

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

RAEANN MARTIN (ROSE))	
Claimant)	
V.)	
)	AP-00-0472-983
FARM HOUSE CAFE, LLC)	CS-00-0159-549
Uninsured Respondent)	
AND)	
)	
KANSAS WORKERS COMPENSATION FUND)	
Insurance Carrier)	

ORDER

Respondent and the Kansas Workers Compensation Fund (Fund) request review of the December 29, 2022, Order issued by Administrative Law Judge (ALJ) Steven M. Roth.

APPEARANCES

William Phalen appeared for Claimant. Ronald Laskowski appeared for Respondent. David Bideau appeared for the Fund.

RECORD AND STIPULATIONS

The Board adopted the same stipulations and considered the same record as the ALJ, consisting of the documents of record filed with the Division and the following:

1. Preliminary Hearing Transcript, taken 11/03/2022;
2. Preliminary Hearing Deposition Transcript, taken 12/5/22, with exhibits.

ISSUES

1. Was Claimant's January 20, 2018, work accident the prevailing factor causing her injury and medical condition?
2. Did the ALJ exceed his jurisdiction by ordering payment of certain medical treatment as authorized medical?

FINDINGS OF FACT

Claimant worked for Respondent as a waitress. On January 20, 2018, Claimant slipped and fell backwards. She landed on her tailbone and back. Her neck hit a pallet. Whether Claimant was knocked unconscious is unclear, but she needed assistance to get up. Claimant testified she requested medical treatment from Respondent, but was encouraged by Respondent's daughters not to report her injuries as work-related.

Approximately three hours after she fell, Claimant sought treatment at the Via Christi Hospital Emergency Room (Via Christi ER) in Pittsburg. Via Christi ER records state Claimant fell off her porch, hitting her head and right shoulder. Claimant reported pain in her right shoulder and low back with pain radiating to the right buttock and thigh. She felt diffuse soreness and achy all over. The ER report noted Claimant reported she struck her head, but denied loss of consciousness, headache, nausea or neck pain.

Claimant went to the Via Christi ER on January 30, 2018. She reported passing out in the shower and waking up on the shower floor. She suffered a bruise to her left forehead, a black eye, headache and reopened an abrasion on her left knee, suffered in a previous fall.

On February 8, 2018, Claimant's attorney filed an E-1, Application for Hearing. The E-1 states Claimant alleged injuries to her back, neck, head, brain, hips and all other affected body parts as a result on an injury on January 20, 2018, when she slipped and fell on ice in front of the drink stand.

Claimant was seen at the Community Health Center of Southeast Kansas, at her own expense, on January 24, 2018 and February 23, 2018 due to blacking out, dizziness, and falling. Claimant was prescribed medication.

Respondent gave Claimant cash to pay for her time off work until February 8, 2018, when he informed Claimant he was done giving her cash.

Claimant retained counsel, who referred her to Rodney Bishop, M.D. for an evaluation on May 14, 2018. Dr. Bishop diagnosed a tailbone contusion, lumbar pain radiating into the left buttock and a head injury, with episodes of lost consciousness and headaches. He opined Claimant's January 20, 2018, slip and fall injury was the prevailing factor causing her medical condition and need for treatment. Dr. Bishop recommended treatment, which included referrals to an orthopedic surgeon for the back and a neurologist for the head injury.

A preliminary hearing was conducted on July 18, 2018. Claimant sought medical treatment for injuries to her neck, back, left hip, shoulder, headaches and loss of consciousness. The ALJ found the claim compensable and appointed Brian Ipsen, M.D.,

as the authorized treating physician for Claimant's physical injuries and Eva Henry, M.D., for her neurologic complaints. The Fund was implied and following a Motion Hearing on September 5, 2018, and became a party due to Respondent's inability to pay.

Dr. Ipsen began treating Claimant on September 10, 2018. In addition to other complaints, Claimant reported she had been dealing with neck and shoulder pain along with numbness/tingling in her fingers/hands. Dr. Ipsen noted muscle spasms and loss of range of motion in the cervical and lumbar spine. He ordered physical therapy, MRI's of the brain, cervical, thoracic and lumbar spine and EMG's of her arms and legs.

On October 8, 2018, Dr. Ipsen noted the MRI's and EMG's were not performed and physical therapy had not been started because written authorization had not been obtained. Upon examination, Dr. Ipsen found muscle spasms and loss of range of motion in the cervical and lumbar spine. He reordered the MRI's, referred Claimant to Dr. Kargas for EMG's of the bilateral arms and legs, and reordered physical therapy.

Claimant's last appointment with Dr. Ipsen was on November 12, 2018. Dr. Ipsen noted Claimant had still not started physical therapy, but the MRI's had finally been provided. Muscle spasms and loss of range of motion in her cervical and lumbar spine continued to be present. Regarding Claimant's cervical complaints, Dr. Ipsen diagnosed stenosis, spondylosis with myelopathy at C3-4, C4-5 and C5-6, radiculopathy and cervical strain. He recommended a discectomy and fusion at C3-4, C5 corpectomy and reconstruction at C3-6. Regarding Claimant's lumbar complaints, Dr. Ipsen diagnosed Claimant with a herniated disc at L4-5, radiculopathy, lumbar strain and degenerative disc disease.

Claimant was evaluated by Eva Henry, M.D., on September 21 and December 27, 2018. On September 21, Dr. Henry noted Claimant had cervical/upper back paraspinal muscle spasms causing reduced range of motion. She diagnosed post head injury with possible mild traumatic brain injury/concussion. Dr. Henry ordered a brain MRI, a repeat EEG and advised her to continue her seizure medications (gabapentin and keppra). She noted Claimant had not been upfront about a few things. Claimant denied certain medication use prior to her injury; she did not disclose her family history of seizures or her pre-injury medical problems; did not reveal a pre-injury motor vehicle accident with head injury; and, did not reveal her history of gastric bypass without nutritional monitoring.

Claimant returned to see Dr. Henry on December 21. Dr. Henry noted difficulty getting the brain MRI and EEG performed as ordered. The MRI was provided on October 31, but the EEG was not provided. Dr. Henry reviewed the MRI results with Claimant. She stated Claimant's spells were not due to epileptic events. She explained "upper cervical spinal cord compression can cause sudden unexpected paralysis and based on all her

spine MRI the cervical cord pathology can account for her symptoms.”¹ She agreed with Dr. Ipsen’s recommendation for cervical spine surgery, but deferred the issue of causation to him. Dr. Henry did not believe lumbar surgery was warranted.

Dr. Bishop performed a second evaluation on April 30, 2019. He diagnosed Claimant with symptomatic cervical spine stenosis and lumbar radiculitis due to a herniated disc. He reiterated his opinion the prevailing factor for Claimant’s medical condition and need for treatment was her January 18, 2018, slip and fall.

A preliminary hearing was held on May 18, 2019, resulting in a court-ordered IME with Dr. Theodore Koreckij. The Fund refused to pay Dr. Koreckij’s fee because it did not follow the medical fee schedule. A subsequent order was issued authorizing Dr. Do to perform the IME.

Claimant saw Pat Do, M.D., a board certified orthopedic surgeon, for a court-ordered independent medical evaluation (IME) on October 1, 2019. He diagnosed subjective seizure disorder and headaches, cervical and lumbar strains, preexisting central and neural foraminal cervical stenosis and preexisting lumbar stenosis. Dr. Do opined the prevailing factor for the cervical and lumbar strains was the slip and fall at work. The prevailing factor for the remaining diagnoses was her preexisting conditions. He stated the need for epidurals or surgery, as recommended by Dr. Ipsen, was due to her preexisting condition.

For the cervical and lumbar strains, Dr. Do recommended additional treatment to include anti-inflammatories, muscle relaxants, physical therapy, trigger point injections and a lower lumbar back brace. He opined the need for permanent work restrictions were due to her preexisting conditions.

Dr. Do testified on August 29, 2022—more than four years after Claimant’s injury and almost three years after he evaluated Claimant. He testified:

- the degree of degeneration in Claimant’s lumbar spine was probably more advanced than one would expect for someone her age;
- he reviewed a cervical spine CT scan report, taken January 30, 2018;
- he did not find it difficult to formulate a prevailing factor opinion in this case due to the advanced imaging taken around the time of the injury, revealing long-standing osteophytes, calcifications and disc space narrowing;
- he has not reviewed any testing or treatment records since he performed Claimant’s IME;

¹ Henry Medical Report (Dec. 27, 2018).

- foramina stenosis can develop immediately after a traumatic event or over time;
- he does not perform surgery to the spine.

On December 12, 2019, while waiting for additional treatment, Claimant returned to work, without restrictions, as a bartender at the Kansas Crossings Casino (Casino) in Pittsburg. Claimant described her job as a bartender as very physical. She emptied trash, changed kegs, stocked beer and liquor, moved frozen food and carried ice buckets.

By agreement of the parties, Michael Hearndon, M.D., became the court-ordered authorized treating physician on June 3, 2020, eight months after Dr. Do's IME. Dr. Hearndon saw Claimant for the first time on June 30, 2020. She reported constant neck and bilateral scapular pain for the past two years. Dr. Hearndon prescribed physical therapy, medication and ordered a cervical interlaminar epidural steroid injection. Claimant returned to Dr. Hearndon on October 20, 2020. She reported continued neck and arm pain, and little relief from the physical therapy. Dr. Hearndon ordered a cervical MRI and scheduled an interlaminar epidural steroid injection at C7-T1. Respondent did not authorize the injections.

A preliminary hearing was held on March 29, 2021. Claimant was seeking the treatment recommended by Dr. Hearndon. An order was issued for an IME with Dr. Santos. This IME was not scheduled by the Fund due to Dr. Santos refusing to follow the medical fee schedule. A second preliminary hearing was held on August 26, 2021. An IME was ordered with Dr. Michael Azzam to replace Dr. Santos. Again, the IME was not scheduled because Dr. Azzam would not follow the medical fee schedule. The ALJ issued a third order replacing Dr. Azzam with Dr. Thomas Frimpong.

On November 26, 2021, while working at the Casino, Claimant's right heel got caught in a floor drain as she was turning, causing her to fall backwards. Claimant tried to catch herself with her left arm, but was unable to do so. She landed on her right side and hit her head on the floor. Claimant injured her head, neck, shoulders, right hip, knee and ankle. Claimant was taken to the Via Christi ER, where she was given a tramadol injection and released with the instructions to follow-up with her family physician, if needed. Claimant was off work for a couple of weeks following her injury. During this time, she sought treatment, at her own expense, at the Community Clinic, who declined to treat her because her injury was work-related.

Although Claimant did not feel better, she returned to work at the Casino. The record is unclear if Claimant returned to work with or without restrictions. Upon returning to work, Claimant requested treatment from her supervisor. No treatment was provided. Claimant attributed injuries to her head (headaches), shoulders, right knee and hip to the November 26 slip and fall injury. At other times, Claimant also attributed neck and right arm and ankle injuries as a result of the fall.

Claimant saw Dr. Frimpong for the court-ordered IME on December 14, 2021. Claimant did not report the November 26 slip and fall incident at the Casino to Dr. Frimpong. Included in the medical records provided to Dr. Frimpong were the head, cervical, thoracic and lumbar MRI's; CT scans of the head, cervical and lumbar spine; and, EMG/NCS studies of the upper and lower upper extremities. All of these diagnostic studies were performed on or before November 1, 2018. Dr. Frimpong diagnosed neck and lower back strain and pain, cervical spondylosis myelopathy, high grade stenosis with myelomalacia and radiculopathy, and lumbar degenerative disease, stenosis and radiculopathy. Dr. Frimpong opined the prevailing factor for the cervical spondylosis myelopathy and the need for treatment, was the slip and fall at work with Respondent. He stated, "Her fall or awkward landing on the ground on Jan. 20, 2018, led to dynamic mechanical injury and dysfunction of the spinal cord." Dr. Frimpong opined Claimant would benefit from surgical intervention.

Dr. Frimpong deferred any questions regarding Claimant's reports of headaches and seizures to a neurologist. He recommended conservative treatment and surgical consultation for Claimant's lumbar complaints. Dr. Frimpong's opinions regarding whether the slip and fall incident was the prevailing factor for the medical condition and need for treatment for Claimant's lumbar spine were unclear.

At the request of her attorney, Claimant was evaluated by Pedro A. Murati, M.D., on April 1, 2022, regarding the November 26, 2021, fall at the Casino. Dr. Murati diagnosed injuries to the shoulders, cervical, thoracic and lumbar spine, right hip and head. He opined his diagnoses were the direct result of the Casino injury. Dr. Murati recommended conservative treatment and opined the prevailing factor for Claimant's medical condition and need for treatment was the Casino injury.

Respondent and the Fund continued to deny treatment. A preliminary hearing was held on April 7, 2022, to address Claimant's request for treatment and other remedies.

On April 13, 2022, Claimant had an incident at the Casino. Claimant delivered food to a table and was returning to the bar area. Her right shoe caught on the floor, stopping her and causing a whiplash motion of her head and neck. Claimant experienced vision changes, slurred speech, shortness of breath, intense neck pain and her right arm drawing in. She felt "fuzzy." Her supervisor sent her outside for some fresh air. The head of security, the food and beverage director and someone from HR checked on her. Claimant feared she was having a stroke. The head of security called an ambulance, which transported Claimant to the Via Christi ER.

Claimant was kept at the ER overnight. A full-body MRI was performed. Via Christi ER personnel consulted with a physician from KU Medical. Claimant was placed in a collar, laid flat and was informed she was being transferred to Mercy Hospital in Joplin, Missouri for emergency spinal cord surgery by Dr. Ipsen.

Surgery was performed by Dr. Ipsen on April 16, 2022. The procedure performed by Dr. Ipsen included:

- C5 corpectomy with decompression of the C4-5 and C5-6 interspaces;
- C3-4, C4-5, C5-6, C6-7 anterior cervical fusion;
- C5 corpectomy cage instrumentation and C3-4 and C6-7 interbody cage without integral fixation;
- C3-7 anterior plate instrumentation; and
- autograft bone morselized for spine surgery.

At her attorney's request, Claimant was evaluated by Harold Hess, M.D., a board-certified neurological surgeon, who limits his practice to spinal surgery. Dr. Hess was provided images of the 2018 lumbar CT scan and the 2018 cervical, thoracic and lumbar MRI's. Noting Claimant reported no history of neck or back pain prior to the 2018 slip and fall, Dr. Hess opined, "She has underlying cervical spondylosis, preexisted her injury, but the disc herniations and cervical spinal cord contusion are a direct result of her work injury of 01/20/18." Regarding the lumbar spine, Dr. Hess opined, "The spondylosis would preexist the work injury, but it is my opinion, within a reasonable degree of medical certainty, that the additional disc bulges and the L4-5 annular tear were directly caused by her work injury of 01/20/2018." He stated:

In summary, it is my opinion, within a reasonable degree of medical certainty, that the work injury of 01/20/2018 is the prevailing factor in causing this patient's current medical conditions and her current symptoms. The subsequent injuries in October 2021 and on 04/12/2022 exacerbated the injuries of 01/20/2018, as her neck pain and low back pain never resolved following the injury of 01/20/2018 prior to the other two injuries.²

Dr. Hess recommended additional treatment for the cervical and lumbar spines.

Claimant hasn't worked since the second Casino incident on April 13, 2022. Claimant testified the November 26, 2021, Casino incident did not increase her symptoms or worsen her condition. She testified: "My condition from January of '18 has always been the prevailing issue with me. It's, you know, just gradually gotten worse because I have not received treatment."³

The ALJ found Claimant was entitled to medical care for work-related injuries suffered in the January 20, 2018, slip and fall injury with Respondent; the November 4, 2022, order remains in effect as to the designation of an authorized treating physician; Dr.

² Hess IME Report (filed Sept.30, 2022) at 3.

³ Claimant's Depo. (July 12, 2022) at 33.

Ipsen was the authorized treating physician to provide all reasonable and medically necessary treatment to Claimant's neck; and, costs for this treatment was assessed against Respondent and the Fund.

The ALJ further found medical costs incurred by Claimant's cervical spine surgery in April 2022 and related costs thereafter were authorized medical treatment; were the result of Claimant's January 20, 2018, slip and fall injury; these costs were assessed against Respondent and the Fund and ordered paid forthwith; unauthorized medical shall be reimbursed to Claimant's attorney by Respondent and the Fund; and, medical mileage was ordered paid by Respondent and the Fund.

Respondent and the Fund incorporate by reference and adopt each other's arguments and authorities. They argue the ALJ's Order, finding Claimant's neck injury compensable and ordering them to pay for emergency surgery, should be reversed. In support of their compensability argument, Respondent and the Fund argue Claimant is not credible; she did not report neck complaints to medical providers until her appointment with Dr. Ipsen on September 10, 2018—almost nine months post-injury; Claimant did not report her first Casino injury (November 26, 2021) to Dr. Frimpong, a court-ordered evaluator, when she saw him on December 14, 2021; Dr. Frimpong diagnosed myelopathy, which had not been previously diagnosed; Claimant returned to work as a bartender for the Casino from December, 2019 through April 13, 2022, after Dr. Ipsen recommended surgery in the fall of 2018; Claimant failed to prove the prevailing factor for her neck surgery was the January 20, 2018, slip and fall.

In support of their argument the ALJ erred in ordering the Fund to pay for the emergency surgery and related treatment, Respondent and the Fund argue Dr. Hearndon was the court-ordered authorized treating physician; the surgery performed by Dr. Ipsen was unauthorized medical treatment and subject to the \$500 unauthorized medical cap; the Kansas Workers Compensation Act (Act) does not allow the payment of medical bills, as authorized medical, in an emergency situation; Respondent was unaware Claimant suffered two injuries at the Casino and was seeking and had received emergency room medical treatment as a result of those injuries; and, requiring Respondent and the Workers Compensation Fund to pay for an emergency surgery four years after the fact, occurring in close proximity to a violent accident and injury at a subsequent employer, is not supported by the evidence.

PRINCIPLES OF LAW AND ANALYSIS

1. The January 20, 2018, accident is the prevailing factor in causing Claimant's medical conditions and need for medical treatment.

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.⁴ 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.⁵ Establishing prevailing factor is based on all relevant evidence and is not dependent on medical opinions.⁶ An injury is not compensable solely because it aggravates, accelerates or exacerbates a preexisting condition or renders a preexisting condition symptomatic.⁷

The undersigned Board Member affirms the ALJ's decision. The initial treating physicians, Drs. Ipsen and Henry, the first and second court-ordered evaluators, Drs. Do and Frimpong, and Claimant's retained evaluators, Drs. Bishop and Hess, all recommended cervical spine surgery. Dr. Henry did not have a causation opinion. Dr. Do opined Claimant's January 20, 2018, slip and fall injury was not the prevailing factor causing her medical condition and need for treatment. All of the remaining physicians opined Claimant's January 20, 2018 slip and fall was the prevailing factor causing Claimant's injuries and medical condition.

Dr. Do's prevailing factor opinion stands alone. Dr. Do does not perform spine surgery. The record is unclear if he provides conservative spine treatment. The record is also unclear if Dr. Do actually viewed the initial diagnostic images or relied on the radiologists' reports. It appears as if he simply relied upon the radiologist's reports. The remaining physicians actually viewed the images in providing their opinions.

Dr. Ipsen and Dr. Henry were the initial court-ordered treating physicians. Both recommended cervical spine surgery less than one year from Claimant's date of accident. Dr. Henry explained upper cervical spinal cord compression can cause sudden, unexpected paralysis, which is what ultimately occurred here. She attributed Claimant's symptoms, which included the seizure-like issues suffered by Claimant immediately following her slip and fall, to her cervical spine condition. It is reasonable to believe Claimant was more focused on the dizziness, fainting and falling than actual neck symptoms occurring immediately following her injury. In addition, Claimant reported to Dr. Ipsen at her first appointment she had been dealing with neck pain and numbness and tingling into her fingers and hands, which indicates she experienced her neck symptoms

⁴ See K.S.A. 44-508(d).

⁵ See K.S.A. 44-508(d),(g).

⁶ See *Fish v. Mid America Nutrition Program*, No. 1,075,841, 2018 WL 3740430 (Kan. WCAB Jul. 12, 2018).

⁷ See K.S.A. 44-501(f)(2).

prior to her first appointment with authorized care. Finally, Respondent was put on notice Claimant was alleging neck injuries when she filed her E-1.

Dr. Frimpong was not aware of the November 26 fall at the Casino. Although this information may have altered his causation opinion, it does not necessarily render his opinion “useless, and unreliable with no credibility” as argued by the Fund. Dr. Frimpong, in forming his causation opinion, reviewed the diagnostic images performed shortly after the slip and fall injury in 2018. He explained how Claimant’s slip and fall led to a dynamic mechanical injury and dysfunction of her spinal cord. This is supported by Claimant’s consistent and documented neck complaints contained in the medical records beginning with her first authorized treatment with Dr. Ipsen. It is also supported by the prevailing factor opinions provided by the other physicians. Lastly, Claimant returned to work at the Casino, which she described as a very physical job, approximately two weeks following the Casino slip and fall in late November, and continued to work through the April 13, 2022 whiplash incident.

Dr. Hess is a board-certified neurosurgeon who limits his practice to spinal surgery. He is the only physician who had the benefit of reviewing all the medical records. Dr. Hess noted Claimant’s preexisting condition in her cervical and lumbar spine and subsequent injuries she suffered at the Casino, but opined it was the original slip and fall in January 2018 which was the prevailing factor for Claimant’s medical condition and symptoms.

The Board historically gives some deference to the opinions of treating and neutral physicians.⁸ Here, one court-ordered prevailing factor opinion stands alone against the opinions of a court-ordered treating physician, a second court-ordered opinion and the opinions of two opinions solicited by Claimant. Based on the record as a whole, the January 20, 2018, slip and fall injury is the prevailing factor causing Claimant’s medical condition and need for treatment.

2. The Board is without jurisdiction to address Respondent and the Fund’s arguments regarding the order to pay the medical bills for treatment provided by Dr. Ipsen and other health care providers incurred in April, 2022, as authorized medical.

The remaining issue deals with whether the ALJ exceeded his authority in ordering payment of outstanding medical bills. K.S.A. 44-534a sets forth the jurisdictional issues subject to review.⁹ The Board previously ruled preliminary orders for medical expenses

⁸ See *Nasi v. Jimmy’s Egg*, No. 1,067,478, 2017 WL 898263, at *15 (Kan. WCAB Feb. 9, 2017).

⁹ See *Omar v. Tyson Meats*, No. 103,534, 2010 WL 4393964 (Kan. Court of Appeals unpublished opinion filed October 29, 2010).

and designation of an authorized treating physician are not jurisdictional issues listed in K.S.A. 44-534a subject to review.¹⁰ When the record reveals a lack of jurisdiction, the Board's authority extends no further than dismissing the action.¹¹ The order for payment of outstanding medical bills is not subject to review by the Board under K.S.A. 44-534a. Respondent's request for review of the ALJ's order requiring payment of those bills is dismissed.

CONCLUSION

After reviewing the record, the undersigned Board Member concludes Claimant met her burden of proof in establishing the injuries to her neck sustained in a fall on January 20, 2018, arose out of and in the course of her employment and was the prevailing factor causing her medical condition.

DECISION

WHEREFORE, it is the finding, decision and order of the undersigned Board Member the Order of ALJ Steven M. Roth, dated December 29, 2022, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of April, 2023.

CHRIS A. CLEMENTS
BOARD MEMBER

¹⁰ See *Omar v. Tyson Fresh Meats, Inc.*, No. 1,035,559, 2011 WL 6122904 (Kan. WCAB Nov. 22, 2011).

¹¹ See *Bibbs v. Pawnee Mental Health Services*, No. 1,035,339, 2015 WL 6776991 (Kan. WCAB Oct. 16, 2015).

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c: Via OSCAR

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