

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

THERESA BURNS)	
Claimant)	
v.)	
)	AP-00-0462-578
UNITED PLAINS AG/CHS, INC.)	CS-00-0268-255
Respondent)	
and)	
)	
OLD REPUBLIC INSURANCE, c/o ESIS, INC.)	
Insurance Carrier)	

ORDER

Respondent requests review of the December 3, 2021, preliminary hearing Order entered by Administrative Law Judge (ALJ) Bruce E. Moore. Jeff K. Cooper appeared for Claimant. Ryan D. Weltz appeared for Respondent and its Insurance Carrier.

RECORD AND STIPULATIONS

The Board adopted the same stipulations and considered the same record as the ALJ, consisting of the transcript of Preliminary Hearing held December 3, 2021, the evidentiary deposition of Douglas C. Burton, M.D., dated November 3, 2020, along with the exhibits and the documents of record filed with the Division.

ISSUES

1. Did Claimant has sustain a compensable injury to her left knee?

FINDINGS OF FACT

This matter comes before the Board for the second time on appeal to review a preliminary Order. A preliminary hearing was held on August 8, 2017. The ALJ issued a preliminary order finding Claimant met her burden of proving she suffered personal injury by accident arising out of and in the course of her employment, when she injured her back attempting to escape a fire on July 24, 2017. The accident was the prevailing factor causing her injury and need for medical treatment. The ALJ ordered medical treatment, temporary total disability compensation and reimbursement of unauthorized medical expenses. Respondent appealed the August 8, 2018, preliminary order to the Board, alleging the ALJ erred in finding Claimant's back injury arose out of and in the course of her employment and was the prevailing factor causing her medical condition.

On October 22, 2018, the Board affirmed the August 8, 2017, preliminary Order. In so doing, the Board Member found Claimant notified Respondent of her injury the day after it occurred; Claimant's first medical appointment, four days after the injury, provided a clear history of the fire incident and her physical complaints following the injury; and the ALJ and the Board Member found Claimant's description of the flash fire, resulting accident and injuries persuasive.

Douglas C. Burton, M.D., provided authorized medical treatment for Claimant. Dr. Burton provided conservative care from July 12, 2019, through February 7, 2020, when he placed Claimant at maximum medical improvement and assigned permanent restrictions. Dr. Burton testified the MRI performed six weeks after the alleged work injury showed a degenerative disc, but "really no nerve compression" and "no herniation that should be causing a true radiculopathy." Further, "certainly, people that have degenerative discs can have referred leg pain."¹

On December 3, 2020, a regular hearing was held and terminal dates were set. An Agreed Order Suspending Terminal Dates was filed on February 9, 2021, because a new psychological claim was presented.

On February 10, 2021, Claimant was putting sealant on her entertainment center. When she stepped from the entertainment center onto the step stool with her left leg, her leg gave way causing her to fall, injuring her left knee. Claimant sought medical treatment through her personal health insurance. Before Claimant's insurance denied coverage, she was evaluated at Capstone Orthopedic and an MRI was performed. The MRI revealed a torn ACL and a small fracture.²

Claimant's attorney referred her to Pedro Murati, M.D., for a second evaluation on September 22, 2021. Regarding Claimant's left knee complaints, Dr. Murati opined Claimant suffered a meniscal and an ACL tear, based on the March 10, 2021, MRI report. He recommended Claimant be referred to an orthopedic surgeon specializing in knees for a surgical consultation. Regarding the prevailing factor, Dr. Murati opined, "It is more probable than not with her worsening pain and weakness in her left hip, that if it had not been for the initial work related injury she would not have fallen resulting in her left knee complaints and the need for future treatment."³

A preliminary hearing was held on December 3, 2021. Claimant requested medical treatment for her left knee. The evidence presented to the ALJ was Claimant's brief

¹ See Burton Depo. at 21-22.

² See P.H. Trans (Dec. 3, 2021) at 8.

³ *Id.* Resp. Ex. 1 at 5.

testimony, Dr. Murati's September 22, 2021, report and the deposition testimony of Dr. Burton. The ALJ found "Claimant has established her entitlement to left knee treatment" and ordered Respondent to provide medical treatment. In so doing, the ALJ stated:

And I will do that based upon the uncontroverted evidence and testimony presented today.

While Dr. Burton may have testified that the claimant didn't have any radiculopathy, he did treat her for pain into her left hip, and I don't know to what extent that treatment suggests that her hip could then give out. And that's a question for Dr. Burton, or a physician down the road as we go further.⁴

Respondent requests review of the ALJ's Order, arguing Claimant's left knee complaints did not arise out of and in the course of her employment. Specifically, Respondent argues Claimant's left knee injury on February 10, 2021, was not a natural and probable consequence of her low back injury. Claimant asks the Board to affirm the Order.

PRINCIPLES OF LAW AND ANALYSIS

Employees are entitled to compensation for secondary injuries which are the natural and probable consequence of the primary injury.⁵ All injuries, including secondary injuries, must be caused primarily by the work accident.⁶ Under the law in effect starting May 15, 2011, secondary injuries are compensable if caused primarily by the original work accident and are the natural and probable consequence of the original injury.⁷

Here, the ALJ considered the limited evidence presented and found Claimant's left knee injury was the natural and probable consequence of her back injury. The ALJ's Order is well-reasoned and supported by the evidence. Respondent's argument, Dr. Burton's opinions were more credible than Dr. Murati's, was considered and rejected by the ALJ. This Board Member agrees.

Respondent argued Dr. Murati opined Claimant's fall was the result of left leg weakness he attributed to the work accident. This misstates Dr. Murati's causation opinion. Dr. Murati opined Claimant's "worsening pain and weakness in the left hip" caused her to fall. Dr. Burton's opinions related to the absence or presence of Claimant's radiculopathy, not hip pain and weakness.

⁴ See P.H. Trans (Dec. 3, 2021) at 12-13.

⁵ See *Casco v. Armour Swift-Eckrich*, 283 Kan. 508, 515-16, 154 P3d 494 (2007).

⁶ See *Buchanan v. JM Staffing, LLC*, 52 Kan.App. 2d 943, 951, 379 P3d 428 (2016).

⁷ See *Id.*

Respondent, in their brief to the Board, also argued Claimant did not sustain a compensable injury to her back. This issue was not raised at the December 3, 2021, preliminary hearing. The Board does not have jurisdiction to address new issues or re-litigate issues not presented to the ALJ.

Based on the evidentiary record, this Board Member concludes Claimant proved her left knee injury arose out of and in the course of her employment including the prevailing factor requirement. Her left knee injury is the direct and natural consequence of her back injury suffered on July 24, 2017.

DECISION

WHEREFORE, it is the finding, decision and order of the undersigned Board Member the Order of Administrative Law Judge Bruce E. Moore dated, December 3, 2021, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of January, 2022.

CHRIS CLEMENTS
BOARD MEMBER

c: Via OSCAR

Jeff K. Cooper, Attorney for Claimant
Ryan D. Wertz, Attorney for Respondent and its Insurance Carrier
Hon. Bruce E. Moore, Administrative Law Judge