

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

BRENTON R. SLEEZER)	
Claimant)	
V.)	
)	
THE LEROY COOPERATIVE ASSN, INC.)	AP-00-0467-325
Respondent)	CS-00-0159-565
AND)	
)	
NATIONWIDE AGRIBUSINESS INS. CO.)	
Insurance Carrier)	

ORDER

The respondent and its insurance carrier (respondent), through John Rathmel, requested review of Administrative Law Judge Steven Roth’s preliminary hearing Order dated April 21, 2022. James Biggs appeared for the claimant.

RECORD AND STIPULATIONS

The Board adopted the same stipulations and considered the same record as the ALJ, consisting of the preliminary hearing transcript, held March 18, 2020, with exhibits; the claimant’s deposition transcript, taken February 18, 2021; the preliminary hearing transcript, held October 28, 2021, with exhibits;¹ the deposition transcripts of Scott Birk and Sheila Swank, taken March 25, 2022, with exhibits; the preliminary hearing transcript, held March 29, 2022, with exhibits; and documents of record filed with the Division.

ISSUES

1. Is the claimant’s intervening welding burn to his leg a natural and probable consequence of his original injury?
2. Did the ALJ exceed his jurisdiction by ordering repair or replacement of the claimant’s three wheelchairs; handicap modifications to a truck, should the claimant purchase a truck in the next year; prepayment into the claimant’s attorney’s trust account for the estimated cost of the handicap modifications to the truck; and requiring the respondent to secure any necessary billing forms for payment of the claimant’s work-related treatment?

¹ This transcript was not listed as evidence in the appealed ALJ’s Order.

FINDINGS OF FACT

The claimant suffered a workers compensation injury on June 13, 2014, when he fell 25 feet into a grain pit, landing on concrete. The claimant shattered his spinal cord, and is paralyzed from the waist down. He also sustained a left elbow injury. Following the accident, the respondent provided the claimant with a manual wheelchair, an electric wheelchair and a track (or all-terrain) wheelchair.

The claimant operates a small farming operation or a “hobby” consisting mostly of cattle and pigs.² For this outdoor activity, the claimant uses the track wheelchair, which allows him to get through gravel and mud. The claimant previously owned a truck fitted with a lift, allowing him to take the track wheelchair to the pasture. The lift was paid for by the respondent.

A preliminary hearing was held on October 28, 2021. In his Order, the ALJ stated:

Respondent will repair or replace the following items:

The manual, electric, and all-terrain wheelchairs, and all apparatuses currently installed on Claimant’s pick-up truck so as to make the truck handicap accessible.³

In January or February 2022, the claimant sustained a welding burn to his leg, requiring extensive wound care. The claimant attributed the severity of the injury to not being able to feel his legs due to paralysis, making a spark on his skin difficult to discern.

At the preliminary hearing on March 29, 2022, the claimant testified he previously used his pickup truck to haul cattle and pigs, in addition to hauling his electric and track wheelchairs. He indicated the lift did not work for a year and one-half, rendering the truck useless, so he sold it. His only current means of transportation is a van, which he testified is in disrepair. The van has handicap modifications, but the claimant testified the lift only works about one-half of the time.

The claimant testified his electric and track wheelchairs have not been functional for about two years. He is limited to using his manual wheelchair, which has caused worsening of his left elbow symptoms and pressure sores. The claimant testified a friend rigged the manual wheelchair several times to make it “barely” functional.⁴ He indicated a vendor came to his house in early March 2022 to inspect the wheelchairs.

² P.H. Trans. (Mar. 29, 2022) at 30.

³ *Id.*, Clmt. Ex. A-6 at 3.

⁴ P.H. Trans. (Mar. 29, 2022) at 17.

At the hearing, the respondent presented an exhibit from Rick Wyche at ATF Medical, dated March 28, 2022, showing the progress of obtaining a power wheel chair, a manual wheel chair and a track wheel chair. Production and supply chain issues were cited for delays.

In his April 21, 2022 Order, the ALJ found the leg burn compensable:

The Court finds the facts support that this burn is a secondary injury, which is the natural and probable consequence of the primary work injury. There are certain unique injuries that put claimants at heightened risk or hazard by their very nature. Total blindness is an example; those so afflicted are at much greater risk of incurring multiple injury hazards, which might easily be avoided by those who have sight. In like manner, Claimant's total paralysis to his lower extremity also fits in this same category under the described circumstances. In all reasonable probability, Claimant's burn injuries incurred to his ankle would have been mitigated if Claimant had any sensation of pain in his lower extremities. But Claimant's work injury has robbed him of the self protection gained by defensive reflexes.

The fact that the burn occurred while Claimant was welding presents no relevant defense. For someone who is engaged in agricultural pursuits, occasional welding is more common than not. Welding is not horse play, nor is there evidence the burn was intentional. This burn could have just as easily happened had something boiled over on the stove. Cooking is an occupational necessity for all; occasional welding for a farmer is also an occupational necessity. Again, the evidence supports that but for Claimant's work injury, Claimant could well have mitigated the burn and possibly been able to identify a later infection in the burn, but for the loss of sensation in his ankle. Medical care for his burn needs to be addressed by the Respondent. Medical mileage to all medical appointments is approved as addressed at the end of this order.⁵

The ALJ further stated:

1. All three wheelchairs currently supplied by Respondent are to be repaired or replaced, as previously ordered. Respondent is to have repairs or replacements performed on any apparatuses currently installed on Claimant's van, in order to make the van handicap accessible. A telephone conference will be held on June 24, 2022, at 9:00 AM or as soon as can be heard thereafter to determine whether these repairs or replacements have occurred, or if good cause is shown for an extension of time allowing Respondent to complete the requirements of this order, or if Claimant will be given authority to repair or replace these items with expenses paid after the fact by Respondent.

⁵ ALJ Order (Apr. 21, 2022) at 5-6.

2. As it pertains to any apparatuses to be installed on a pick-up truck purchased in the future by Claimant, if Claimant still seeks to buy a truck any time within one year from the date of this order, then by June 24, 2022, Claimant and Respondent should present exhibits demonstrating the average cost for the purchase of and installation of apparatuses needed to make a generic pick-up truck handicap accessible. Whereupon, unless there is an agreement of the parties otherwise, all should expect a court order requiring a set amount to be paid by Respondent to Claimant's attorney's trust account for the payment of, and only to pay for, such a handicap apparatus and installment of the apparatus, as selected by the Claimant upon the purchase of a pick-up truck, which will be paid for by Claimant. This trust fund and the opportunity to use its funds remains for within one year from the date of this order.
3. Claimant is ordered to inform Respondent by email of the use of this trust fund money within 72 hours of any payment out of the trust fund. Information about amounts paid, to whom, and an itemization of the equipment purchased is to also be provided to Respondent, and supported with documentation by the providers of such items and installation.
4. If the purchase of a pick-up truck is anticipated by the Claimant, and in the event it is believed the amount held in trust proves insufficient to cover the cost and installation of handicap modifications, the Court will not consider approving more funds absent a preliminary hearing order or an agreed order approving more funds being filed. If said another way, if Claimant spends this trust money on a handicap apparatus which is fitted on his newly purchased pick-up truck, and comes up short on money, don't bother asking the Court to approve more money after the trust money has been spent. Requests for more money must be made and approved prior to the release of trust fund money in order for such requests to be considered.
5. If Claimant purchases a truck and uses the trust fund money to pay for the purchase and installation of handicap modifications, and there is money remaining in the trust fund, said funds will be paid back to the Respondent within 30 days of the original release of funds to pay for the handicap modifications.
6. Medical expenses/bills as testified and reflected in Claimant's admitted exhibits are approved as authorized, whether they be for burn care or for other work related injuries. These are to be paid by the Respondent, subject to the fee schedule, if not already paid. If the HICFA billing format becomes an obstacle to payment, it shall be the Respondent's duty to make a good faith effort to obtain such compliance with providers. Respondent should be prepared to advise the court on payment compliance and/or their good faith effort at the June 24, 2022 hearing.

7. Medical mileage claims as testified, itemized, and reflected in Claimant's exhibits are approved as authorized and to be paid, if not already paid, at the legal rate.
8. All reimbursements for costs incurred in the pursuit of agricultural activities as reflected in Claimant's exhibits are considered but denied.
9. Costs associated with ongoing maintenance of the current exercise equipment, including but not limited to internet services, may be discontinued after the current internet billing is paid so as to allow Claimant to obtain internet on his own without interruption of service.⁶

PRINCIPLES OF LAW AND ANALYSIS

1. The claimant's left leg burn and associated medical treatment is the direct and natural result of his original work-related injury.

Under K.S.A. 44-501b(b), an employer is liable to pay compensation to an employee who sustains personal injury by accident arising out of and in the course of employment. Under K.S.A. 44-501b(c) and K.S.A. 44-508(h), the worker carries the burden of proof by a preponderance of the credible evidence.

"[I]njured employees are . . . entitled to compensation for any secondary injuries that are the natural and probable result of the primary injury: this is known as the secondary-injury rule."⁷ Additionally, "all injuries, including secondary injuries, must be caused primarily by the work accident."⁸

The claimant sustained a leg burn while welding. The respondent argues the claimant's intervening welding injury was not the natural and probable consequence of the original injury.

The claimant testified his leg paralysis made it difficult to know he had a "spark" on his skin. The ALJ reasoned the claimant would not have sustained a serious leg burn and infection if he had normal sensation in his legs and accompanying defensive reflexes. The explanation set forth by the claimant and the ALJ's rationale are reasonable. The undersigned concludes the claimant's leg burn was the direct and natural result of his original injury and the leg burn was caused primarily by the original work accident.

⁶ ALJ Order (Apr. 21, 2022) at 6-8.

⁷ *Buchanan v. JM Staffing, LLC*, 52 Kan. App. 2d 943, 950, 379 P.3d 428 (2016).

⁸ *Id.* at 951.

2. The Board lacks jurisdiction to entertain the respondent's arguments concerning an award of medical treatment.

The respondent argues the claimant does not need three wheelchairs and two vehicles as reasonably necessary medical treatment for his compensable injuries. The respondent argues the ALJ exceeded his jurisdiction in ordering the respondent to deposit monies in the claimant's attorney's trust account to be used to pay for handicap accessible accommodations and obtain HICFA billing format for any bill submitted by the claimant.

K.S.A. 44-534a(a)(2) states, in part:

Upon a preliminary finding that the injury to the employee is compensable and in accordance with the facts presented at such preliminary hearing, the administrative law judge may make a preliminary award of medical compensation and temporary total disability compensation to be in effect pending the conclusion of a full hearing on the claim, A finding with regard to a disputed issue of whether the employee suffered an accident, repetitive trauma or resulting injury, whether the injury arose out of and in the course of the employee's employment, whether notice is given, or whether certain defenses apply, shall be considered jurisdictional, and subject to review by the board.

K.S.A. 44-551(2)(A) states, in part:

If an administrative law judge has entered a preliminary award under K.S.A. 44-534a, and amendments thereto, a review by the board shall not be conducted under this section unless it is alleged that the administrative law judge exceeded the administrative law judge's jurisdiction in granting or denying the relief requested at the preliminary hearing. Such an appeal from a preliminary award may be heard and decided by a single member of the board. . . .

Following a preliminary order, the Board can review allegations a judge exceeded his or her jurisdiction, including whether: (1) the employee sustained an accident, repetitive trauma or resulting injury; (2) the injury arose out of and in the course of employment; (3) notice; and (4) whether certain defenses regarding compensability apply.⁹ An order for medical treatment is not appealable from a preliminary hearing decision under K.S.A. 44-534a.¹⁰ Wheelchairs and modifications to a vehicle concern medical treatment, so this Order is not appealable from the preliminary ruling. This is not a case of an ALJ exceeding his or her jurisdiction by ordering something that is not medical treatment.¹¹

⁹ See *Carpenter v. Nat'l Filter Serv.*, 26 Kan. App. 2d 672, 675, 994 P.2d 641 (1999).

¹⁰ See *Timmer v. ResCare, Inc.*, No. CS-00-0436-779, 2019 WL 3705910 (Kan. WCAB July 23, 2019).

¹¹ See *Hedrick v. U.S.D. No. 259*, 23 Kan. App. 2d 783, 786, 935 P.2d 1083 (1997).

With respect to the trust account money to address handicap modification for a truck the claimant might purchase within one year of the ALJ's Order, this is an order for medical treatment. While this particular Order is unusual, it is still an order for medical treatment, which is not appealable from a preliminary hearing.

With respect to the billing format of the claimant's medical expenses, the ALJ is essentially instructing the respondent to get the proper format needed to pay the bills. While the undersigned Board Member agrees it is typically a claimant who would submit a bill to the respondent for payment, this is not an appealable issue following a preliminary ruling.

WHEREFORE, the Board affirms the Order dated April 21, 2022.

IT IS SO ORDERED.

Dated this _____ day of July, 2022.

JOHN F. CARPINELLI
BOARD MEMBER

c: (via OSCAR)
James Biggs
John Rathmel
Hon. Steven Roth