

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

DENNIS SCHMIDT)	
Claimant)	
V.)	
)	AP-00-0462-808
CRUSTBUSTERS, INC.)	CS-00-0436-091
Respondent)	
AND)	
)	
AMERICAN COMPENSATION INSURANCE CO.)	
Insurance Carrier)	

ORDER

Respondent appeals the December 14, 2021, preliminary hearing Order issued by Administrative Law Judge (ALJ) Gary K. Jones.

APPEARANCES

Ronald J. Laskowski appeared for Claimant. Travis J. Ternes 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 taken January 23, 2020, with exhibits attached; the transcript of Preliminary Hearing taken August 23, 2021, with exhibits attached; the Deposition of the Claimant taken September 20, 2021; the transcript of Preliminary Hearing taken December 23, 2021, with exhibits attached; and the documents of record filed with the Division.

ISSUE

Is Claimant's compensable left knee injury the prevailing factor causing a secondary injury to his right knee?

FINDINGS OF FACT

Claimant is a 67 year old man currently employed as a maintenance man at an apartment complex.

Claimant had left knee problems beginning in 2008 when he injured his left knee at work. In 2008, Claimant had left knee arthroscopic surgery. Due to persistent symptoms in Claimant's left knee, Claimant had left knee replacement surgery in 2010. He had a revision surgery to his left knee in 2012. On January 14, 2015, Claimant suffered a second work-related injury to his left knee. In August 2015, Claimant had a second revision left knee replacement surgery by Dr. Pappedemos.

Dr. David Hufford examined Claimant on May 9, 2017, at the request of Respondent for evaluation of the left knee. Claimant complained of pain in the left lower extremity. Dr. Hufford found a work-related slip and twist injury resulting in loosening of the femoral component of a prior left knee arthroplasty. He found Claimant had a work-related injury on January 14, 2015, and was at maximum medical improvement. Dr. Hufford noted Claimant's previous occupational injury to the left knee, resulted in a total knee arthroplasty and revision. The current injury involved loosening of the femoral component of his hardware, which has been replaced. Dr. Hufford found no need for further medical treatment of the left knee, and the August 4, 2015, revision surgery was appropriate.

In 2019, Claimant's left knee gave out and he fell. Claimant went back to Dr. Pappademos, who did his left knee surgery in 2015. Claimant's left knee was swollen and painful. The examination revealed a mechanical loosening of internal left knee prosthetic joint and peri-prosthetic fracture around the internal prosthetic left knee joint. Dr. Pappademos believed the only option for Claimant was a hinged prosthesis, which was not a good option for Claimant due to his age and activity level.

In November 2019, Claimant noticed increasing problems with his right knee. Due to ongoing problems with his left knee, Claimant developed an antalgic gait favoring his left knee. Claimant's right knee became painful. Claimant wants diagnostic and conservative treatment to treat the symptoms in his right knee. His right knee pops and grinds. The pain has worsened over time. Claimant uses a cane to ambulate half the time and wears a hinged brace. He wants to be able to continue to work despite the instability in his knee.

As a result of the preliminary hearing held on January 23, 2020, the Court ordered an independent medical examination with Dr. Danny Gurba, who examined Claimant on June 4, 2020. Dr. Gurba diagnosed Claimant with a painful, but stable revision of a total knee arthroplasty with a poor result. Dr. Gurba agreed with Dr. Pappademos no further surgical or nonsurgical intervention would improve Claimant's current symptoms. Claimant was found to be at maximum medical improvement. Further treatment would not provide any significant improvement in Claimant's symptoms and would likely lead to amputation of the left leg. Dr. Gurba opined Claimant's work injury of January 14, 2015, was the prevailing factor for the loosening of the femoral component necessitating the second revision surgery by Dr. Pappademos.

Claimant acknowledges there is no mention in the medical records about right knee problems until 2021 when Claimant saw Dr. Fluter. His left knee has had significant problems and his focus has been on his left knee, until the pain in his right knee worsened to the extent he believed he needed medical treatment for his right knee.

Dr. George Fluter examined Claimant on March 1, 2021, at Claimant's attorney's request. Claimant complained of left knee pain at a 7 or 8 on the pain scale and described the pain as burning, throbbing, dull/ache, sharp, numbness and tingling. Claimant reported lying down, walking and exercise makes the pain worse and sitting, heat and medication make the pain better. Claimant tries to avoid certain work, physical labor and activities of daily living because it causes him pain. Claimant has little feeling from his left knee down his left leg, which throws his balance off.

Dr. Fluter noted Claimant had his left knee replaced 3 times in the last ten years. He noted Claimant complained of right knee pain, but no treatment was directed to the right knee. Upon examination of the left and right knees, Dr. Fluter diagnosed the following: status post work-related injury 2008; left knee pain; possible left knee internal derangement; status post left knee arthroscopy, 3/20/09; status post left knee replacement surgery, 2010; status post left knee replacement surgery, 6/22/2012; status post work-related injury 1/14/2015; left knee replacement peri-prosthetic fracture, 8/4/2019; right knee pain; and right knee medial compartment cartilage loss.

Dr. Fluter opined there was a reasonable degree of medical probability of a causal/contributory relationship between Claimant's current condition and the reported work-related injuries occurring in 2008 and 2015 and their sequelae. He believed the new injury to the left knee is not an aggravation or acceleration of the preexisting left knee condition. He found gait abnormalities from the left knee injury, caused structural changes in the right knee, including significant cartilage loss in the medial compartment.

Dr. Fluter opined the 2015 injury was the prevailing factor for Claimant's need for medical treatment and resulting impairment. The prevailing factor for the conditions affecting the right knee are the gait abnormalities affecting the left lower extremity resulting in altered biomechanical stresses affecting the right knee.

Dr. Fluter recommended pain medication, pool-based therapy, an orthopedic followup, and if all conservative measures fail, further surgery should be considered.

Claimant saw Dr. Suhel Kotwal on his own to see if the bone in his left knee could be saved. Dr. Kotwal is an orthopedic reconstructive cancer surgeon. Dr. Kotwal recommended additional revision surgery to Claimant's left knee. Claimant wants the surgery recommended by Dr. Kotwal and wants Dr. Kotwal authorized.

The ALJ found the record to show Claimant has considerable left knee problems and the treatment received from Dr. Pappademos has been satisfactory for those problems. Dr. Gurba, the court-ordered IME physician agreed with Dr. Pappademos that further surgery was not warranted for the left knee. The ALJ found Dr. Kotwal to be at a disadvantage with not having all of Claimant's medical records before making recommendations, and therefore the request for Dr. Kotwal's treatment for the left knee was denied. The ALJ found Claimant's right knee complaints were a natural and probable consequence of the left knee injury and granted Claimant's request for treatment of the right knee. Respondent was ordered to provide the names of two qualified physicians to Claimant for selection of a physician to treat his right knee.

PRINCIPLES OF LAW AND ANALYSIS

Respondent argues the Board should reverse the ALJ's Order and deny medical treatment for Claimant's right knee as Dr. Flutter's prevailing factor opinion is unreasonable and otherwise unreliable.

Claimant argues the ALJ's Order should be affirmed.

Kansas law has long held injured employees are entitled to compensation for any secondary injuries that are the natural and probable consequence of the primary injury, known as the secondary-injury rule. The amendments made to the Kansas Workers Compensation Act in 2011 added the prevailing factor requirement for an injury to be compensable. However, the 2011 amendments did not eliminate the secondary injury rule. After the addition of the prevailing factor requirement, a secondary injury must be both the natural and probable consequence of the primary injury and caused primarily by the work accident to be compensable.¹

Claimant has a compensable left knee injury requiring extensive medical treatment, including three left knee replacement surgeries. Claimant still has pain and swelling as result of his left knee injury. Claimant developed an antalgic gait favoring his left knee, which caused development of symptoms in his right knee.

Respondent argues there is no mention in medical records about problems in his right knee until 2021. Claimant explained he did not develop concern about his right knee until recently when the pain worsened because Claimant's primary concern had been the extensive problems with his left knee. The undersigned finds Claimant's explanation logical and credible.

¹ See *Buchanan v. JM Staffing, LLC* 52 Kan. App. 2d 943, 379 P.3d 428 (2016).

Dr. Fluter opined the symptoms in Claimant's right knee and the need for medical treatment were primarily caused by Claimant's left knee injury. No other doctor offered an opinion about the right knee. Dr. Fluter's opinion is corroborated by the extensive treatment Claimant received for his left knee injury and the ongoing problems Claimant has with his left knee. Claimant's extensive treatment and problems with his left knee and the opinion of Dr. Fluter are persuasive. Claimant's right knee symptoms and need for treatment are primarily caused and are the natural and probable consequence of Claimant's compensable left knee injury. The right knee injury is compensable.

Authorization of a different medical provider was an issue not appealed by Claimant and is also an issue in which the Board has no jurisdiction over in a preliminary hearing application.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding, as they may be modified upon a full hearing of the claim.² Moreover, this review of a preliminary hearing Order determined by one Board Member, as permitted by K.S.A. 44-551(l)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

DECISION

WHEREFORE, it is the finding, decision and order of the undersigned Board Member the Order of Administrative Law Judge Gary K. Jones dated December 14, 2021, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of February, 2022.

HONORABLE REBECCA SANDERS
BOARD MEMBER

c: Via OSCAR

Ronald J. Laskowski, Attorney for Claimant
Travis J. Ternes, Attorney for Respondent and its Insurance Carrier
Hon. Gary K. Jones, Administrative Law Judge

² K.S.A. 2020 Supp. 44-534a.