

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

TROY RUSSELL)	
Claimant)	
V.)	
)	AP-00-0463-876
MORTON SALT, INC.)	CS-00-0453-385
Respondent)	
AND)	
)	
AMERICAN ZURICH INSURANCE CO.)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier (respondent) request review of the February 16, 2022, preliminary hearing Order entered by Administrative Law Judge (ALJ) Thomas Klein.

APPEARANCES

Roger A. Riedmiller appeared for claimant. Meredith L. Moser appeared for respondent.

RECORD AND STIPULATIONS

The Board has adopted the same stipulations and considered the same record as did the ALJ, consisting of the transcript of the Preliminary Hearing held December 14, 2021, with exhibits attached, and the documents of record filed with the Division.

ISSUES

1. Did claimant's motor vehicle accident of July 21, 2021, arise out of and in the course of his employment?
2. If so, is claimant entitled to the payment of medical bills and temporary total disability benefits (TTD) related to the motor vehicle accident?

FINDINGS OF FACT

Claimant sustained a compensable injury to his left shoulder while working for respondent on August 7, 2020. Claimant received authorized medical treatment, including left shoulder arthroscopic surgery performed by Dr. Daniel Prohaska. Claimant underwent extensive post-operative rehabilitation, including an injection and physical therapy, before he was declared to be at maximum medical improvement by Dr. Prohaska on June 9, 2021.

Claimant testified he experienced no improvement after surgery and continued to suffer consistent pain in his left shoulder. Claimant's attorney scheduled an appointment for claimant with Dr. George Fluter for purposes of an examination and a second opinion. Claimant understood he was not seeking medical treatment from Dr. Fluter at his appointment. Claimant stated he wanted to discover why his left shoulder pain persisted because it affects his everyday life. He was not paid mileage for travel to Dr. Fluter's office. Respondent was not aware of claimant's appointment with Dr. Fluter.

On July 21, 2021, claimant left his home in Haven, Kansas, to attend the appointment with Dr. Fluter, who was not an authorized treating or examining physician, in Wichita, Kansas. While driving northbound on Oliver Avenue, claimant's vehicle was struck by another driver who failed to yield when making a left turn. Claimant was transported via ambulance to Wesley Medical Center with complaints of pain in his chest, neck, head, abdomen, left shoulder, and left hip. The hospital provided claimant with medication and released him.

Claimant sought treatment, on his own, with the Hutchinson Clinic and Dr. Aly Gadalla following the accident. He was provided medications and work restrictions.

On August 3, 2021, Dr. Fluter finally examined claimant at his counsel's request. Claimant complained of left shoulder pain, in addition to pain affecting his neck, back, left hip, chest, and abdomen. Dr. Fluter reviewed claimant's medical records, history, and performed a physical examination. Regarding claimant's left shoulder injury from August 2020, Dr. Fluter recommended temporary restrictions and additional medical treatment, including diagnostic studies, physical therapy, and possible interventional pain management. For the injuries sustained as a result of the July 2021 accident, Dr. Fluter recommended temporary restrictions and additional medical treatment.

The ALJ found:

The court finds that claimant's accident of July 21, 2021 is a compensable event because it arose out of the nature, conditions, obligations or incidents of his employment. The medical appointment that claimant was going to is authorized by the act.

Respondent is to provide a list of two physicians from which claimant is to choose an authorized treating physician for the injuries sustained in his motor vehicle accident of July 21, 2021. The bills submitted as evidence in this claim are to be paid as authorized. TTD is to be reinstated as of July 1, 2021 until claimant is released or accommodated. Respondent is to reimburse claimant's counsel for the unauthorized treatment of Dr. Flutter up to the statutory maximum.¹

The ALJ ordered an independent medical evaluation from Dr. Lowry Jones for the purpose of obtaining a diagnosis and treatment recommendations, if any, for claimant's left shoulder.

PRINCIPLES OF LAW AND ANALYSIS

Respondent argues claimant may be entitled to \$500 in unauthorized medical expenses for the evaluation with Dr. Flutter, but he is not entitled to make respondent pay for a motor vehicle accident occurring outside the course and scope of his employment. Respondent maintains claimant's July 2021 accident is not compensable under the Kansas Workers Compensation Act (Act), and medical bills and TTD related to that accident should be denied.

Claimant contends the ALJ's Order should be affirmed. Claimant argues his motor vehicle accident occurred while on the way to attend an unauthorized doctor's appointment, and arose out of and in the course of his employment.

In *Taylor v. Centex Construction Company, Inc.*, the Supreme Court held:

. . . Under the Workmen's Compensation Act securing medical treatment was in the course of claimant's employment with respondent and the trip to and from the doctor's office arose out of the nature, conditions, obligations or incidents of his employment; . . .²

The Court reasoned an employer is under a statutory duty to furnish medical care and an employee is similarly under a duty to submit to reasonable medical treatment under the Act. Because the provisions of the Act, by implication, become part of the employment contract, the Court held accidental injuries occurring during a trip for medical treatment are work connected and, therefore, compensable. The Court wrote:

It would be folly to say that the claimant's trip going to and from the doctor's office did not "arise out of" the nature, conditions, obligations, or incidents of his

¹ ALJ Order (Feb. 16, 2022) at 2.

² *Taylor v. Centex Const. Co.*, 191 Kan. 130, 379 P.2d 217, 217 (1963).

employment. (*Pinkston v. Rice Motor Co.*, 180 Kan. 295, 303 P.2d 197.) In Larson's Workmen's Compensation Law, Vol. 1, p. 186, it is said:

"It should not, therefore, be necessarily concluded that anything happening to an injured workman in the course of a visit to the doctor is compensable. To get this result, there should be either a showing that the trip was in the course of employment by usual tests, or that the nature of the primary injury contributed to the subsequent injury in some way. . . ."

. . .

There can be no question but that securing medical treatment in Topeka was in the course of claimant's employment and we have no hesitancy in holding that the district court erred in finding that the trip to the doctor's office was not a part of claimant's employment.³

In *Payne v. The Boeing Company*,⁴ the Board found a claimant, who was involved in an automobile accident while on the way home from an authorized medical appointment, was permanently and totally disabled as a result of the work-related accident and the subsequent compensable automobile accident.

In *Sanchez v. Wayman Brothers 66*,⁵ a Board Member found an automobile accident in which a claimant was involved on her way to receive authorized medical treatment for a work-related back injury arose in the course of her employment, writing:

Whether claimant's injuries were "in the course" of employment is substantially more problematic. But, the Board is persuaded the injuries were "in the course of" employment even though claimant had gone to work for another employer. What *Taylor* did not mention, and because of other factors did not need to mention, is that the Workers Compensation Act also required respondent to provide transportation to medical treatment. Transportation is, therefore, part of the employment contract.

K.S.A. 44-510 provides:

[T]ransportation to and from the home of the injured employee to a place outside the community in which such employee resides, and within such community if the director in the director's discretion so orders, including transportation expenses computed in accordance with subsection (a) of K.S.A. 44-515

³ *Id.* at 136.

⁴ *Payne v. The Boeing Company*, Nos. 1,007,073 & 1,020,332, 2007 WL 466011, at *2 (Kan. WCAB Jan. 26, 2007).

⁵ *Sanchez v. Wayman Brothers 66*, No. 202,088, 1998 WL 165852 (Kan. WCAB Mar. 20, 1998).

K.A.R. 51-9-11 also provides:

It shall be the duty of the employer to provide transportation to obtain medical services to and from the home of the injured employee whether those services are outside the community in which the employee resides or within the community. Since respondent is required under the Act to provide transportation, an accidental injury during that travel should be considered to be "in the course of" employment. In *Taylor*, the claimant was paid by respondent and respondent expressly authorized the trip. Those were handy factors supporting a finding of compensability. But, those factors do not, in view of the statutory obligation to provide transportation, appear to be necessary to make the claim compensable.

Here it seems similarly clear that claimant's injuries "arose out of" employment. The risks involved in driving to the medical appointment are risks, as they were in *Taylor*, to which claimant would not be exposed except for the original injury and subsequent medical treatment. The injuries from the automobile accident result from an employment risk.⁶

The common thread gleaned from *Taylor* and the Board cases finding accidents occurring on the way to or from medical appointments compensable is the appointments were for authorized medical treatment. *Taylor* tied the employer's liability to its statutory duty to furnish medical care and the employee's duty to submit to reasonable medical treatment under the Act.

In this case, claimant was injured in a motor vehicle accident on his way to see his own medical expert. There exists no statutory or regulatory mandate for claimant to schedule and attend an evaluation with his own expert. The undersigned, in consultation with the entire Board, finds claimant's injury from his motor vehicle accident did not arise out of his employment with respondent.

All other issues are moot.

DECISION

WHEREFORE, it is the finding, decision and order of the undersigned Board Member that the Order of Administrative Law Judge Thomas Klein dated February 16, 2022, is reversed.

IT IS SO ORDERED.

⁶ *Id.* at 3.

TROY RUSSELL

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Dated this _____ day of May, 2022.

HONORABLE SETH G. VALERIUS
BOARD MEMBER

c: Via OSCAR

Roger A. Riedmiller, Attorney for Claimant
Meredith L. Moser, Attorney for Respondent and its Insurance Carrier
Hon. Thomas Klein, Administrative Law Judge