

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

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|---------------------------------|---|----------------|
| VERONICA HOLLINGER |) | |
| Claimant |) | |
| |) | |
| V. |) | |
| |) | |
| PREMIER CUSTOM CARE, LLC |) | |
| Respondent |) | CS-00-0451-738 |
| |) | AP-00-0453-334 |
| AND |) | |
| |) | |
| ACCIDENT FUND INS. CO. |) | |
| OF AMERICA |) | |
| Insurance Carrier |) | |

ORDER

STATEMENT OF THE CASE

Respondent and its insurance carrier (respondent) requested review of the September 18, 2020, preliminary hearing Order entered by Administrative Law Judge (ALJ) Troy A. Larson. Zachary A. Kolich, of Merriam, Kansas, appeared for Veronica Hollinger. Bill W. Richerson, of Overland Park, Kansas, appeared for respondent.

The ALJ found Ms. Hollinger met her burden of proving a compensable work injury to her low back while working for respondent on June 15, 2020. The ALJ ordered respondent to provide a list of two treating physicians for Ms. Hollinger to choose from for authorized medical treatment.

The record on appeal is the same as considered by the ALJ and consists of the transcript of the September 1, 2020, Preliminary Hearing and the exhibits; the transcript of the September 3, 2020, deposition of Veronica K. Hollinger and the exhibits; and the transcript of the September 3, 2020, deposition of Alysha Jackson and the exhibit; together with the pleadings contained in the administrative file.

ISSUES

Respondent argues the ALJ's Order should be reversed. Respondent maintains Ms. Hollinger failed to prove her injury arose out of and in the course of her employment.

Ms. Hollinger contends the ALJ's Order should be affirmed, as she met her burden of proving her injury and need for treatment arose out of and in the course of her employment with respondent.

The sole issue for the Board's review is: did Ms. Hollinger sustain personal injury on June 15, 2020, arising out of and in the course of her employment with respondent?

FINDINGS OF FACT

Ms. Hollinger works as a senior caregiver for an elderly couple, the Medinas. In this position, Ms. Hollinger works nightly from 8:00 p.m. to 8:00 a.m. for two separate companies, respondent and Home Instead. On some nights Ms. Hollinger is employed by respondent, and on others she is employed by Home Instead.

Ms. Hollinger testified she sustained an injury to her low back during the early morning hours of Monday, June 15, 2020, while working for respondent. Ms. Hollinger explained she was assisting Mr. Medina when he stumbled and began to fall. Ms. Hollinger instinctively grabbed Mr. Medina's forearms to catch him, injuring her low back in the process. Mr. Medina sustained injuries to his arms during the incident, which Ms. Hollinger recorded in a logbook kept by the caregivers. She did not mention any injury to herself in the Medina logbook.

On June 16, 2020, Ms. Hollinger returned to the Medina home as an employee of Home Instead. Ms. Medina required special attention that evening, so Ms. Hollinger stayed in a chair by her bedside throughout the night. Ms. Hollinger had a noticeable increase in her low back discomfort upon waking the following morning.

That Friday, June 19, 2020, Ms. Hollinger was lying on the Medinas' couch when she was called to assist Ms. Medina in another room. Ms. Hollinger attempted to rise from the couch but could not due to severe back pain. Ms. Hollinger's pain was such she was taken via ambulance to St. Luke's South emergency department. Records from the visit state:

40-year-old female with history of previous back surgery due to lumbar disc herniations presents emergency department with low back pain radiating to the left side that started just prior to arrival. She works as a home health overnight nurse. She states 2 nights ago her patient was in quite a bit of pain after she fell so she slept in a chair next to her bed. She woke up the next morning feeling very stiff and having significant pain in her low back. She had the pain all day today went to bed this evening. Her patient called for her and when she went to go get out of bed she thinks she may have twisted something and has significant pain to the area. She denies falling or trauma.

Ms. Hollinger initially notified respondent of her back symptoms on June 19, 2020, following her hospital visit. A note from Ms. Hollinger in respondent's ClearCare system states:

I had to call 911 for myself while at the Medina's house around midnight! [Ms. Medina] ring [sic] her bell last night and I was unable to stand and couldn't dare think about walking. I had to immediately call for Janet to come help me. I believe this injure [sic] is from me working Tuesday night and sleeping in a chair next to [Ms. Medina].¹

Ms. Hollinger sent an email to Monica Roy and Alysha Jackson of respondent on June 22, 2020, indicating she injured her back while attempting to catch Mr. Medina during her shift beginning June 14, 2020. Ms. Hollinger requested medical treatment from respondent due to worsening of her symptoms. Alysha Jackson, owner/manager of respondent, replied:

So sorry you are still not feeling well. Can you help get me updated information/clarification? The email we received from you on Friday says you injured yourself on Tuesday evening from sleeping in a chair? Marsha said your other company was getting you scheduled for an MRI? We have text with you (starting on 6/14), there is no mention of a fall until the [June 22, 2020, email]?²

Ms. Jackson acknowledged receipt of Ms. Hollinger's June 22, 2020, written notice, as well as receipt of correspondence from Ms. Hollinger's attorney's office within the same week. Ms. Jackson received and reviewed the Medina logbook entry of June 14, 2020, and did not find it to be doctored, amended, or altered. Ms. Jackson further testified respondent placed another caregiver with the Medina family during the week of June 15, 2020, who reported and confirmed the injuries to Mr. Medina's forearms.

Dr. Harold Hess, a board certified neurological surgeon, examined Ms. Hollinger on July 31, 2020. Ms. Hollinger's chief complaint was low back pain radiating down her left leg. She provided a history of immediate low back pain with radiation after catching a falling patient on June 15, 2020. Dr. Hess reviewed Ms. Hollinger's medical records and performed a physical examination, finding Ms. Hollinger sustained left lumbar radiculopathy as a result of her work injury. Dr. Hess opined the prevailing factor causing Ms. Hollinger's current medical condition and symptoms was the work accident of June 15, 2020. He recommended Ms. Hollinger undergo a lumbar spine MRI to determine further treatment, which would most likely include lumbar epidurals.

¹ Hollinger Depo., Resp. Ex. 2 at 2.

² Hollinger Depo., Resp. Ex. 3 at 1.

PRINCIPLES OF LAW

K.S.A. 2019 Supp. 44-501b(c) states:

The burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends. In determining whether the claimant has satisfied this burden of proof, the trier of fact shall consider the whole record.

K.S.A. 2019 Supp. 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.

K.S.A. 2019 Supp. 44-508(d) states:

"Accident" means an undesigned, sudden and unexpected traumatic event, usually of an afflictive or unfortunate nature and often, but not necessarily, accompanied by a manifestation of force. An accident shall be identifiable by time and place of occurrence, produce at the time symptoms of an injury, and occur during a single work shift. The accident must be the prevailing factor in causing the injury. "Accident" shall in no case be construed to include repetitive trauma in any form.

By statute, preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.³ Moreover, this review of a preliminary hearing order has been determined by only one Board Member, as permitted by K.S.A. 2019 Supp. 44-551(l)(2)(A), as opposed to being determined by the entire Board as it is when the appeal is from a final order.⁴

ANALYSIS

On June 14, 2020, Ms. Hollinger noted an incident involving her patient falling in her log. On June 19, 2020, Ms. Hollinger told the emergency room staff about twisting and having pain while assisting her patient. On June 22, 2020, Ms. Hollinger sent an email telling Monica Roy and Alysha Jackson her patient fell on June 14, 2020, and she hurt her back trying to catch him. Ms. Hollinger also made statements her pain was associated with sleeping in a chair. This complaint appears to be related to her trying to catch the patient.

³ K.S.A. 44-534a.

⁴ K.S.A. 2019 Supp. 44-555c(j).

It is apparent from the record claimant experienced an event involving her patient falling on June 14, 2020.

The uncontradicted medical evidence, provided by Dr. Hess, supports finding the prevailing factor causing Ms. Hollinger's current medical condition and symptoms is the work accident of June 14, 2020.

CONCLUSION

Ms. Hollinger suffered an injury by accident arising out of and in the course of her employment on June 14, 2020, which is the prevailing factor causing her medical condition and need for medical treatment.

ORDER

WHEREFORE, it is the finding, decision and order of this Board Member the Order of Administrative Law Judge Troy A. Larson, dated September 18, 2020, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of January, 2021.

HONORABLE SETH G. VALERIUS
BOARD MEMBER

c: Zachary A. Kolich, Attorney for Ms. Hollinger
Bill W. Richerson, Attorney for Respondent and its Insurance Carrier
Hon. Troy A. Larson, Administrative Law Judge