

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

AARONELL GARDNER)	
Claimant)	
V.)	
)	AP-00-0472-457
CERTAINTEEED CORPORATION)	CS-00-0467-783
Self-Insured Respondent)	

ORDER

Claimant appeals the December 6, 2022, preliminary hearing Order entered by Administrative Law Judge (ALJ) Troy A. Larson.

APPEARANCES

Zachary Kolich appeared for Claimant. James Wolf appeared for Self-Insured Respondent.

RECORD AND STIPULATIONS

The Board adopted the same stipulations and considered the same record as the ALJ, consisting of the transcript of Preliminary Hearing from November 29, 2022, with exhibits attached, and the documents of record filed with the Division and the briefs filed by the parties.

ISSUE

1. Was Claimant's accidental injury on May 4, 2022, the prevailing factor causing Claimant's right knee complaints?

FINDINGS OF FACT

Claimant had an accidental injury to her right shoulder and right knee on November 19, 2019, while employed for Shawnee Gardens. Claimant filed a workers compensation claim. Claimant settled this claim on December 17, 2021, for \$45,000. Claimant testified at the time of this settlement, all the complaints she had from the accident had resolved.

Claimant saw three doctors for her 2019 injuries. All three doctors examined and evaluated Claimant's right knee.

Claimant saw Dr. Kevin Witte, an orthopedic surgeon, who diagnosed a right knee contusion. Claimant was treated with physical therapy and medication. Claimant was also examined by Dr. Daniel Zimmerman, who diagnosed Claimant with chronic right knee capsulitis. Dr. Zimmerman rated Claimant's injuries from the November 19, 2019, accident as 29 percent to the body as a whole. Eight percent of the rating was for impairment to the right knee. Claimant was also examined by Dr. Michael Khadavi, at the request of Respondent, for injuries resulting from the November 19, 2019, accident. He concluded Claimant's right knee complaints were due to degenerative osteoarthritis. Dr. Khadavi opined Claimant's right knee complaints attributed to the November 19, 2019, accident were an exacerbation of preexisting degenerative changes.

On May 4, 2022, while employed with Respondent Claimant walked around a machine and hit her right knee on a piece of metal on the machine. She had immediate pain in her right knee and was unable to walk.

On May 6, 2022, Respondent sent Claimant to Meritas Health and she saw Dr. Daniel C. Reeves. Claimant reported her right knee pain was constant, but helped with rest and made worse with walking and certain movements when laying down. Dr. Reeves diagnosed Claimant with a right knee contusion. Claimant was instructed to ice the knee for 20 minutes intermittently throughout the day, take ibuprofen every 6 hours if needed and extra strength Tylenol every 6 hours as needed. Claimant was allowed to return to work with restrictions and an MRI was ordered. Dr. Reeves assigned restrictions of: seated position 50 percent of the time; sit as needed for pain relief; and may work at a slower pace.

On May 8, 2022, Claimant had an MRI at North Kansas City Hospital Imaging Center. The MRI showed a small, potentially degenerative tear along the superior surface of the anterior horn of the lateral meniscus; degenerative cartilage loss which is severe at the patellofemoral articulation and anterior aspect of the lateral femoral condyle, associated subcortical bone marrow edema and small subcortical cysts; and mild to moderate nonspecific knee joint effusion.

Claimant saw Dr. Reeves for followup on May 9, 2022. There was no real change in Claimant's condition, but she was allowed to return to regular duty, instructed to followup with her primary care physician for any further treatment for her degenerative symptoms.

Claimant continued to work full duty after the accident, which made her symptoms worse. She does not feel there is any improvement, as the pain radiates down her leg into the ankle with swelling. She rated her pain at an eight out of ten.

Claimant had a prior MRI of her right knee on January 30, 2020, at Coliseum Imaging Center related to her November 19, 2019, work injury. This MRI revealed menisci, ligaments, and tendons were intact; extensive full-thickness cartilage loss

throughout the lateral aspect of the trochlea with reactive subchondral marrow edema and cystic change; multifocal full-thickness cartilage fissures of the median ridge and the lateral patella facet with reactive subchondral marrow edema and cystic change; edema throughout the superolateral aspect of Hoffa's fat pad is most likely sequela of altered patellofemoral biomechanics or fat pad impingement and mild thickening of the medial patella plica. She received injections to the right knee for the November 2019 injury.

Claimant testified prior to the May 4, 2022, accident, her right knee was doing fine. Claimant relates her difficulty going up and down stairs and getting in and out of bed to the May 4, 2022, injury and reports pain running down her right ankle and locking up in the right knee. Claimant testified these symptoms were worse than her 2019 injury. Claimant testified her pain level has been as high as ten and as low as five on the pain scale. Her pain level averages eight.

Claimant's employment was terminated by Respondent. She continued to work as a CNA, but does not lift.

Dr. Daniel Zimmerman examined Claimant on July 1, 2022, at the request of her attorney. Claimant's chief complaint was a right knee injury from hitting it against a piece of metal. Claimant was able to bend her right knee with some discomfort. She reported being unable to stoop or perform a full deep knee bend or squat because of pain and discomfort. She was not able to run and has to go up and down steps one at a time. She leads with her left leg when using steps and has pain. Claimant reported weakness in the right knee with position changes. The pain and discomfort made it difficult for Claimant to sleep.

Dr. Zimmerman opined Claimant sustained a reinjury affecting the right knee on May 4, 2022, while working for Respondent. Claimant had an MRI on May 8, 2022, which revealed a tear along the superior surface of the anterior horn of the lateral meniscus. Dr. Zimmerman opined this is a new pathology, compared to Claimant's MRI from January 30, 2020.

Dr. Zimmerman opined the prevailing factor for the right knee lateral meniscal tear to be the May 4, 2022, accident. He opined Claimant was not at maximum medical improvement and recommended a series of nonsteroidal anti-inflammatory medication under supervision of a physician. He also recommended a steroid injection and, if those measures did not work, a right knee arthroplasty should be considered.

Dr. Zimmerman previously met with Claimant on July 8, 2014, for a right shoulder injury; on March 17, 2020, for injuries affecting the right knee, right shoulder and cervical spine; and on May 28, 2021, for injuries affecting the cervical spine, right shoulder and right knee.

Dr. Daniel Stetchschulte examined Claimant on September 23, 2022, at the request of the Court, regarding her right knee and the work injury on May 4, 2022. Claimant complained of right knee pain, clicking and feelings of instability. Claimant reported pain along the lateral knee and deep around the kneecap with radiation down the leg to the ankle and quadriceps. She described the pain as dull with sharp increases with certain activity. She rated her pain seven out of ten.

Dr. Stetchschulte noted Claimant's prior right knee injury from November 19, 2019, and she received treatment and was released at maximum medical improvement on May 3, 2021. He also noted Claimant had a motor vehicle accident in 2022 resulting in some knee pain.

Dr. Stetchschulte diagnosed right knee pain, refractory; history of right knee contusion; right knee lateral meniscus tear, equivocal; right knee patellofemoral arthritis, preexisting with exacerbation. Dr. Stetchschulte opined the May 4, 2022, work injury was not the prevailing factor for Claimant's current and ongoing right knee complaints within a reasonable degree of medical certainty. He also opined Claimant's reported injury mechanism was consistent with a possible contusion, but not a meniscus tear. Claimant's pain complaints were most commonly associated with patellefemoral arthritis, as shown in right knee MRIs of January 30, 2020, and May 8, 2022.

The ALJ found Claimant failed to prove her work accident of May 4, 2022, was the prevailing factor for the right knee condition and denied the request for medical treatment. Dr. Stetchschulte and Dr. Khadavi opined Claimant's May 4, 2022, work accident was not the prevailing factor in causing the right knee condition.

PRINCIPLES OF LAW AND ANALYSIS

Claimant argues the ALJ's Order should be reversed. Claimant contends she met her burden of proof the injury and the medical condition arose out of and in the course of her employment and the May 4, 2022, accident is the prevailing factor for the need for medical treatment for the meniscal tear in the right knee.

Respondent argues the Board should find the ALJ correct in finding Claimant failed to meet her burden of proving her alleged work injury on May 4, 2022, was the prevailing factor for her current right knee symptoms. Respondent also argues that since Claimant failed to meet her burden of proof of a compensable injury under the Act, the ALJ's decision to deny medical treatment should be affirmed.

K.S.A. 44-508(h) states:

"Burden of proof" means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is

more probably true than not true on the basis of the whole record unless a higher burden of proof is specifically required by this act.

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.¹ 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.² Establishing prevailing factor is based on all relevant evidence and is not dependent on medical opinions.³ An injury is not compensable solely because it aggravates, accelerates or exacerbates a preexisting condition symptomatic.⁴

Dr. Stechschulte, the neutral physician retained by the Court, opined the work accident of May 4, 2022, was not the prevailing factor for Claimant’s right knee complaints. Claimant’s medical history shows degenerative arthritis and right knee complaints prior to the May 4, 2022, accident. Dr. Stechschulte opined the mechanism of Claimant’s injury was consistent with a knee contusion and not a meniscus tear. Claimant’s right knee complaints, according to Dr. Stechschulte, are most commonly associated with patellofemoral arthritis.

While the May 8, 2022, MRI showed a small tear along the superior surface of the anterior horn of the lateral meniscus, which was not present on the January 30, 2020, MRI, it was characterized as a degenerative tear and not a traumatic tear.

Dr. Stechschulte’s opinion is corroborated by Dr. Reeves, Respondent’s doctor, who examined Claimant on May 6, 2022.

Dr. Zimmerman’s opinion the May 4, 2022, accident was the prevailing factor for Claimant’s right knee complaints is not persuasive. Dr. Zimmerman previously rated Claimant’s right knee at an 8 percent impairment due to the November 19, 2019, accident. Dr. Zimmerman offers no explanation how the mechanism of Claimant’s accident of May 4, 2022, is the prevailing factor of a degenerative mensical tear. For these reasons it is found and concluded Claimant has not met her burden of proving the May 4, 2020, accident is the prevailing factor for Claimant’s current right knee complaints. Therefore, Claimant’s request for workers compensation benefits is denied.

¹ See K.S.A. 44-508(d).

² See K.S.A. 44-508(d),(g).

³ See *Fish v. Mid America Nutrition Program*, No. 1,075,841, 2018 WL 3740430 (Kan. WCAB July 12, 2018).

⁴ See K.S.A. 44-508(f)(2).

DECISION

WHEREFORE, it is the finding, decision and order of the undersigned Board Member the Order of Administrative Law Judge Troy A. Larson dated, December 6, 2022, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of May, 2023.

REBECCA SANDERS
BOARD MEMBER

c: Via OSCAR

Zachary Kolich, Attorney for Claimant
James Wolf, Attorney for Self-Insured Respondent
Hon. Troy A. Larson, Administrative Law Judge