

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

GUILLERMO GUZMAN)	
Claimant)	
V.)	
)	AP-00-0474-168
POTTER'S PLUMBING, INC.)	CS-00-0470-315
Respondent)	
AND)	
)	
FARM BUREAU PROPERTY & CASUALTY)	
INSURANCE CO.)	
Insurance Carrier)	

ORDER

Claimant requests review of the March 7, 2023, preliminary hearing Order entered by Administrative Law Judge (ALJ) Thomas Klein.

APPEARANCES

C. Albert Herdoiza and Yasmin Herdoiza appeared for Claimant. Matthew Crowley appeared for Respondent and its insurance carrier (Respondent).

RECORD AND STIPULATIONS

The Board adopted the same stipulations and considered the same record as the ALJ, consisting of the transcript of the Preliminary Hearing held November 15, 2022, with exhibits attached; the transcript of the Remote Evidentiary Deposition for Preliminary Hearing of Claimant from October 27, 2022, with exhibit attached; and the documents of record filed with the Division.

ISSUES

1. Does the Board have jurisdiction to review Claimant's appeal?
2. If so, did Claimant's psychological injury arise out of and in the course of his employment?

FINDINGS OF FACT

Claimant worked for Respondent as an excavation foreman. Claimant dug holes with an excavator or hydro-excavator to expose pipes for repair by Respondent's plumbing staff. On July 27, 2021, Claimant was working at a site near a river with a coworker and his supervisor. Claimant inspected the site the day prior and noted the soil was type C-80, consisting mostly of sand and lacking structure. Claimant brought plywood to the site as it was necessary to shore up the hole.

Claimant was at the bottom of the hole attempting to shore up the sides when it collapsed, pinning Claimant "in half, like a taco"¹ under 8 feet of dirt. Claimant was trapped in the hole for approximately 3 to 4 hours while his coworkers tried to free him. Claimant suffered a broken right femur as a result of the incident and received medical treatment from Dr. Chad Corrigan.

Claimant testified he experienced lasting psychological effects from the incident:

I have a lot of trauma that goes through my head from the incidence. Like there's certain things that can trigger what had happened. Like when it rains, the thunder, the thunder sounds exactly like the dirt did when it caved. There's just certain things that I couldn't exactly explain them, but they're things that kind of trigger me back and take me back to the incident and it just – it will get me – make me very jittery. It will make me lose my train of thought or just make me completely stare off into space, almost like I have no recollection of what's going on around me. It's just there until I come back from it; that or if somebody nudges me and tell me hey, are you okay. Until something like that happens, it's just there.²

Dr. Corrigan, in a note dated October 8, 2021, wrote, "For [Claimant's] PTSD and other mental health issues, I recommend he talk to his PCP and possible referral to psych."³ Claimant was determined to be at maximum medical improvement for his physical injuries on October 6, 2022. Dr. Corrigan did not relate the PTSD to the physical injury or provide a prevailing factor opinion.

Claimant sought treatment on his own at Horizons Mental Health Clinic (Horizons) on August 25, 2022. Claimant indicated his request for mental health treatment was denied by Respondent, and he could not afford to continue treatment. Claimant's treatment plan from Horizons indicates he presented with a traumatic work injury and requested coping strategies. After an evaluation, Claimant was diagnosed with unspecified

¹ Claimant's Depo. at 39.

² *Id.* at 44-45.

³ P.H. Trans., Cl. Ex. 1 at 3.

trauma- and stressor-related disorder and reaction to severe stress, unspecified. The managing clinician at Horizons concluded:

DIAGNOSTIC JUSTIFICATION: Unspecified Trauma or stress disorder: One year ago [Claimant] was stuck in a trench while at work. [Claimant] had back injury and broken leg. Scarring due to shovels as the staff tried to dig him out of the trench. [Claimant] reports raining and thunder will trigger ruminating thoughts. Flashbacks but unsure of how often. [Claimant] unsure of changes in personality or responses. [Claimant] reports increase in caution and watching surroundings. Loss of memory and forgetfulness. . . . [Claimant] does not meet criteria for Post Traumatic Stress Disorder. Further assessment warranted.

. . .

Important Note: [Claimant] aggressive toward this clinician verbally during intake. [Claimant] is easily frustrated and reads into statements with offense. [Claimant] unwilling to consider Depression, Anxiety, and past trauma as part of current symptoms. Clinician observed indicators that past trauma and possible Depression are present.⁴

Claimant acknowledged he sought mental health care following the death of a loved one when he was approximately 18 years old. Claimant testified he improved after treatment and has not suffered any depression or mental health symptoms until following the work accident. Claimant attributes his current mental symptoms to the work accident of July 27, 2021.

The ALJ determined Claimant's psychological condition is not directly traceable to the work injury and denied Claimant's request for psychological treatment.

PRINCIPLES OF LAW AND ANALYSIS

Claimant argues the ALJ's Order should be reversed and psychological treatment ordered. Claimant contends his psychological injuries resulted from his physical work injury. Further, Claimant argues the ALJ "ignored evidence supporting an aggravation, acceleration, or intensification of the alluded to pre-existing mental condition."⁵

At the Preliminary Hearing, Respondent advised the ALJ there was no prevailing factor opinion. Respondent also maintains the Board lacks jurisdiction to review Claimant's appeal. Respondent argues the ALJ acted within his authority to determine, preliminarily, Claimant's eligibility for medical treatment. Thus, Respondent argues this appeal should be dismissed.

⁴ P.H. Trans., Cl. Ex. 3 at 8.

⁵ Claimant's Brief (filed Mar. 20, 2023) at 5.

1. Does the Board have jurisdiction to review Claimant's appeal?

Generally, the Board possesses the authority to review preliminary orders on disputed issues of whether the employee suffered an accident, repetitive trauma or resulting injury; whether the injury arose out of and in the course of employment; whether notice was given; or whether certain defenses apply. "Certain defenses" are issues concerning the compensability of the injury under the Workers Compensation Act. If jurisdiction under K.S.A. 44-534a is not present, it is appropriate to dismiss the appeal.

In his Order, referring to the mental illness claim, the ALJ stated, "However, his difficulties, while perfectly understandable by the court, are not directly traceable to his injury."⁶ The ALJ is basically saying the mental health claim does not arise out of the course of employment.

The issue of whether a psychological condition is directly traceable to the work-related injury is a question that goes to the compensability of the condition or injury. Thus, the Board has jurisdiction over the issue.⁷

2. Did Claimant's psychological injury arise out of and in the course of his employment?

To prove a compensable psychiatric or psychological injury, the employee must prove: (1) a work-related physical injury, (2) symptoms of a traumatic neurosis, (3) the neurosis is directly traceable to the physical injury, and (4) the accident was the prevailing factor causing the psychological injury.⁸ "Prevailing factor" is the primary factor, in relation to any other factor, based on consideration of all relevant evidence submitted by the parties.⁹

The burden is upon Claimant to prove his mental condition is directly traceable to a physical injury arising out of his work-related accident. While it makes sense Claimant's mental health condition was caused by being buried with a broken leg for four hours, there is no evidence tying the mental condition to the physical injury as required by *Love*.

⁶ ALJ Order (Mar. 7, 2023) at 2.

⁷ See *Farra v. Mercy Hospital*, No. 1,005,822, 2004 WL 1301715 (Kan. WCAB May 27, 2004); *Baty v. Woodhaven Care Center*, No. 1,047,549, 2010 WL 1445627 (Kan. WCAB Mar. 31, 2010); *Jordan-Cain v. State of Kansas*, No. 1,058,565, 2012 WL 3279504 (Kan. WCAB Jul. 12, 2012).

⁸ See, e.g., *Heyen v. City of Wichita*, No. 1,064,079, 2013 WL 2455722 (Kan. WCAB May 29, 2013) (citing *Love v. McDonald's Restaurant*, 13 Kan. App. 2d 397, 771 P.2d 557 (1989)); see also K.S.A. 44-508(d).

⁹ See K.S.A. 44-508(g).

Considering all relevant evidence, the undersigned finds Claimant failed to meet the burden of proving his mental health condition is directly related to the leg injury, or to a combination of the leg fracture and being buried alive for four hours.

DECISION

WHEREFORE, it is the finding, decision and order of the undersigned Board Member the Order of ALJ Thomas Klein, dated March 7, 2023, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of April, 2023.

SETH G. VALERIUS
BOARD MEMBER

c: Via OSCAR

C. Albert Herdoiza, Attorney for Claimant
Yasmin Herdoiza, Attorney for Claimant
Matthew Crowley, Attorney for Respondent and its Insurance Carrier
Hon. Thomas Klein, Administrative Law Judge