

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

ALLEN ATER)	
Claimant)	
V.)	
)	AP-00-0472-104
LANG DIESEL, INC.)	CS-00-0463-699
Respondent)	
AND)	
)	
FEDERATED MUTUAL INS. CO.)	
Insurance Carrier)	

ORDER

Respondent appeals the November 3, 2022, preliminary hearing Order entered by Administrative Law Judge (ALJ) Bruce E. Moore.

APPEARANCES

Jeff Cooper appeared for Claimant. Dallas Rakestraw 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 Evidentiary Deposition of David W. Hufford, M.D., taken August 29, 2022, with exhibits attached, the briefs filed by the parties and the documents of record filed with the Division.

ISSUE

Does the Board have jurisdiction to consider and decide this appeal?

FINDINGS OF FACT

On January 24, 2022, Claimant fell injuring his right knee.

After his injury, Claimant had an MRI of his right knee which showed a complex tear of the lateral meniscus and significant patellofemoral arthritis.

On May 20, 2022, Claimant was examined by Dr. David Hufford at the request of the Court. Dr. Hufford opined Claimant incurred a direct contusion to the right knee when he fell on January 24, 2022, and the prevailing factor for the complex tear of the lateral meniscus was the work accident of January 24, 2022. Dr. Hufford opined the injury did not cause Claimant's patellofemoral arthritis and if not for the injury Claimant would not have the tear and aggravated the arthritis, but were it not for the degenerative changes, Claimant would not be in need of a right knee replacement.

Dr. Hufford testified the total knee replacement is the best treatment option for Claimant at this point:

Q. So, in other words, just fixing the problems caused specifically by the injury would not give him a functional knee, would it, Doctor?

A. No, I don't think that just going in and trimming the lateral meniscus would be beneficial. The surgeons don't go into a joint that has significant arthritis. So that precluded that particular intervention. He saw Dr. Prohaska about that and that was his opinion, also, from my recollection of the records. I put a statement in this report that I think is the most significant sentence in my entire report. That is in Paragraph 3 regarding additional medical treatment. I stated "Were it not for the occupational injury he would not have a lateral meniscal tear and aggravation of patellofemoral arthritis, but were it not for the underlying degenerative changes a total knee replacement would not be warranted at the present time." By that I mean that were it not for the work injury I think he would have been totally functional and not require a knee replacement for at least the present time, potentially three, five, seven, ten years, who knows? But since he fell and tore the meniscus his knee is nonfunctional, as you stated, and to me the appropriate restorative treatment is in replacement. And I understand all of the issues involving arthritis and the knee replacement and that is why I said that I felt that it would end up being adjudicated and it seems that is the case. You were proven correct.¹

The ALJ granted Claimant's request for authorization of a total knee replacement.

It is not disputed Claimant suffered a torn meniscus and it is a compensable injury.

PRINCIPLES OF LAW AND ANALYSIS

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

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

¹ Hufford Depo. at 31-32.

certain defenses apply, shall be considered jurisdictional, and subject to review by the board.

The term “certain defenses” refers to defenses disputing the compensability of the injury under the Workers Compensation Act.²

K.S.A. 44-508(f)(2)(B) states:

An injury by accident shall be deemed to arise out of employment only if:

- (i) There is a causal connection between the conditions under which the work is required to be performed and the resulting accident; and
- (ii) the accident is the prevailing factor causing the injury, medical condition, and resulting disability or impairment.

According to the statute, prevailing factor only applies to the injury, the medical condition or impairment. There is nothing in the statute referring to the type of medical treatment. Possibly, an argument could be made that a medical condition is medical treatment. If a statute is plain and unambiguous it should be applied as written.³ Medical condition is the resulting disease, illness or injury caused by the work accident. Medical treatment is the management and care of a patient to combat the medical condition.⁴

This appeal is simply an attempt to challenge what medical treatment should be provided Claimant for his compensable work injury by attempting to graft on the prevailing factor standard what medical treatment is provided for a compensable injury. The prevailing factor standard does not apply to what medical treatment should be provided for a compensable work injury. K.S.A. 44-510h(a) imposes upon Respondent/insurance carrier the obligation to provide medical treatment”as may be necessary to cure and relieve the effects of the accidental injury.”⁵

A challenge to what medical treatment is being provided by an authorized doctor is a not an issue in preliminary hearing order over which the Board has jurisdiction.

The appeal is dismissed.

² *Carpenter v. National Filter Service*, 26 Kan. App. 2d 672, 994 P.2d 641 (1999).

³ *See Bergstrom v. Spears Mfg. Co.*, 289 Kan. 605, 607, 214 P.3d 676 (2009).

⁴ *See Segen's Medical Dictionary 2012.*

⁵ *See K.S.A. 44-510h(a)*

DECISION

WHEREFORE, it is the finding, decision and order of the undersigned Board Member that the appeal of the Order of ALJ Bruce E. Moore, dated November 3, 2022, is dismissed due to lack of jurisdiction.

IT IS SO ORDERED.

Dated this _____ day of February, 2023.

REBECCA SANDERS
BOARD MEMBER

c: Via OSCAR

Jeff Cooper, Attorney for Claimant
Dallas Rakestraw, Attorney for Respondent and its Insurance Carrier
Hon. Bruce E. Moore, Administrative Law Judge