

**BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD**

<b>MICHAEL LETTERMAN</b>	)	
Claimant	)	
V.	)	
	)	AP-00-0466-144
<b>CITY OF CHANUTE</b>	)	CS-00-0457-402
Respondent	)	
AND	)	
	)	
<b>KANSAS EASTERN REGION INSURANCE TRUST</b>	)	
Insurance Carrier	)	

**ORDER**

Respondent appealed the April 20, 2022, preliminary hearing Order entered by Administrative Law Judge (ALJ) Steven M. Roth.

**APPEARANCES**

Kala Spigarelli appeared for Claimant. Karl Wenger 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 from April 7, 2022, with exhibits attached, and the documents of record filed with the Division.

**ISSUES**

1. Did Claimant’s injury on May 10, 2019, arise out of and in the course of his employment? Specifically, did Claimant’s injury occur as the result of a normal activity of day-to-day living or a neutral risk with no particular employment character.
2. Is Claimant’s April 6, 2021, left shoulder injury the natural and probable consequence of his May 10, 2019 injury, and therefore, not compensable?

FINDINGS OF FACT

Claimant was employed by Respondent as a pipefitter since 2015. He was elevated to foreman in the water and waste department in May 2019. Claimant's job required him to drive a truck to various locations to respond to calls, complaints, and check on equipment. Claimant testified he was in his work truck approximately 6 hours per day. He estimated he got in and out of the truck approximately 20 times throughout the day.

On Friday, May 10, 2019, Claimant was traveling to the lift station to check on a non-working pump. He was accompanied by his supervisor, Danny Finley. When they arrived, Claimant got out of the truck onto an uneven, graveled surface. He felt a pop in his left knee. Claimant was not concerned about the "pop" initially and hoped the injury would resolve itself. Later that night, Claimant's knee "started swelling up and hurting real bad." Claimant's pain and swelling worsened over the weekend. Claimant formally reported his injury on Monday.<sup>1</sup>

Claimant was directed to see Dr. Bruce Lee on May 13, 2019, at the Ashley Clinic for evaluation of left knee pain and swelling. An MRI was ordered, Claimant was provided medication and referred for an orthopedic evaluation. An MRI of the left knee was provided on January 14, 2020, revealed an oblique tear of the posterior horn of the medial meniscus contacting the inferior articular surface; fluid was seen in the cleft; there was a moderate sized joint effusion; and mild articular cartilage thinning in the medial compartment suggesting degenerative change.

Traci Endicott has been a human resource assistant for Respondent for 27 years. She testified Claimant did not convey to her he stepped in a pothole, a rut, or anything other than merely getting out of the truck causing his injury. In short, Claimant reported he was getting out of the truck, heard a pop in his knee and was still hurting.

Shortly after seeing Dr. Lee (Claimant estimated within 3 weeks), Claimant was informed his claim was being denied because his injury was "age related."<sup>2</sup>

Claimant met with Dr. Brad Meister on October 27, 2020, for evaluation of his ongoing left knee pain. Claimant reported having the pain for over a year and related it to feeling a pop in his knee when he exited his work truck. Dr. Meister diagnosed left knee pain with early onset degenerative disease. Claimant was encouraged to continue with rest, ice, compression and elevation.

---

<sup>1</sup> P.H. Trans. at 24-25.

<sup>2</sup> *Id.* at 29.

On April 6, 2021, while at work and walking through a field, Claimant's left knee locked up causing him to fall on his left shoulder. "I couldn't move it and then I just, I tripped because it was like I had a stiff leg."<sup>3</sup> Claimant filled out an accident report and was sent to Dr. Meister. Claimant was advised he had arthritis and nothing could be done for the shoulder. He was instructed to take it easy and not to lift a lot with his shoulder. Claimant was released to light duty. Respondent informed Claimant there was no light duty available and sent him home.

Claimant, at his own expense, had surgery on his left knee by Dr. Meister on June 11, 2021. Following surgery, he was cleared to return to work, only to learn he had "voluntarily resigned" his employment with Respondent. Claimant denied resigning his employment, but was instructed to go home because he did not have a job.

Claimant met with Dr. Kris Parchuri on May 24, 2021, for left shoulder and bilateral knee pain. Dr. Parchuri recommended an updated MRI of the knee. If the meniscus tear was still present, surgery, arthroscopy and partial meniscectomy, would be recommended. An MR arthrogram was recommended for the left shoulder. Dr. Parchuri opined the work accident was the prevailing factor causing Claimant's injury to his knees and left shoulder. Dr. Parchuri did not have medical records to review from Weilert Chiropractic regarding left shoulder complaints prior to the April 6 fall before providing his prevailing factor opinion.

Claimant met with Dr. Chris Fevurly at Respondent's request on August 10, 2021. Dr. Fevurly opined the prevailing factor for the left knee injury and subsequent medical treatment was the May 10, 2019, work event. Dr. Fevurly opined the prevailing factor for the left shoulder was the preexisting nature of his pain in March 2021 and not the work related event on April 6, 2021. Dr. Fevurly found Claimant to be at maximum medical improvement for the left knee injury and not in need of restrictions or future medical treatment. He assigned a 2 percent impairment to the left lower extremity.

Claimant met with Dr. Pat Do for a Court-ordered IME for the left knee and left shoulder on November 22, 2021. Dr. Do found Claimant to be at maximum medical improvement for the left knee, status post left knee arthroscopy for partial medial meniscectomy, with no need for future medical treatment. Regarding the left shoulder, Dr. Do opined Claimant did not need additional treatment. He opined the April 6, 2021, fall aggravated a preexisting injury in the left shoulder and was, therefore, not causally related to any work injury.

The ALJ found: "Respondent's arguments in defense of Claimant's knee injury being a neutral risk and/or one of daily living are well presented, but lacking in legal

---

<sup>3</sup> *Id.* at 36.

persuasion.”<sup>4</sup> He further found Claimant sustained injury to his left knee arising out of and in the course of his employment. Accordingly, Respondent was ordered to pay any outstanding medical bills related to the left knee. Regarding the left shoulder injury, the ALJ found it was not work-related and payment of medical bills was denied.

Respondent appealed, arguing the ALJ erred in finding Claimant’s left knee injury compensable. Respondent contends Claimant’s left knee condition did not arise out of and in the course of his employment, but was the result of a neutral risk, and/or was the result of normal activities of day-to-day living. Further, Respondent argues the Board should affirm the ALJ’s denial of medical bills for the left shoulder. Claimant argues the Board should affirm the order finding the left knee injury compensable and reverse the denial of the left shoulder injury to find it compensable as a natural and probable consequence of the knee injury.

### PRINCIPLES OF LAW AND ANALYSIS

#### **1. Claimant’s left knee injury on May 10, 2019, arose out of and in the course of his employment.**

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.<sup>5</sup> The accident must be the prevailing factor in causing the injury. Prevailing factor is defined as the primary factor compared to any other factor, based on consideration of all relevant evidence.<sup>6</sup>

Once the employee has met the burden of proving a right to compensation, the employer has the burden of proving relief from liability based on any statutory defense or exception.<sup>7</sup> An injury occurring as a result of day-to-day activities or a neutral risk with no particular employment or personal character is not considered to arise out of and in the course of employment.<sup>8</sup>

---

<sup>4</sup> ALJ Order (Apr. 20, 2022) at 3.

<sup>5</sup> K.S.A. 44-508(d).

<sup>6</sup> K.S.A. 44-508(d)(g).

<sup>7</sup> *Johnson v. Stormont Vail Healthcare, Inc.*, 57 Kan. App. 2d 44, 53, 445 P. 3d 1183 (2019), *rev denied* 311 Kan. 1046 (2020).

<sup>8</sup> K.S.A. 44-508(f)(3)(A).

There is no dispute there was an incident involving Claimant's left knee when he got out of his work truck on May 10, 2019. Claimant was with his supervisor at a lift station to check on a non-working pump. Claimant was in an area he was reasonably expected to be in furtherance of his employment. Dr. Fevurly, Respondent's independent evaluator, opined the prevailing factor for Claimant's left knee injury was the event on May 19, 2019. The issue is whether Claimant getting out of his truck is excluded from the definition of "arising out of and in the course of employment" contained in K.S.A. 44-508(f)(3)(A).

Claimant met his burden of proving a right to compensation from the accident of May 10, 2019. The burden shifts to Respondent to prove the accident falls under an exception to compensability. The ALJ found "Respondent's arguments in defense of Claimant's knee injury being a neutral risk and/or one of daily living are well-presented, but lacking in legal persuasion." This Board Member agrees.

Claimant's uncontroverted testimony is he was required to drive to various locations to respond to calls, complaints, and check on equipment throughout the day. He estimated he got in and out of the truck approximately 20 times throughout the day. On this date, Claimant was getting out of Respondent's truck, at Respondent's facility to evaluate one of Respondent's non-working pumps. Under these facts, getting in and out of the truck was an employment-related risk. Because none of the statutory defenses apply, the order requiring Respondent to pay all outstanding and related medical bills associated with claimant's left knee injury should be affirmed.

**2. Claimant's April 6, 2021, left shoulder injury is not the natural and probable consequence of his May 10, 2019 injury, and therefore, not compensable.**

The ALJ stated:

Claimant testified that his fall was caused by his work injured left knee locking up. He has reported this causation consistently to his medical providers. There is no reason not to believe and adopt this account.

Dr. Fevurly does not significantly discount the knee locking up and resulting in a fall. Rather, Dr. Fevurly finds evidence of a pre-existing shoulder complaint and previous treatment with chiropractor Dr. Weilert for his back and left shoulder in March of 2021, just weeks before the fall, and places prevailing factor on this pre-existing condition.

Dr. Parchuri finds work the prevailing factor to the knee; the work-related injury to the knee then resulted in the left shoulder injury. Dr. Parchuri's report, however, makes no mention of any review of medical records. Hence, there is no evidence Dr. Parchuri knew about the previous March visit to the chiropractor.

As such, even though both doctors had the benefit of a personal exam, since Dr. Fevurly appears to have more evidence before him than just an examination, Dr. Fevurly's opinions prevail. The medical bills associated with the shoulder injury care will be excluded from this order.<sup>9</sup>

This Board Member agrees with the ALJ's analysis. In addition, the Court-ordered evaluator, Dr. Do, opined "his fall onto his left shoulder on April 6, 2021, aggravated a pre-existing injury and any treatment for the left shoulder is not causally related to work related issues."<sup>10</sup> Because Claimant failed to prove the left shoulder is the natural and probable consequence of his original left knee injury, the order denying payment of medical bills associated with this injury should be affirmed.

### DECISION

**WHEREFORE**, it is the finding, decision and order of the undersigned Board Member the Order of Administrative Law Judge Steven M. Roth dated April 20, 2022, is affirmed.

**IT IS SO ORDERED.**

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

---

CHRIS A. CLEMENTS  
BOARD MEMBER

c: Via OSCAR

Kala Spigarelli, Attorney for Claimant  
Karl Wenger, Attorney for Respondent and its Insurance Carrier  
Hon. Steven M. Roth, Administrative Law Judge

---

<sup>9</sup> ALJ Order (Apr. 20, 2022) at 4.

<sup>10</sup> Do IME Report (Nov. 22, 2021) at 3.