth.

APPEARANCES

William L. Phalen appeared for Claimant. Vincent A. Burnett appeared for Respondent and its Insurance Carrier.

RECORD AND STIPULATIONS

The Board did not consider a record on appeal, because the Order dated May 12, 2021, states a record was not made, and there is no evidence a transcript of the proceedings was filed in OSCAR. Similarly, there is no record the exhibits downloaded into OSCAR were admitted into evidence. The Board considered the pleadings and orders contained in the administrative file, and the narrative report of Dr. Do, dated August 7, 2019, concerning his Court-ordered independent medical examination. The Board also reviewed the parties' briefs.

ISSUES

1. Does the Appeals Board have legal authority to consider Claimant's application for review at this time?
2. Is Claimant entitled to additional medical treatment or has she reached maximum medical improvement?

FINDINGS OF FACT

In CS-00-0436-625, Claimant alleges she sustained a left knee injury while lifting a patient on May 3, 2018. In CS-00-0434-703, Claimant alleges she sustained a left knee injury while lifting a patient on September 2, 2018.

Claimant was referred to Dr. Mosier for treatment after the May 3, 2018, accident. As part of her treatment with Dr. Mosier, Claimant underwent an MRI scan, which revealed a tear of the anterior horn of the lateral meniscus and moderate cartilage loss. Dr. Mosier performed an arthroscopic partial lateral meniscectomy.

According to the May 12, 2021, Order, ALJ Roth found Claimant suffered from popping and swelling at the left knee following the September 3, 2018, accident, and fluid was drained from the left knee capsule. Another MRI was performed in January 2019, which revealed no evidence of tearing, but degenerative changes. Dr. Mosier declared Claimant at maximum medical improvement on January 14, 2019.

ALJ Roth also found Claimant was evaluated by Dr. Fluter on March 12, 2019, and Dr. Fluter recommended additional medical treatment. Claimant sought additional medical treatment at a preliminary hearing held June 12, 2019. ALJ Roth appointed Dr. Do to perform a Court-ordered independent medical examination on June 13, 2019.

Dr. Do performed the Court-ordered independent medical examination of Claimant on August 7, 2019. Dr. Do reviewed the history and the MRI scans. Examination was notable for crepitus of the left knee, which was stable in drawer and valgus/vargus stress tests. Dr. Do thought Claimant sustained a work-related lateral meniscus tear caused by the work-related accident of May 3, 2018. Dr. Do thought Claimant had preexisting degenerative changes and moderate cartilage loss unrelated to work. Although the September 2, 2018, accident aggravated the degenerative changes, Dr. Do did not believe the accident produced anatomic changes in the left knee. Dr. Do thought Claimant reached maximum medical improvement for her work-related injury, and required no further medical treatment. An impairment rating was issued.

Claimant was evaluated by Dr. Rosenthal at her attorney's request on October 29, 2020. Dr. Rosenthal recommended additional medical treatment.

On May 12, 2021, ALJ Roth issued the Preliminary Hearing Order. No record of the preliminary hearing was made, but ALJ Roth considered Claimant's Exhibit A1, Respondent's Exhibits B1-B2, a transcript of a deposition of Claimant taken on February

12, 2021, and a transcript of a deposition, with exhibits, of Dr. Do taken on June 24, 2020. In the Order, ALJ Roth noted Respondent did not dispute compensability. Claimant sought additional medical treatment, and the issue was whether Claimant reached maximum medical improvement or required additional medical treatment for her work-related injuries. ALJ Roth reviewed the medical opinions of Drs. Mosier, Fluter, Do and Rosenthal, and found the opinions of Drs. Mosier and Do more persuasive. ALJ Roth found Claimant reached maximum medical improvement for her work-related injuries, but required additional medical treatment for her unrelated degenerative condition. The request for additional medical treatment was denied. This appeal follows.

PRINCIPLES OF LAW AND ANALYSIS

Claimant argues the denial of medical treatment was erroneous because ALJ Roth misunderstood the medical evidence and Claimant has not reached maximum medical improvement for her work-related injuries. Respondent contends the Board does not possess jurisdiction to consider Claimant's application for review, and Claimant failed to prove she is entitled to additional medical treatment paid under workers compensation.

The lack of a record limits the Appeals 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.¹ When conducting review of an administrative law judge's decision, the Appeals Board shall have authority to grant or disallow compensation, to increase or decrease an award, or to remand a matter to the administrative law judge for further proceedings.²

Before the Appeals 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.³ "Certain defenses" are issues concerning the compensability of

¹ See K.S.A. 44-555c(a).

² See K.S.A. 44-551(l)(1).

³ See K.S.A. 44-534a(a)(2).

the injury under the Workers Compensation Act.⁴ If jurisdiction under K.S.A. 44-534a is not present, it is appropriate to dismiss the appeal.⁵

Claimant seeks review of ALJ Roth's determination Claimant reached maximum medical improvement, and requires no further medical treatment for her work-related injury. Claimant does not raise an issue involving the compensability of the claims. According to the Order dated May 12, 2021, Respondent did not raise compensability issues, either. Because Claimant's application for review does not invoke an issue concerning compensability, the Appeals Board does not possess legal authority to consider Claimant's application for review under K.S.A. 44-534a. Therefore, Claimant's application for review must be dismissed.

DECISION

WHEREFORE, it is the finding, decision and order of the undersigned Board Member Claimant's Application for Review is dismissed, and the Preliminary Hearing Order issued by ALJ Roth, dated May 12, 2021, remains in force and effect.

IT IS SO ORDERED.

Dated this _____ day of July, 2021.

WILLIAM G. BELDEN
APPEALS BOARD MEMBER

c: Via OSCAR

William L. Phalen
Vincent A. Burnett
Hon. Steven M. Roth

⁴ See *Carpenter v. National Filter Service*, 26 Kan. App. 2d 672, 675, 994 P.2d 641 (1999).

⁵ See *id.* at 676.