

**BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD**

<b>COREY STRYKER</b>	)	
Claimant	)	
V.	)	
	)	AP-00-0461-236
<b>SUGAR CREEK PACKING COMPANY</b>	)	CS-00-0338-508
Self-Insured Respondent	)	

**ORDER**

Corey Stryker requested review of the September 16, 2021, Award issued by Administrative Law Judge (ALJ) Steven M. Roth. The Board heard oral argument on January 13, 2022.

**APPEARANCES**

Patrick C. Smith appeared for Mr. Stryker. Karl L. Wenger appeared for self-insured respondent.

**RECORD AND STIPULATIONS**

The Board adopted the same stipulations and considered the same record as the ALJ, consisting of the transcript of the Regular Hearing held November 9, 2020; the transcript of the Regular Hearing Testimony by Deposition of Corey Stryker taken April 2, 2021, with exhibits attached; the transcript of the Deposition of Corey Stryker taken January 3, 2017; the transcript of the Evidentiary Deposition of William O. Hopkins, M.D., taken June 29, 2021, with exhibits attached; the transcript of the Evidentiary Deposition of Chris D. Fevurly, M.D., taken July 16, 2021, with exhibits attached; the transcript of the Evidentiary Deposition of David K. Ebelke, M.D., taken August 6, 2021, with exhibits attached; the transcript of the Evidentiary Deposition of Paul S. Hardin taken March 16, 2021, with exhibits attached; the transcript of the Evidentiary Deposition of Steve Benjamin taken August 16, 2021, with exhibits attached; and the documents of record filed with the Division.

**ISSUES**

The issues for the Board's review are:

1. Did Mr. Stryker suffer repetitive personal injury by repetitive trauma arising out of and in the course of his employment?

2. If so, what is the nature and extent of Mr. Stryker's disability?
3. Is Mr. Stryker entitled to unauthorized and future medical compensation?

#### FINDINGS OF FACT

Mr. Stryker began working for respondent, a meat processing plant, in 2013. Mr. Stryker's job duties varied over his employment, but all required manual labor. In the weeks leading to June 4, 2016, Mr. Stryker unloaded large boxes of meat from a trailer. Each box weighed between 1,600 to 3,000 pounds, and Mr. Stryker moved each with a manual pallet jack. Mr. Stryker described this position as fast-paced and strenuous. Mr. Stryker had approximately 1.5 minutes to move each box to keep the line running smoothly, and about 80,000 pounds of product were moved each shift. This position was normally performed by two people, but Mr. Stryker worked alone for the three weeks prior June 4, 2016, due to staffing shortages. Mr. Stryker indicated he worked seven days a week at that time, and he was increasingly exhausted and sore. Mr. Stryker informed his supervisor about his symptoms, but essentially told to make the best of the situation.

On Saturday, June 4, 2016, Mr. Stryker worked his regular shift and went home. Mr. Stryker testified he sat in a chair, removed his boots, and took a short nap. When he later tried to rise from the chair, Mr. Stryker could not move. He said, "I was a little more sore that day than I had been before. I just couldn't move, just couldn't go from the sitting to the standing position."<sup>1</sup> The following day, Mr. Stryker's wife took him to the emergency room. Mr. Stryker testified he was unable to get in the truck and had to ride to the hospital lying flat in the truck bed. Mr. Stryker was treated for low back pain at the hospital and released that day.

Mr. Stryker called his supervisor on Sunday and said he could not work because of back pain. Mr. Stryker told his supervisor he injured his back at work. Mr. Stryker was told to report to the plant on Monday to complete an accident report, which he did. Afterward, it was decided Mr. Stryker would apply for FMLA leave. Mr. Stryker received FMLA leave until it expired October 10, 2016. Respondent ended the employment relationship when Mr. Stryker did not return to work.

Mr. Stryker has a history of back and associated leg pain beginning in 2008, and he was prescribed narcotics for pain for several years. On June 16, 2008, an MRI of Mr. Stryker's lumbar spine was obtained, after he complained of low back pain and lower extremity radiation occurring for many months. The MRI revealed a disc herniation at L5-S1 causing central and neural foraminal stenosis. Mr. Stryker continued to report low back and left leg symptoms, and another MRI of the lumbar spine was taken on September 8,

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<sup>1</sup> Claimant Depo. (Apr. 2, 2021) at 14.

2010. This MRI showed a mild to moderate central disc extrusion at L5-S1 impinging both S1 nerve roots, left greater than right.

On May 18, 2011, Mr. Stryker was referred to Dr. Cherylon Yarosh because of ongoing complaints of low back pain and left leg pain with numbness. Dr. Yarosh diagnosed Mr. Stryker with a lumbar disc herniation at L5-S1, degenerative disc disease, and lumbar radiculopathy. Mr. Stryker underwent epidural injections in 2011 with no relief. On April 21, 2013, Mr. Stryker visited the emergency room for low back and sciatic nerve pain starting one week before.

Mr. Stryker had some back pain prior to 2016, but most of his problems were with his left leg. Mr. Stryker stated most of his pain resolved, except for some left leg pain, at the time of the incident. Mr. Stryker described his pain as different, constant, and severe following the incident. Mr. Stryker also complained of incontinence, sexual dysfunction, and right leg pain after June 2016.

Mr. Stryker underwent an MRI on June 10, 2016. The MRI revealed interval progression of degenerative disc disease throughout the thoracolumbar spine and mild central canal narrowing from L3-5. A moderate-sized disc protrusion/herniation was seen at L5-S1, with moderate central canal narrowing and moderate to severe neuroforaminal narrowing.<sup>2</sup>

Dr. Chris Fevurly, a physician board certified in internal medicine and preventative medicine with specialization in occupational medicine, examined Mr. Stryker at respondent's request on April 13, 2017. Mr. Stryker complained of constant low back pain and occasional bilateral leg pain/tingling. Dr. Fevurly reviewed Mr. Stryker's history, medical records, and performed a physical examination. Dr. Fevurly opined:

The prevailing factor for the current low back pain is the preexisting 8 to 10-year history of low back pain and radiculopathy (present since 2008). The work activity in early June 2016 may have temporarily exacerbated the claimant's back pain and sciatica but it is clear from his interview history and medical records that this has been chronic and preexisting problem. There is little change in the appearance of the MRI from 2008 to 2016.<sup>3</sup>

Dr. Fevurly did not recommend future medical treatment and assigned no impairment related to Mr. Stryker's alleged work-related injury. He recommended restrictions of lifting 20 pounds rarely, 10 pounds occasionally, and 5 pounds frequently, as well as avoiding more than occasional bending and stooping at the waist.

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<sup>2</sup> See Fevurly Depo., Ex. 2 at 6.

<sup>3</sup> Fevurly Depo., Ex. 3 at 10.

Dr. C. Lan Fotopoulos, the court-ordered physician, performed an independent medical evaluation of Mr. Stryker on July 10, 2017. After a review of Mr. Stryker's information and performing a physical examination, Dr. Fotopoulos determined Mr. Stryker suffered from L5-S1 lumbar disc herniation with S1 radiculopathy and chronic low back pain. Dr. Fotopoulos believed Mr. Stryker exacerbated his preexisting back condition and recommended physical therapy and steroid injections, and if there was no improvement, a surgical consultation. Dr. Fotopoulos provided temporary restrictions of no lifting greater than 10 pounds, sit/stand as needed for pain, and no aerial work.

On March 4, 2020, Mr. Stryker's counsel sent him to Dr. William Hopkins, an orthopedic surgeon, for an evaluation. Dr. Hopkins reported:

In summary, based on the information I have available to me, I believe that with reasonable medical certainty that Mr. Stryker had work-incurred injuries to his lumbar spine at [respondent] creating back pain with left lower extremity paresthesias in a neurogenic pattern for which he improved from his injury as recorded in 2016 and evidently was able ultimately to return to employment that his symptoms again were low back pain with left lower extremity neurogenic claudication.<sup>4</sup>

Dr. Hopkins noted an onset of sexual dysfunction and loss of bladder/bowel control following June 4, 2016. He found the onset of these symptoms consistent with his finding of a new injury occurring in June 2016. Dr. Hopkins opined Mr. Stryker's 2016 injury was the direct and prevailing factor for his current medical problems, need for medical treatment and disability.<sup>5</sup>

Dr. Hopkins did not review medical records predating June 2016. Dr. Hopkins could not identify any new lesion or physiological change in Mr. Stryker's physical condition. Dr. Hopkins was unsure whether additional treatment would be beneficial, aside from pain management. Using the *AMA Guides*,<sup>6</sup> Dr. Hopkins opined Mr. Stryker sustained a combined 43 percent permanent partial disability to the body as a whole as a result of the repetitive trauma. He further opined Mr. Stryker is permanently and totally disabled and could not reasonably be expected to obtain employment.

Dr. David Ebelke, a board certified orthopedic surgeon, evaluated Mr. Stryker at respondent's request on February 24, 2021. Dr. Ebelke reviewed Mr. Stryker's history and medical records, making note of MRIs obtained June 16, 2008, June 10, 2016, and May

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<sup>4</sup> Hopkins Depo., Ex. 2 at 6.

<sup>5</sup> Ibid.

<sup>6</sup> American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (6th ed.). All references are based upon the sixth edition of the *Guides* unless otherwise noted.

10, 2020, and a CT scan from June 5, 2020. Dr. Ebelke noted the imaging studies show no anatomical change in Mr. Stryker's condition from 2008 through 2020. The CT scan confirmed calcification of the L5-S1 disc herniation. Dr. Ebelke determined no work accident occurred, and work was not the prevailing factor causing Mr. Stryker's condition.

Dr. Ebelke explained pain complaints tend to increase over time in those with an opioid dependency because the body habituates to the opioid and more medication is required to achieve relief. Dr. Ebelke did not believe additional treatment would improve Mr. Stryker's condition and did not impose restrictions, other than Mr. Stryker should exercise good judgment in his activities. Dr. Ebelke testified Mr. Stryker is physically capable of working in some capacity.

Dr. Ebelke determined Mr. Stryker had no impairment related to any work activity. He opined, using the *AMA Guides*, Mr. Stryker's maximum impairment rating would be one to three percent to the body as a whole if the claim was compensable.

Paul Hardin, a vocational expert, interviewed Mr. Stryker on June 29, 2020, for a task and wage loss assessment. Mr. Hardin reviewed Mr. Stryker's job duties and the reports from Drs. Hopkins and Fotopoulos, finding Mr. Stryker was permanently and totally disabled. Mr. Hardin stated Mr. Stryker was essentially and realistically unemployable. Mr. Hardin testified he based his opinion on the restrictions of Dr. Hopkins and did not consider those from Dr. Fotopoulos.

Steve Benjamin, a vocational expert, also interviewed Mr. Stryker for a task and wage loss assessment on October 30, 2020. Mr. Benjamin considered the restrictions of Drs. Fevurly and Fotopoulos, and determined Mr. Stryker was not permanently and totally disabled. If Mr. Stryker were to obtain an entry-level position within those restrictions, Mr. Benjamin opined Mr. Stryker would sustain a 42.6 percent wage loss as a result.

Mr. Stryker has not worked since June 4, 2016. He applied for Social Security disability benefits for his back condition, but has not yet been approved.

The ALJ found Mr. Stryker did not suffer an injury by repetitive trauma arising out of and in the course of his employment with respondent, but rather aggravated a preexisting back condition. The ALJ determined Mr. Stryker provided timely notice of the accident and noted he would have been awarded future medical treatment were the claim compensable. Further, the ALJ found Mr. Stryker's potential wage loss was not caused by voluntary resignation or termination for cause. Mr. Stryker's request for compensation was denied.

#### **PRINCIPLES OF LAW AND ANALYSIS**

Mr. Stryker argues he sustained a new injury from repetitive trauma through his last day worked at respondent on June 4, 2016. Mr. Stryker contends he is permanently and

totally disabled as a result of this injury, and he is entitled to unauthorized and future medical treatment.

Respondent maintains the ALJ's Award should be affirmed. Alternatively, respondent argues Mr. Stryker sustained functional impairment of one to three percent to the body as a whole and is not permanently and totally disabled. Further, respondent argues Mr. Stryker is not entitled to unauthorized or future medical care.

K.S.A. 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. 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. 44-508 states, in part:

(e) "Repetitive trauma" refers to cases where an injury occurs as a result of repetitive use, cumulative traumas or microtraumas. The repetitive nature of the injury must be demonstrated by diagnostic or clinical tests. The repetitive trauma must be the prevailing factor in causing the injury.

. . .

(f) (1) "Personal injury" and "injury" mean any lesion or change in the physical structure of the body, causing damage or harm thereto. Personal injury or injury may occur only by accident, repetitive trauma or occupational disease as those terms are defined.

(2) An injury is compensable only if it arises out of and in the course of employment. An injury is not compensable because work was a triggering or precipitating factor. An injury is not compensable solely because it aggravates, accelerates or exacerbates a preexisting condition or renders a preexisting condition symptomatic.

(A) An injury by repetitive trauma shall be deemed to arise out of employment only if:

(i) the employment exposed the worker to an increased risk or hazard which the worker would not have been exposed in normal non-employment life;

(ii) the increased risk or hazard to which the employment exposed the worker is the prevailing factor in causing the repetitive trauma; and

(iii) the repetitive trauma is the prevailing factor in causing both the medical condition and resulting disability or impairment.

When dealing with preexisting conditions that are aggravated by work duties, the test is not whether the injury causes the condition, but whether an injury aggravates or accelerates the condition.<sup>7</sup>

In *Del Real v. Sam's Club*,<sup>8</sup> a Board Member wrote:

The opinion of the Kansas Court of Appeals in *Le* makes clear that in order to prove a compensable claim, more than a sole aggravation must be proven, but the worker must also satisfy the prevailing factor requirement. Several Board decisions have denied TKA [total knee arthroplasty] procedures when it was found preexisting arthritic conditions, not the accident, caused the need for the knee replacement. Although these issues are fact-driven and depend on the evidence adduced in each case, these claims have fact patterns and issues comparable to this claim.<sup>9</sup>

In *Shook v. Waters True Value Hardware*,<sup>10</sup> the Board cited *Del Real* and a list of other cases in support of the proposition prior Board decisions held “preexisting arthritis and DJD, and not the work accident, were the prevailing factor causing an injury, need for medical treatment, and impairment or disability.”<sup>11</sup> More recently, in *Riley v. BJ's Restaurant Operations Co.*,<sup>12</sup> the Board again cited *Del Real* in support of the premise more than a sole aggravation of a preexisting condition must be proven.

Additionally, Mr. Stryker has the burden of proving he suffered any lesion or change in the physical structure of the body, and the repetitive work activities were the prevailing factor causing his injury, medical condition, and resulting disability. The Board finds Mr. Stryker failed to prove either.

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<sup>7</sup> *Martin v. CNH Am. LLC*, 40 Kan. App. 2d 342, 346, 195 P.3d 771, 775 (2007), citing *Claphan v. Great Bend Manor*, 5 Kan.App.2d 47, 49, 611 P.2d 180, rev. denied 228 Kan. 806 (1980).

<sup>8</sup> *Del Real v. Sam's Club*, Nos. 1,068,697 & 1,068,698, 2016 WL 6496898 (Kan. WCAB July 1, 2016).

<sup>9</sup> *Id.* at 7, citing *Nam Le v. Armour Eckrich Meats*, 52 Kan. App. 2d 189, 197, 364 P.3d 571 (2015).

<sup>10</sup> *Shook v. Waters True Value Hardware*, No. CS-00-0368-737, 2019 WL 6695514 (Kan. WCAB Nov. 19, 2019).

<sup>11</sup> *Id.* at 9.

<sup>12</sup> *Riley v. BJ's Restaurant Operations Co.*, No. CS-00-0369-128, 2021 WL 1832459, at 8 (Kan. WCAB Apr. 23, 2021).

Dr. Fevurly opined Mr. Stryker suffered a chronic and preexisting problem which may have been temporarily exacerbated by his work activities in 2016. Dr. Fotopoulos thought Mr. Stryker exacerbated his preexisting back condition. After reviewing MRIs from 2008, 2016, and 2021, Dr. Ebelke opined the activities of Mr. Stryker's job did not cause or permanently aggravate any of the diagnoses in his back or cause any anatomical change in his condition.

Only Dr. Hopkins thought the 2016 injury was the prevailing factor causing Mr. Stryker's need for treatment and resulting disability. Dr. Hopkins had no medical records predating the injury by repetitive trauma. His opinions regarding prevailing factor or the etiology of Mr. Stryker's medical condition are given little weight.

The Board agrees with the conclusions of the ALJ. Mr. Stryker failed to prove a lesion or change in the physical structure of the body as required by K.S.A. 44-508(e). Mr. Stryker failed to prove he suffered more than a sole aggravation as required by K.S.A. 44-508(f)(2). The weight of the evidence fails to prove a work-related injury by repetitive trauma was the prevailing factor causing Mr. Stryker's low back condition, need for treatment, or permanent disability.

All other issues are moot.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Board the Award of Administrative Law Judge Steven M. Roth, dated September 16, 2021, is affirmed.

**IT IS SO ORDERED.**



Dated this \_\_\_\_\_ day of February, 2022.

\_\_\_\_\_  
BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: (Via OSCAR)

Patrick C. Smith, Attorney for Mr. Stryker  
Karl L. Wenger, Attorney for Self-Insured Respondent  
Hon. Steven M. Roth, Administrative Law Judge