

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

KEITH CHRISLIP)
Claimant)
V.)
)
LSI CORP) CS-00-0301-807
Respondent) AP-00-0454-052
AND)
)
ZURICH AMERICAN INSURANCE CO.)
Insurance Carrier)

ORDER

Claimant requests review of Administrative Law Judge (ALJ) Gary Jones' preliminary hearing Order dated November 2, 2020.

APPEARANCES

Roger Riedmiller appeared for Claimant. Terry Torline appeared for Respondent.

RECORD AND STIPULATIONS

The Board adopted the same stipulations and considered the same record as the ALJ, including additional evidence as follows:

1. Transcript of the Deposition of Keith Brown with exhibits, taken June 18, 2020;
2. Transcript of the Deposition of Dr. Eva Henry with exhibits, taken June 19, 2020;
3. Dr. Curt Meinecke's report admitted into evidence at the Preliminary Hearing held on October 26, 2020; and
4. Via Christi Hospital records admitted into evidence at the Preliminary Hearing held on October 26, 2020.

ISSUE

This is the second time the Board has reviewed this matter. In an order dated June 24, 2020, the ALJ granted workers compensation benefits to Claimant. Respondent appealed the matter to the Board. On September 4, 2020, the Board affirmed the ALJ's ruling.

Subsequently, a preliminary hearing was held October 26, 2020, at which time Respondent presented additional evidence. In his Order dated November 2, 2020, the ALJ stated:

As stated previously, the Claimant has met his burden to show that the injury occurred while he was acting within the course and scope of his employment. The Respondent then has the burden to prove the injury resulted from a personal condition of the Claimant.

At this point, the Court finds that the Respondent has met its burden to show that it is more likely than not the injury resulted from an alcohol withdrawal seizure and did not arise out of the Claimant's employment with the Respondent. The evidence at this time shows the injury arose from a personal risk under K.S.A. 44-508(f)(3)(A)(iii). The Court is persuaded by the report from Dr. Meinecke and the records from Via Christi that show alcohol withdrawal during the time the Claimant was in the hospital after the injury at work. The CIWA assessment at Via Christi was done by an independent hospital staff with no involvement in the Workers Compensation case. Although the CIWA does not show that the Claimant suffered an alcohol withdrawal seizure, the CIWA combined with the other evidence convinces the Court that is the most likely [cause] of the fall was an alcohol withdrawal seizure.

The Respondent's request to terminate Workers Compensation benefits is granted.

Claimant requests reversal, arguing his injuries arose out of and in the course of his employment. Respondent maintains the Order should be affirmed.

The sole issue is: did the ALJ err in denying benefits by finding Claimant's injuries were caused by an alcohol withdrawal seizure?

FINDINGS OF FACT

The Board incorporates by reference the findings of fact set forth in its September 4, 2020, Order.

On January 3, 2018, Claimant fell and hit his head while working for Respondent. There were no witnesses and he has no memory of the events occurring that day. He was transported via ambulance to Via Christi St. Francis and admitted. Clinical Institute Withdrawal Assessments (CIWA) performed at Via Christi over the next several days showed:

- 1/3/2018 - scores between 7 and 16, indicating moderate withdrawal. Findings at different times included: "agitated", "fidgety and restless", "beads of sweat obvious on forehead", "disoriented", "tremors", "clouding of sensorium"

- 1/4/2018 - scores between 6 and 14, indicating mild withdrawal. Findings at different times included: “agitation”, “disoriented”, “cannot do serial addition or is uncertain of date”, “tremors”, “anxiety”, “clouding of sensorium”
- 1/5/2018 - scores between 6 and 9, indicating mild withdrawal. Findings at different times included: “tremors” (not visible but can be felt fingertip to fingertip), “clouding of sensorium”, “moderately fidgety and restless”, “tactile disturbances”, “disoriented to place and or person”
- 1/6/2018 - scores between 1 and 5, indicating minimal withdrawal.
- 1/7/2018 - scores between 0 and 8, indicating minimal withdrawal.
- 1/8/2018 - scores between 3 and 11, indicating minimal withdrawal; and later between 5 and 10, indicating minimal withdrawal.
- 1/9/2018 - scores indicating minimal withdrawal (last score 1, which is almost normal). CIWA was discontinued.

Curt Meinecke, M.D., is board certified in emergency medicine and has over 18 years’ experience as an attending physician. At Respondent’s request, he performed a records review, including medical records, depositions, exhibits, an accident investigation and three independent medical examination reports. In his September 20, 2018 report, Dr. Meinecke opined Claimant’s fall was caused by an alcohol withdrawal seizure. He further stated:

It is my opinion that objective evidence shows Mr. Chrislip is a severe alcoholic, that he was in alcohol withdrawal on 01/03/2018, that he fell backwards while unconscious, thus causing his severe head injury and subsequent disability. Far and away, the most likely diagnosis to cause this loss of consciousness would be alcohol withdrawal seizure. Admittedly, the fall was unwitnessed. Regardless, however, given that is my opinion that Mr. Chrislip fell while unconscious, I can in good conscience, offer the opinion, beyond reasonable doubt, that whatever the cause for his loss of consciousness, his fall was not work related.¹

At Respondent’s request, Keith Brown was hired to investigate the viability of Claimant’s theory he was injured when he tripped at work and fell into a compressor. Mr. Brown received a BA in communications with an emphasis in marketing, advertising and business in 1994, and a leadership and management certificate in 2002. Since 2011, he has worked in the area of insurance surveying of aviation and agricultural claims.

¹ P.H. Trans. (Oct. 26, 2020), Resp. Ex. A at 7.

Mr. Brown reviewed depositions, medical records and photos taken in the case. He performed an onsite review of Respondent's facility on May 27, 2020, and interviewed Andy Unruh, Todd Krahl and Angela Patton. He attempted to recreate the accident scene, including personally laying on the floor and having one of Respondent's employees photograph him and the scene.

Mr. Brown testified lighting was fed by two circuits so both circuits would have to fail at the exact same time for the lights to go out. Even with the lights out, he testified there was enough ambient lighting coming in through the skylights that there was adequate light to exit the compressor room. He indicated the most reasonable route of exit from the compressor room would not have taken Claimant over the drain depression. Thus, Mr. Brown concluded Claimant's injuries were not the result of him tripping over the depression in the floor and opined Claimant suffered an alcohol withdrawal seizure. In reaching this conclusion, he testified:

In the medical records it stated the claimant was suffering from anxiety. That he had past anxiety, past high blood pressure. The claimant had suffered seizures while he was at the first EMS site in McPherson. The claimant then suffered ongoing seizures en route from McPherson to Via Christi. The claimant affirmed that he did have an alcohol abuse problem. The claimant's sister affirmed that the claimant had an alcohol abuse problem. Then the claimant's brother-in-law affirmed that he - - he being the claimant - - had stopped drinking just prior to this occurrence. We don't know exactly what day. In the medical records and in the depositions that were read or that were provided and read by me, they all stated that the symptoms could be shakiness or anxiety. And just on a basic web search, those exact same symptoms were brought up. Those are the only things that appeared to be consistent in the medical records and the depositions.²

Dr. Eva Henry's deposition was taken on June 19, 2020. At the Court's request, she performed an independent medical examination and issued a report dated April 7, 2020. Dr. Henry testified it was still her opinion Claimant had a higher chance of a trauma inducing his seizure versus a seizure from alcohol withdrawal given all the evidence and work conditions. The doctor believed it was more likely the Claimant tripped and fell. She further testified:

None of us can exclude 100 percent that [claimant] did not have alcohol withdrawal seizure. What I have stated previously was that even if he did have alcohol withdrawal seizure, that alone should not cause skull fracture. How the accident happened, nobody knows for sure. We know there's some trip hazards and the matter here, what's important is he sustained a trauma at work.³

² Brown Depo. at 50.

³ Henry Depo. at 72-73.

PRINCIPLES OF LAW AND ANALYSIS

This matter comes before the Board for the second time. Respondent provided additional evidence in support of its position Claimant's benefits should be denied because Claimant's injury was the result of an alcohol withdrawal seizure and did not arise out of Claimant's employment with Respondent. The ALJ reviewed Respondent's additional evidence and found Claimant's injury arose out of a personal risk and not out of his employment. Therefore, he terminated Claimant's benefits.

The ALJ first addressed the report and testimony of Keith Brown. In sustaining Claimant's objections to the report and testimony of Keith Brown, the ALJ found:

Mr. Brown has no engineering or medical training or experience. His experience is in the area of surveying agriculture claims. He is not qualified to testify as an accident reconstruction expert in this case.

Mr. Brown is particularly unqualified to give a medical opinion regarding the cause of the Claimant's fall being related to an alcohol withdrawal seizure.⁴

This Board Member agrees with the ALJ. Mr. Brown's opinions and testimony will not be considered.

Dr. Henry was asked to address several issues, specifically "whether it was more likely than not that the Claimant's fall on January 3, 2018, was the result of an alcohol withdrawal seizure."⁵ Dr. Henry addressed the difficulty in determining the cause of unwitnessed falls, testifying:

Q So we don't really know in this case what caused the trauma, do we?

A Nobody knows.⁶

In affirming the award of benefits in the prior review, the Board found the opinions of Dr. Eva Henry, as the Court appointed evaluator, to be more persuasive than the opinions of Dr. John McMaster. Because Mr. Brown's opinions will not be considered, Respondent's defense relies solely upon the opinions of Dr. Meinecke, which are based in part, on the Via Christi medical records.

⁴ ALJ Order (Nov. 2, 2020) at 2.

⁵ ALJ Order (Nov. 25, 2019) at 1.

⁶ Henry Depo. at 69.

Dr. Meinecke opined Claimant is a severe alcoholic, was in withdrawal the day he fell, and was not conscious at the time he fell causing him to fall backward causing his head injury. He opined Claimant's fall "was the direct result of an alcohol seizure."⁷

Dr. Meinecke's opinion Claimant's fall was the result of an alcohol withdrawal seizure is based on his opinion Claimant was in alcohol withdrawal on the date of the accident. This opinion relies on his belief Claimant's blood alcohol level was zero when Claimant was seen at McPherson Memorial ER and "reports from Mr. Chrislip's co-workers that he was exhibiting signs of autonomic instability the day of his work injury."⁸ This misstates the evidentiary record.

Three co-workers testified regarding the presence or absence of tremors in Claimant's hands. Dr. Meinecke adopted the testimony of Jordan Schroeder, who testified Claimant's tremors were worse the day before and the day of his accident. Two witnesses testified they did not notice any increase in tremors in Claimant's hands. Dr. Meinecke made a factual finding regarding the testimony of Todd Krahl and disregarded it. He failed to mention the testimony of Branden Bryant although it was listed as documents he had reviewed.⁹ Dr. Meinecke ignored the testimony of all three co-workers Claimant was satisfactorily performing his job on the day of the accident.

Dr. Henry testified drug screens vary. One must examine "the specific perimeter of the urine drug screen."¹⁰ All she could conclude from this drug screen was Claimant had not consumed alcohol on the date of his accident. She added "I do not think, at least at this point, anyone can say how long before that testing did he not drink."¹¹ In response to Mr. Schroeder's testimony Claimant's hands were shaking more than normal that Tuesday and Wednesday, Dr. Henry testified: "An alcoholic can be shaky more on one day than the next whether or not the person kept drinking or not drinking I would not place any conclusions just based upon somebody's observation of an alcoholic's degree of shakiness from one day to the next."¹² More importantly, "it's less likely he had suffered alcohol withdrawal seizure on January 3 if there were multiple witness[es] stating that he appeared to be performing his work capacity without any problems."¹³

⁷ P.H. Trans. (Oct. 26, 2020), Resp. Ex. A at 7.

⁸ *Id.* at 4.

⁹ See *id.* at 1.

¹⁰ Henry Depo. at 32.

¹¹ *Id.*

¹² *Id.* at 29.

¹³ *Id.* at 64.

Dr. Meinecke also relied heavily on the CIWA taken from January 3 through January 9, 2018, to support his conclusion Claimant was in withdrawal on the date of the accident. The CIWA started at “moderate withdrawal” on January 3, reduced to “mild” on January 4 and 5 and “minimal from January 6-9. On January 9, he noted the “(last score 1, which is almost normal).” Without knowing if or when Claimant stopped drinking, this information is not persuasive. Claimant was hospitalized during this time frame. Naturally, no alcohol was consumed. It follows he would begin experiencing withdrawal while hospitalized. It is interesting to note that his highest level of withdrawal was on the date of the accident (moderate withdrawal) and it immediately trended downward to “almost normal.”

As noted in the first Board Order, there is no credible evidence if or when Claimant stopped drinking. Even if one accepts Claimant was in withdrawal, It does not necessarily follow Claimant suffered an alcohol withdrawal seizure causing his injuries. No evidence was presented setting forth everyone suffering through withdrawal suffers an alcoholic withdrawal seizure.

Lastly, Dr. Meinecke opines claimant was not conscious when he fell or he would have suffered additional injuries to other body parts in an attempt to protect the head. While possible, it fails to consider the possibility the head was struck immediately at the start of the fall, rendering the individual unconscious essentially from the outset of the fall.

Dr. Meinecke’s opinions, compared to those of Dr. Henry, fall short of convincing this Board Member Claimant’s fall is the result of an alcohol withdrawal seizure, a personal risk, and therefore, not compensable. Despite rigorous cross-examination by Respondent’s counsel, Dr. Henry did not waiver from her opinion, given all the evidence and the work conditions present (trip hazards), Claimant had a higher chance of a trauma inducing his seizure versus a seizure from alcohol withdrawal. Dr. Henry testified:

Q And it’s still your opinion today that more probably than not the workplace, as you have been shown in the various photos that we sent to you, as well as the photos that Terry Torline and myself have shown you, that the workplace resulted in Mr. Chrislip’s sustaining a fall and suffering a skull fracture and the sequela of problems developed since then, correct?

A Yes.¹⁴

Dr. Henry was the Court appointed evaluator. She is well versed in workers compensation claims. Dr. Meinecke’s report contains the opinion he was retained to provide. His conclusion, “I can in good conscience, offer the opinion, beyond reasonable doubt, that whatever the cause for his loss of consciousness, his fall was not work related[.]”¹⁵ in and of itself, calls into question the objectivity of his conclusions.

¹⁴ *Id.* at 66.

¹⁵ P.H. Trans. (Oct. 26, 2020), Resp. Ex. A at 7.

CONCLUSIONS

After reviewing the record compiled to date, the undersigned Board Member concludes the preliminary hearing Order of ALJ Jones dated November 2, 2020, should be reversed. Claimant's injuries arose out of and in the course of his employment.

WHEREFORE, the Board reverses the November 2, 2020, Order of ALJ Jones.¹⁶

IT IS SO ORDERED.

Dated this _____ day of January, 2021.

CHRIS A. CLEMENTS
BOARD MEMBER

c: (Via OSCAR)
Roger Riedmiller
Terry Torline
Hon. Gary Jones

¹⁶ The above preliminary hearing findings and conclusions are neither final nor binding and may be modified upon a full hearing. This review of a preliminary hearing Order was determined by only one Board Member, unlike appeals of final orders, which are considered by the entire Board.