

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

MICHELE COLLINS
Claimant

v.

E. MEDICAL GROUP OF KANSAS, INC.
Respondent

AP-00-0464-962
CS-00-0464-032

and

ACCIDENT FUND GENERAL INS. CO.
Insurance Carrier

ORDER

Respondent and Insurance Carrier request review of the April 7, 2022, preliminary Order issued by Administrative Law Judge (ALJ) Bruce E. Moore.

APPEARANCES

Brian D. Pistotnik appeared for Claimant. Matthew J. Shaefer appeared for Respondent and Insurance Carrier.

RECORD AND STIPULATIONS

The Board adopted the stipulations and considered the same record as the ALJ, consisting of the transcript of Preliminary Hearing, held April 6, 2022, with Exhibits 1-6; the transcript of the Discovery Deposition of Michele Collins, taken April 1, 2022; and the pleadings and orders contained in the administrative file. The Board also reviewed the parties' briefs.

ISSUE

Did Claimant sustain personal injuries from an accident arising out of and in the course of her employment with Respondent?

FINDINGS OF FACT

Claimant, a registered nurse, worked for Respondent as a traveling home health nurse. Claimant traveled to patients' homes, performed monitoring, gave tests and provided some treatments, such as administering IV antibiotics, injections and wound care. Claimant's work required her to drive her personal vehicle out of town, and the longest she drove was ninety minutes to see a patient. Claimant's normal working hours were 8:00 a.m. to 5:00 p.m. Respondent paid Claimant for her travel expenses.

Claimant's medical history is notable for anxiety and depression, treated with medication. Claimant did not recall having anxiety attacks, and testified she responded to anxiety by crying. Claimant was seeing a primary care physician regularly before the accident of February 21, 2021. For approximately a month before the accident, Claimant felt chest pain two or three times. Claimant did not know the reason she had chest pain, and she did not consult a physician.

On February 21, 2021, Claimant started her usual work day, and attended a couple of appointments. Another nurse, Ms. Bracken, followed Claimant as she drove to the appointments. After seeing a patient in Bazine, Kansas together, Claimant and Ms. Bracken drove separately to another patient located in Larned. Ms. Bracken followed Claimant. Claimant denied experiencing chest pain while working in Bazine.

Claimant drove approximately twenty minutes, and was in Alexander, Kansas when the accident occurred. Claimant testified she could not recall much. Claimant recalled driving through Alexander, and she was not tired or sleepy. Claimant next recalled Ms. Bracken hitting the window of Claimant's car after the accident and asking Claimant if she was hurt. Claimant also recalled being loaded into an ambulance and being transported to the hospital. Claimant did not recall telling anyone she had chest pain. Claimant did not recall talking on the phone when the accident occurred.

Ms. Bracken testified she was driving behind Claimant in her car when the accident occurred. According to Ms. Bracken, the weather was unremarkable and there were no problems with the roads. Ms. Bracken briefly looked down. When Ms. Bracken looked up, she saw Claimant's car become airborne and hit the ground. Ms. Bracken pulled over, rendered aid and called the EMS. Ms. Bracken heard Claimant tell a paramedic she was driving down the road, felt chest pain, and "here I am."¹

Officer Hammerschmidt of the Rush County Sheriff's Office came to the accident scene and completed an accident report. Officer Hammerschmidt questioned Claimant and Ms. Bracken. According to the report, Claimant stated she was traveling east on K-96

¹ P.H. Trans. at 12.

Highway and experienced chest pains. Claimant did not know what happened next and woke up in the ditch. According to Officer Hammerschmidt, Claimant drove off the roadway, entered a ditch, struck a culvert and rolled. No adverse weather conditions, road hazards, or alcohol or drug impairment was noted. Ms. Bracken said Claimant did not report health issues, but she saw Claimant drive to the right side of the road once before the accident, and Ms. Bracken assumed Claimant was using her phone.

According to the report from Rush County EMS, Claimant experienced chest pain prior to the accident. Claimant also stated she was continuing to have chest pain and low back pain after the accident. Claimant was given aspirin, and transported to Great Bend Regional Hospital.

According to the emergency department records of Great Bend Regional Hospital, Claimant felt chest pain, which caused her to drive off the road. Claimant could recall nothing further. Claimant was not certain if she lost consciousness. Claimant said she had chest pain several days before February 21. Multiple bruises were noted, as well as low back tenderness. CT scans of the head and cervical spine were negative for an acute injury. A CT scan of the chest revealed a burst fracture at T12 and multiple rib fractures. A CT scan of the abdomen and pelvis revealed a burst fracture at L1 and a compression fracture at L5. An EKG revealed a sinus rhythm, no ST elevation and a heart rate of seventy-three beats per minute. Claimant was diagnosed with post-motor vehicle accident low back pain without sciatica, multiple closed rib fractures on the right side, stable closed burst fracture at T12 and closed fracture at L1. Claimant was transferred to Via Christi St. Francis in Wichita for further treatment.

Claimant was admitted as a patient at Via Christi from February 21 to 25, 2021. According to Via Christi's records, Claimant reported she was on her way to see a patient, felt chest pain, drove off the road into a ditch, and rolled several times. Claimant told Dr. Murphy she felt chest pain three weeks before the accident. A neurology consultation was performed, and Claimant was diagnosed with a concussion with loss of consciousness from the accident. The neurologist also stated it was unclear whether Claimant's loss of consciousness caused the motor vehicle accident or if the loss of consciousness occurred after Claimant sustained the concussion from the accident. The neurologist also noted a history of seizure-like episodes before the motor vehicle accident. Claimant was referred to an epilepsy clinic for further evaluation. Claimant was also referred to an orthopedist for further treatment of the fractures at T12, L1 and L5.

Claimant was seen at the Kansas Orthopedic Center on March 9, 2022, and was released to return to work light duty, which Respondent cannot accommodate. The diagnosis of fractures to T12, L1 and L5 were confirmed. No surgery was recommended. Claimant attempted to schedule an appointment with an epilepsy clinic in Wichita, but the clinic refused to schedule an appointment because Claimant was not diagnosed with epilepsy. Claimant also scheduled an appointment with Dr. Hourani for evaluation of her

chest pain, but the appointment was cancelled by Respondent. Claimant continues to receive treatment from the orthopedist.

Claimant sought additional medical treatment, payment of past medical bills and temporary total disability compensation, and a preliminary hearing was held on April 6, 2022, before ALJ Moore. ALJ Moore subsequently issued the preliminary Order, dated April 7, 2022. ALJ Moore found the medical cause of the accident was not known because all the necessary evaluations and testing were not completed. ALJ Moore concluded Respondent did not prove the accident was caused by a personal or idiopathic condition. ALJ Moore also noted injuries caused by a concurrence of work and personal conditions would be compensable, the accident was the prevailing factor causing Claimant's injuries and travel was inherent in Claimant's work. ALJ Moore concluded Claimant proved a compensable event occurred. Respondent was ordered to pay past medical expenses, temporary total disability compensation and to provide a list of two physicians, from which Claimant would select one as the authorized treating physician. These review proceedings follow.

PRINCIPLES OF LAW AND ANALYSIS

Respondent argues the Order is erroneous because Claimant did not prove the cause of the accident, and Respondent is not obligated to prove Claimant's injuries were caused by a personal or idiopathic condition. Respondent argues the accident would not have occurred absent Claimant's chest pains or seizure, which are personal conditions. Claimant argues the Order is correct, and Respondent did not prove the injuries were caused by a personal or idiopathic condition.

It is the intent of the Legislature the Workers Compensation Act be liberally construed only for the purpose of bringing employers and employees within the provisions of the Act.² The provisions of the Workers Compensation Act shall be applied impartially to all parties.³ The burden of proof shall be on the employee to establish the right to an award of compensation, and to prove the various conditions on which the right to compensation depends.⁴ To be compensable, an accident must be identifiable by time and place of occurrence, produce at the time symptoms of an injury and occur during a single work shift.⁵ The accident must be the prevailing factor in causing the injury, and "prevailing factor" is defined as the primary factor compared to any other factor, based on

² See K.S.A. 44-501b(a).

³ See *id.*

⁴ See K.S.A. 44-501b(c).

⁵ See K.S.A. 44-508(d).

consideration of all relevant evidence.⁶ Before 2011, an injury resulting from the concurrence of a preexisting condition and a hazard of employment was generally compensable,⁷ but the 2011 amendments to the Workers Compensation Act likely abrogated the concurrence rule.⁸

After the employee proves an injury by accident arising out of and in the course of employment, the employer has the burden of proving any statutory defenses to compensability.⁹ “Arising out of and in the course of employment” shall not include an accident or injury arising out of a neutral risk with no particular employment or personal character, a risk personal to the worker, or an accident or injury arising either directly or indirectly from idiopathic causes.¹⁰ K.S.A. 44-508(f)(3)(A)(ii) does not bar accidents or injuries from all neutral risks, but rather accidents or injuries from neutral risks with no particular employment or personal character.¹¹ Similarly, K.S.A. 44-508(f)(3)(A)(iv) does not bar accidents or injuries from all unknown causes, but rather accidents or injuries arising either directly or indirectly from medical conditions or medical events of unknown origin peculiar to the injured worker.¹²

In this case, the greater weight of the credible evidence proves Claimant was performing her usual work as a traveling nurse in Respondent’s service when the accident occurred. It is undisputed Claimant’s physical injuries, including multiple rib fractures, burst fractures at T12 and L1, and a compression fracture at L5, were caused by the accident. The medical records and Claimant’s testimony establish Claimant requires additional medical treatment denied by Respondent, and Claimant is currently under work restrictions Respondent cannot accommodate. Claimant met her burden of establishing a *prima facie* compensable claim. At issue is whether Respondent met its burden of proving a statutory defense to compensability.

⁶ See K.S.A. 44-508(d),(g).

⁷ See, e.g., *Bennett v. Wichita Fence Co.*, 16 Kan. App. 2d 458, 459, 824 P.2d 1001 (1992), *rev. denied* 250 Kan. 804.

⁸ See *Stepter v. LKQ Corp.*, No. 177,002, 2017 WL 4456730, at *5 (Kansas Court of Appeals unpublished opinion filed Oct. 6, 2017).

⁹ See, e.g., *Johnson v. Stormont Vail Healthcare, Inc.*, 57 Kan. App. 2d 44, 54, 445 P.3d 1183 (2019) *rev. denied* 311 Kan. 1046.

¹⁰ See K.S.A. 44-508(f)(3)(A).

¹¹ See *Johnson*, 57 Kan. App. 2d at 51.

¹² See *Estate of Graber v. Dillon Cos.*, 309 Kan. 509, 510, 519-20, 439 P.3d 291 (2019).

Based on the current evidence, Respondent did not prove a statutory defense to compensability applies. Respondent argues the accident was caused by Claimant's experiencing chest pains and driving off the road, but Respondent provided no evidence establishing the accident was caused directly or indirectly from a medical condition or medical event peculiar to Claimant. In the absence of such evidence, Respondent failed to prove the matter is noncompensable due to an idiopathic cause. The accident and resulting injuries did not arise out of a personal risk because Claimant was required to travel by car as part of her work, which creates an employment risk. Likewise, the accident and resulting injuries did not arise out of a neutral risk with no particular employment or personal character because Claimant's mandatory travel created an increased risk of injury from a motor vehicle accident. Because none of the statutory defenses to compensability apply, based on the current evidence, the award of compensation contained in the preliminary Order should be affirmed.

DECISION

WHEREFORE it is the finding, decision and order of the undersigned Board Member the preliminary Order of ALJ Moore, dated April 7, 2022, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of June, 2022.

WILLIAM G. BELDEN
APPEALS BOARD MEMBER

c: Via OSCAR

Brian D. Pistotnik
Matthew J. Schaefer
Hon. Bruce E. Moore