

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

LAURA GRANADO
Claimant

v.

**CAMSO MANUFACTURING USA LTD,
MICHELIN NORTH AMERICA, INC.**
Respondents

CS-00-0449-761
AP-00-0457-443

and

**TRUMBULL INS. CO.,
SAFETY NATIONAL CASUALTY CORP.**
Insurance Carriers

ORDER

Claimant requests review of the April 13, 2021, preliminary Order issued by Administrative Law Judge (ALJ) David J. Bogdan.

APPEARANCES

William L. Phalen appeared for Claimant. Patricia A. Wohlford appeared for Camso Manufacturing USA LTD (Camso) and Trumbull Insurance Company. Samantha N. Benjamin-House appeared for Michelin North America, Incorporated (Michelin) and Safety National Casualty Corporation.

RECORD AND STIPULATIONS

The Board considered the same record as the ALJ, consisting of the transcript of Preliminary Hearing, held March 31, 2021, with exhibits A1-A3; Transcript of Preliminary Hearing Continuation, held April 6, 2021, with exhibits B1-B9; Videoconference Deposition of Fermin J. Santos, M.D., taken February 22, 2021, with Exhibit 1; the narrative report of Dr. Santos, dated August 31, 2020, concerning his Court-ordered independent medical examination; and the pleadings and orders contained in the administrative file. The Board also reviewed the parties' briefs.

ISSUES

1. Does the Appeals Board possess jurisdiction to consider Claimant's application for review?
2. If the Appeals Board possesses jurisdiction to consider the application for review, is the preliminary Order erroneous because it did not state a basis for denying Claimant's request for medical treatment?
3. If the Appeals Board possesses jurisdiction to consider the application for review, is the preliminary Order's denial of medical treatment otherwise erroneous?
4. If the Appeals Board possesses jurisdiction to consider the application for review, did Claimant sustain personal injury from an accident or repetitive trauma arising out of and in the course of her employment with Respondents?
5. If the Appeals Board possesses jurisdiction to consider the application for review, should Camso and Trumbull Insurance Company be dismissed?

FINDINGS OF FACT

Claimant worked for Respondent from May 2018 through February 21, 2020. As part of the hiring process, Claimant passed a pre-employment physical examination. Claimant initially worked as a Polyurethane Operator, which required constant forceful gripping and grasping with both hands, and constant pushing, pulling and lifting of wheels weighing fifteen to twenty-five pounds above the shoulders. Claimant worked twelve-hour shifts, and estimated she produced 185-210 wheels per day.

After working three weeks, Claimant developed symptoms in her arms, shoulders and back while lifting the wheels. Claimant reported her symptoms to her supervisor, completed a report and continued working. Claimant's symptoms worsened, and she reported her problems to Human Resources after working a month and a half. Three months later, Claimant was assigned the Injection Operator job, which Claimant testified was essentially the same job as Polyurethane Operator, without mixing chemicals. Claimant's symptoms persisted, and she reported her problems to management. Claimant continued working. Claimant was also instructed to clean the industrial ovens on occasion, which increased the symptoms in Claimant's shoulders, neck and back. Claimant was also asked to perform the Polyurethane Operator job.

On February 20, 2020, while performing the Polyurethane Operator job, Claimant caught a falling wheel and pushed it back into an oven with an overhead motion. Claimant felt a sharp pain in the neck, shoulder and back, which she described as different from her

prior symptoms. Claimant reported the event to management and rested. Respondent set an appointment for medical treatment and sent Claimant home.

Claimant received treatment at Cotton O'Neil on February 21, 2020. Claimant reported a history of left shoulder pain following a work-related injury occurring on February 20. Claimant also reported right-sided pain and soreness in the hand, elbow and shoulder from repetitive work performed the last two to three weeks. Claimant was diagnosed with a right shoulder strain and right-sided lateral and medial epicondylitis, which was related to work. Claimant was released to perform regular-duty work, and conservative treatment was recommended. Claimant was told to return if there was no improvement in Claimant's symptoms.

Claimant testified she was driven back to work after the appointment at Cotton O'Neil, and was terminated. Further medical treatment was denied. Claimant received unemployment compensation from March 2020 through December 2020. Claimant obtained work as a custodian. The record is unclear when Claimant began working as a custodian.

Claimant's medical history is notable for two prior workers compensation injuries and settlements with prior employers. In 1996, Claimant sustained injuries to her hand, wrist, elbow and bilateral shoulders while working for Excel Corporation. Claimant underwent physical therapy at Excel, and received a settlement in 1998. Dr. Murati and Dr. Curtis evaluated Claimant. Claimant testified her condition improved after she left Excel.

Claimant received a second settlement after she sustained injuries to both hands, wrists, elbows and shoulders while working for Interstate Brands. Claimant received treatment at Stormont-Vail in 2011 for injuries to the bilateral upper extremities and shoulders. Dr. Murati evaluated Claimant on February 6, 2012, and diagnosed a right-sided TFCC sprain, bilateral carpal tunnel syndrome, right rotator cuff strain versus tear, left labral tear and myofascial pain of the left shoulder girdle, right medial meniscus tear and right patellofemoral syndrome. Dr. Prostic evaluated Claimant in 2013, and diagnosed injuries to the neck, upper extremities and right knee. Dr. Jones evaluated Claimant's shoulders and Dr. Divelbiss evaluated Claimant's wrists. Claimant received a settlement based on work disability considerations. Claimant testified her residual symptoms completely resolved after she stopped working at Interstate Brands. Claimant did not require medical treatment between the time she stopped working at Interstate Brands and started working for Respondent.

Claimant filed an application for workers compensation benefits in this matter, alleging injuries from repetitive trauma arising out of and in the course of her employment with Respondent each working day through February 20, 2020, and an acute event occurring on February 20, 2020. Claimant testified she continues to experience neck pain running through the shoulders, and mid-back pain running to the shoulders, rib cage and

low back. Claimant also experiences headaches, and bilateral upper extremity symptoms radiating from the shoulders to the elbows, forearms and wrists. Claimant sought additional medical treatment under the direction of Dr. Murati and temporary total disability compensation from February 21, 2020, through February 10, 2021.

Dr. Murati evaluated Claimant at her counsel's request on May 18, 2020, and diagnosed bilateral carpal tunnel syndrome, right-sided medial epicondylitis, neck pain, myofascial pain of both shoulder girdles, and low back pain with radiculopathy caused by the February 20, 2020, accident. Dr. Murati recommended additional treatment and temporary work restrictions. On October 8, 2020, Dr. Murati issued a supplemental report, after reviewing additional medical records, stating his opinion on the cause of Claimant's condition was unchanged.

On July 21, 2020, Dr. Fevurly evaluated Claimant at Respondent's request. Dr. Fevurly thought the event of February 20, 2020, aggravated Claimant's preexisting symptoms, and the prevailing factor of Claimant's condition was her preexisting condition. Dr. Fevurly also stated Claimant's symptoms were reminiscent of fibromyalgia, and was commonly seen in women of Claimant's age. Dr. Fevurly concluded Claimant did not sustain an injury on February 20, 2020, required no medical treatment, and sustained no impairment.

Dr. Santos was appointed to perform a Court-ordered independent medical examination, which was performed on August 31, 2020. At that time, Dr. Santos understood Claimant had a traumatic injury on February 20, 2020, but was not aware of the repetitive trauma element of the claim. Dr. Santos was aware Claimant had a prior workers compensation claim against Interstate Brands. Claimant told Dr. Santos her symptoms from the prior claim resolved. Dr. Santos diagnosed neck pain, bilateral upper extremity pain, bilateral epicondylitis and suspected myofascial pain syndrome. Dr. Santos thought Claimant's symptoms were an exacerbation of the prior injuries of 2012, and the February 20, 2020, event was not the prevailing factor causing Claimant's symptoms. No further medical treatment was recommended and Claimant was at maximum medical improvement.

Dr. Santos also testified in a deposition on February 22, 2021. Dr. Santos admitted on direct examination there were no records indicating Claimant received treatment for her upper extremities after she left Interstate Brands' employ, which would be consistent with Claimant's condition resolving. Dr. Santos also testified Claimant's neck pain, elbow pain, upper extremity pain, epicondylitis and myofascial pain syndrome could be caused by repetitive work, although unlikely caused by trauma. Dr. Santos was not aware Claimant was alleging injury by repetitive trauma, and testified this could cause his opinions on causation to change. Dr. Santos also testified regardless of causation, Claimant could benefit from physical therapy for the epicondylitis and myofascial pain syndrome, and he would be willing to reevaluate Claimant.

On cross-examination, Dr. Santos confirmed Claimant did not tell him about her prior workers compensation claims. Dr. Santos reviewed Dr. Jones' rating of Claimant's shoulders, and noted the symptoms and examination findings in Dr. Jones' evaluation were similar to his findings. Dr. Divelbiss' examination and Dr. Prostic's examination were also reviewed. After reviewing the additional medical reports, Dr. Santos testified his initial opinions were confirmed, and he did not need to evaluate Claimant again. Dr. Santos reiterated Claimant did not require additional medical treatment. Dr. Santos also testified Claimant's symptoms could be caused by unrelated fibromyalgia. Dr. Santos further testified the additional treatment recommended by Dr. Murati would not be the standard of care for Claimant's condition.

ALJ Bogdan issued the preliminary Order on April 13, 2021. In the Order, ALJ Bogdan stated:

As a result of issues raised by various reports including the reports of Dr. Murati and Dr. Fevurly, a preliminary hearing was requested regarding the demand for additional authorized medical treatment. Dr. Santos was appointed to provide assistance and expert medical opinion as to whether medical treatment would be appropriate and related to the work accident alleged. Dr. Santos was provided certain records, obtained a history provided by Claimant and completed his own examination. Dr. Santos provided his opinion that no additional treatment was recommended and that Claimant was considered at MMI status. By removing the history provided by the medical records and assuming Claimant was fully resolved after her injury of 2012, Dr. Santos questioned whether a follow up visit was necessary. However, based on upon additional information provided, he considered his assessment and findings to be accurate and that no further evaluation was necessary, and that no additional treatment was recommended. The Court is persuaded by his findings and remarks.

After considering the medical records presented, and the remarks of counsel, the Court enters the following Orders:

Claimant's demand for additional authorized medical treatment is denied.¹

This appeal follows.

PRINCIPLES OF LAW AND ANALYSIS

Claimant argues the preliminary Order is erroneous because the denial of medical treatment, itself, was erroneous, and because ALJ Bogdan did not state a basis for

¹ See ALJ Order (April 13, 2021) at 5-6.

denying medical treatment. Camso and Trumbull Insurance contend Claimant failed to prove she sustained a compensable injury during the time Camso was the employer and Trumbull Insurance was the insurer, and they should be dismissed from these proceedings. Michelin and Safety National contend Claimant's request for benefits should be denied because she did not prove she sustained a compensable injury. In the alternative, Michelin and Safety National argue they should provide a list of two physicians, from which Claimant may select one to serve as the authorized physician, if this matter is compensable.

The Board first addresses Claimant's argument the Order is erroneous because it did not state a basis for denying medical treatment. According to the Order, ALJ Bogdan found Dr. Santos initially believed Claimant had reached maximum medical improvement, but later questioned his opinion based on the assumption Claimant's preexisting condition resolved and without consideration of causation. ALJ Bogdan also found Dr. Santos was presented additional evidence, thought his initial opinions were correct, and confirmed no further evaluation or treatment was needed. ALJ Bogdan stated Dr. Santos' findings and remarks were persuasive, and denied Claimant's request for medical treatment. Essentially, ALJ Bogdan found Dr. Santos' opinion Claimant did not require further medical treatment was the most credible evidence, and denied Claimant's request for additional medical treatment. The Order states the basis for the denial of Claimant's request for additional medical treatment. The error alleged by Claimant did not occur.

The basis for the preliminary Order gives rise to a jurisdictional issue. 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.² "Certain defenses" are issues concerning the compensability of the injury under the Workers Compensation Act.³ If jurisdiction under K.S.A. 44-534a is not present, it is appropriate to dismiss the appeal.⁴ A preliminary finding the employee does not require additional medical treatment is not one of the jurisdictional bases enumerated in the Act. Because no jurisdictional basis for reviewing ALJ Bogdan's preliminary finding Claimant required no additional treatment is present, Claimant's application for review must be dismissed.

Because Claimant's application for review must be dismissed, the additional issues raised by Respondents are moot.

² See K.S.A. 44-534a(a)(2).

³ See *Carpenter v. National Filter Service*, 26 Kan. App. 2d 672, 675, 994 P.2d 641 (1999).

⁴ See *id.* at 676.

DECISION

THEREFORE, it is the finding, decision and order of the Appeals Board Claimant's Application for Review be dismissed. The preliminary Order issued by ALJ Bogdan, dated April 13, 2021, remains in force and effect.

IT IS SO ORDERED.

Dated this _____ day of June, 2021.

WILLIAM G. BELDEN
APPEALS BOARD MEMBER

c: Via OSCAR

William L. Phalen
Patricia A. Wohlford
Samantha N. Benjamin-House
Hon. David J. Bogdan