

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

MOHAMED HASSAN
Claimant

v.

CNH INDUSTRIAL AMERICA
Respondent

AP-00-0467-703
CS-00-0458-489

and

INDEMNITY INSURANCE CO.
Insurance Carrier

ORDER

Respondent requested review of the May 13, 2022, preliminary Order issued by Administrative Law Judge (ALJ) Thomas Klein.

APPEARANCES

R. Todd King appeared for Claimant. Karl L. Wenger appeared for Respondent and Insurance Carrier.

RECORD AND STIPULATIONS

The Appeals Board adopted the same stipulations and considered the same record as the ALJ, consisting of the transcript of Preliminary Hearing, held May 10, 2022, including Claimant's Exhibits 1-7 and Respondent's Exhibits 1-2; the narrative report, dated June 24, 2021, authored by Dr. Hufford concerning his Court-ordered independent medical examination; and the pleadings and orders contained in the administrative file. The Board also reviewed the brief filed by Respondent and Insurance Carrier.

ISSUE

Did Claimant sustain personal injury to his low back from repetitive trauma arising out of and in the course of his employment with Respondent?

FINDINGS OF FACT

Claimant works on Respondent's assembly line. Claimant has worked for Respondent since September 9, 2018. Claimant alleges he injured his low back while pushing a heavy cart at work for two to three weeks prior to May 10, 2021. Claimant did not experience an acute onset of symptoms of an injury by accident, but a gradual onset and worsening of low back symptoms while working.

Before working for Respondent, Claimant worked for Johnson Controls, where he sustained a right knee injury on August 8, 2018. Claimant denied injuring his back in the accident. Claimant received medical treatment for the right knee only. Claimant denied limping or having an altered gait on account of the right knee injury.

On February 7, 2020, Claimant sustained a left knee injury while working for Respondent. Claimant denied low back pain at the time of the accident. Claimant denied limping or having an altered gait on account of the left knee injury. Claimant received treatment from Dr. Estivo from February 27 through May 11, 2020, including an arthroscopic procedure. Dr. Estivo stated Claimant only reported left knee symptoms. Dr. Estivo also noted Claimant reported thoracic and lumbar pain after falling out of a car and after sitting, but he did not believe those symptoms were related to the February 7 injury. Claimant also received treatment from Dr. Gadalla for the left knee.

Dr. Murati apparently evaluated Claimant on June 29, 2020, and stated Claimant had occasional low back pain. Dr. Murati evaluated Claimant again on April 13, 2021, and noted Claimant reported constant low back pain with pain and numbness to the bottom of the left foot. Dr. Murati also evaluated the left knee, left shoulder and neck. Among other diagnoses, Dr. Murati diagnosed low back pain with radiculopathy, which he related to the February 7, 2020, accident.

After noticing the low back symptoms at work on May 10, 2021, Claimant told his supervisor and was sent to the company nurse. Claimant also received treatment for his low back at Via Christi. Claimant underwent an MRI scan of the low back, and was told to see a specialist.

Claimant subsequently had a conversation with Respondent's representatives about his ability to work. According to Claimant, he was sent home by Respondent due to his low back and left knee. Claimant was paid disability benefits by Respondent from May 10, 2021 through February 25, 2022. Claimant did not return to work after February 25, 2022. Claimant did not resign his employment, and did not know if he was terminated.

Claimant underwent a Court-ordered independent medical examination of his left knee and low back by Dr. Hufford on June 24, 2021. Claimant reported an acute onset of low back pain while pushing a cart on May 11, 2021, with left-sided radicular symptoms.

Dr. Hufford interpreted an MRI scan as showing an eccentric disc herniation at L4-5. Dr. Hufford diagnosed a disc herniation at L4-5, which was caused by work activities on May 11, 2021, and not the result of an altered gait or from the prior knee injuries. Dr. Hufford recommended a referral to a spine surgeon.

Dr. Hufford was deposed on January 6, 2022. Dr. Hufford was provided a copy of Dr. Murati's April 13, 2021 report, which Dr. Hufford did not recall having at the time of his examination. Dr. Hufford acknowledged it was possible Claimant had a disc herniation at the time of Dr. Murati's examination based on the symptoms and examination findings contained in Dr. Murati's report. Dr. Hufford, however, did not defer to Dr. Murati's history of symptoms or examination findings over his own, and concluded his prior findings and conclusions were unchanged. Dr. Hufford also stated Claimant's condition more likely resulted from an acute event, rather than repetitive trauma.

Claimant also underwent an MRI scan of the low back while he was in Egypt on July 30, 2021. The MRI scan was interpreted as showing a diffuse posterior disc bulge at L3-4, and a recent annular tear with a protrusion indenting the thecal sac at L4-5. Claimant received no further testing or treatment for the low back in Egypt.

Claimant's low back remained symptomatic, and Claimant sought additional medical treatment. Following the preliminary hearing of May 10, 2022, ALJ Klein issued the preliminary Order dated May 13, 2022. ALJ Klein reviewed Claimant's history of his injuries, and found Dr. Hufford did not change his prior opinions on causation. Dr. Weimer was designated the authorized treating physician, and Respondent was directed not to solicit causation opinions from Dr. Weimer until Claimant's treatment ended. These review proceedings follow.

PRINCIPLES OF LAW AND ANALYSIS

Respondent argues the preliminary Order is erroneous because work activities were not the prevailing factor causing Claimant's low back condition or need for treatment. In the alternative, Respondent argues Claimant's preexisting condition was merely aggravated by work activities performed in April and May 2021.

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.¹ The provisions of the Workers Compensation Act shall be applied impartially to all parties.² The burden of proof shall be on the employee to establish the right to an

¹ See K.S.A. 44-501b(a).

² See *id.*

award of compensation, and to prove the various conditions on which the right to compensation depends.³

An injury by repetitive trauma shall be compensable only if employment exposes the worker to an increased risk of injury, the employment is the prevailing factor in causing the repetitive trauma, and the repetitive trauma is the prevailing factor causing the medical condition.⁴ "Prevailing factor" is defined as the primary factor compared to any other factor, based on consideration of all relevant evidence.⁵ Moreover, the repetitive nature of the injury must be demonstrated by diagnostic or clinical tests.⁶

In this case, it is undisputed Claimant was pushing a heavy cart as part of his work duties in April and May 2021. The primary issue is whether those work activities were the primary factor, compared to all other factors, causing the disc herniation at L4-5 and need for additional medical treatment. Claimant testified he did not experience low back pain on account of the prior knee injuries, and he denied telling Dr. Murati he had constant low back pain. Claimant's testimony is consistent with the history he gave to Dr. Hufford.

Dr. Murati thought Claimant suffered low back pain with radiculopathy on account of the February 2020 left knee injury. The record does not indicate Dr. Murati saw Claimant after May 10, 2021. Dr. Estivo did not believe Claimant sustained a low back injury due to the prior knee injuries, and states Claimant did not report low back symptoms until subsequent events occurred in 2020. The record does not indicate Dr. Estivo saw Claimant after May 10, 2021. The only physician who saw Claimant after May 10, 2021, and provided a causation opinion was Dr. Hufford, who thought Claimant sustained a disc herniation at L4-5 necessitating additional medical treatment on account of work activities on May 10, 2021. Dr. Hufford did not change his opinions when questioned during his deposition.

The undersigned agrees with ALJ Klein, and concludes Claimant met his burden of proving by a greater weight of the credible evidence the disc herniation at L4-5 and need for further medical treatment were caused primarily by work activities performed for Respondent on May 10, 2021. Claimant sustained a low back injury by repetitive trauma arising out of and in the course of his employment with Respondent on or about May 10, 2021. Accordingly, the preliminary Order for medical treatment should be affirmed.

³ See K.S.A. 44-501b(c).

⁴ See K.S.A. 44-508(f)(2).

⁵ See K.S.A. 44-508(g).

⁶ See K.S.A. 44-508(e).

DECISION

WHEREFORE, it is the finding, decision and order of the undersigned Board Member the preliminary Order issued by ALJ Thomas Klein, dated May 13, 2022, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of July, 2022.

WILLIAM G. BELDEN
APPEALS BOARD MEMBER

c: Via OSCAR
R. Todd King
Karl L. Wenger
Hon. Thomas Klein