

**BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD**

<b>CHASE COLEMAN</b>	)	
Claimant	)	
V.	)	AP-00-0461-072
	)	CS-00-0456-909
<b>AMAZON.COM SERVICES, INC.</b>	)	
Respondent	)	AP-00-0461-073
AND	)	CS-00-0456-908
	)	
<b>AMERICAN ZURICH INSURANCE CO.</b>	)	
Insurance Carrier	)	

**ORDER**

Chase Coleman requests review of the September 2, 2021, preliminary hearing Order entered by Administrative Law Judge (ALJ) Kenneth J. Hursh.

**APPEARANCES**

Jeff K. Cooper appeared for Mr. Coleman. Weston A. Mills 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 June 2, 2021, with exhibits attached; the transcript of the Preliminary Hearing held September 1, 2021, with exhibits attached; and the documents of record filed with the Division.

**ISSUE**

The ALJ denied Mr. Coleman's request for additional medical treatment. The ALJ noted the court-ordered physician could not say whether the prevailing factor for Mr. Coleman's symptoms were the work-related injuries. Further, the ALJ wrote:

The only justification for an order, here, was K.S.A. 44-510(b)(1), which says, "If the director finds, upon application of an injured employee, that the services of the health care provider furnished as provided in subsection (a) and rendered on behalf

of the injured employee are not satisfactory, the director may authorize the appointment of some other health care provider.”

The court did not find such justification from the record. The claimant’s injury has reached maximum medical improvement as determined by Dr. Davoren. The claimant’s request is denied.<sup>1</sup>

Mr. Coleman argues the ALJ’s Order should be reversed. Mr. Coleman contends he is entitled to additional medical treatment as recommended by the court-ordered physician. Mr. Coleman argues the denial of medical treatment, based on the issue of prevailing factor, is contrary to the evidence. Mr. Coleman states the ALJ exceeded his jurisdiction in failing to properly consider the court-ordered independent medical evaluation (IME).

Respondent maintains the ALJ’s Order should be affirmed. Respondent argues Mr. Coleman did not meet his burden of proving the work accidents are the prevailing factor in his need for additional medical treatment, nor does the evidence support an award of additional medical treatment.

The sole issue before the Board is: did the ALJ exceed his jurisdiction in denying medical benefits by failing to consider all evidence, including an agreed IME?

#### **FINDINGS OF FACT**

Mr. Coleman’s position for respondent required him to lift heavy boxes and place them overhead. On November 30, 2020, Mr. Coleman suffered an umbilical hernia related to his work (CS-00-0456-908). Dr. Michael Davoren was authorized to treat Mr. Coleman for this condition, and he performed a ventral hernia repair with mesh on December 24, 2020. Following surgery, Mr. Coleman complained of ongoing discomfort. Mr. Coleman described significant left-sided electrical or shocking-type discomfort radiating down his left testicle to his penis. The discomfort continued to progress over time. Mr. Coleman was provided temporary restrictions.

Mr. Coleman returned to full-duty work on January 27, 2021, though he continued to have pain. While lifting at work on February 23, 2021, Mr. Coleman began to experience significant left lower quadrant pain. Mr. Coleman underwent a CT scan three days later, which revealed a small fat-containing left inguinal hernia (CS-00-0456-909). Mr. Coleman returned to Dr. Davoren, who performed a laparoscopic left inguinal hernia repair with mesh on April 2, 2021. Dr. Davoren imposed temporary restrictions of no lifting, pushing, or pulling more than 20 pounds.

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<sup>1</sup> ALJ Order (Sept. 2, 2021) at 2.

On April 28, 2021, Dr. Howard Aks examined Mr. Coleman at his counsel's request. Mr. Coleman complained of abdominal pain with occasional shocking pain radiating to his penis, and left lower quadrant pain radiating into his left thigh and inguinal area. Dr. Aks reviewed Mr. Coleman's available medical records, history, and performed a physical examination. Dr. Aks listed the following impression:

1. Chronic intractable abdominal pain status post umbilical herniorrhaphy with mesh.
2. Left lower quadrant pain status post left herniorrhaphy with mesh.
3. Myofascial pain.
4. Neuropathic pain possibly involving the ilioinguinal and genital femoral nerve on the left side.<sup>2</sup>

Dr. Aks opined the work-related injury sustained on November 30, 2020, was the prevailing factor for Mr. Coleman's umbilical hernia, and the work-related injury sustained February 23, 2021, was the prevailing factor for Mr. Coleman's left inguinal hernia. Dr. Aks determined Mr. Coleman had not yet reached maximum medical improvement (MMI) and recommended additional medical treatment in the form of medications and localized injections. He also provided temporary restrictions. Dr. Aks noted Mr. Coleman should be reevaluated by Dr. Davoren for the abdominal pain and was pleased to hear an appointment was already scheduled with the surgeon for May 4.

In his office record dated May 5, 2021, Dr. Davoren reported Mr. Coleman no longer complained of pain below the umbilicus crossing the midline, and he no longer complained of left inguinal discomfort. Dr. Davoren performed a physical examination, noting Mr. Coleman's wounds were well-healed without evidence of infection, and there was no evidence of recurrent herniation. Dr. Davoren noted Mr. Coleman had some minimal tenderness in the area of his previous hernia repair in the epigastrium. Dr. Davoren concluded:

At this point in time he is [*sic*] achieved maximal medical benefit from his surgical repairs. I instructed him that due to the nature of his workplace requirements with significant musculoskeletal demands, he needs to be working on core strengthening. Possible options for this would include physical therapy versus a home exercise regimen. These programs are outside the scope of my expertise for surgery. Without some sort of core strengthening, I have significant doubts as to his ability to be able to complete the requirements for his job on a regular basis.<sup>3</sup>

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<sup>2</sup> P.H. Trans. (June 2, 2021), Cl. Ex. 1 at 4.

<sup>3</sup> P.H. Trans. (June 2, 2021), Resp. Ex. 1 at 2.

Mr. Coleman continued to suffer tenderness and discomfort, especially on his left side, with radiating electrical shocking sensations. He underwent repeat CT imaging on June 21, 2021, which revealed a new or recurring small ventral hernia superior to the umbilicus.

Dr. B. Todd Moore performed a court-ordered IME on June 29, 2021. Mr. Coleman complained of ongoing symptomatology in his abdomen and left side. Dr. Moore reviewed Mr. Coleman's available medical records, history, and performed a physical examination. Dr. Moore noted the timing of Mr. Coleman's chronic discomfort seemed to correlate with the initial hernia occurrence, though the left-sided discomfort seemingly worsened since the left inguinal hernia repair. Dr. Moore found the treatment plan outlined by Dr. Aks to be reasonable and recommended Mr. Coleman try medications in conjunction with nerve block and physical therapy. Regarding the most recent ventral hernia identified by CT imaging, Dr. Moore stated, "My suspicion would be low that this is causing any of his current symptomatology - especially the symptomatology which radiates down into his left groin."<sup>4</sup>

The parties submitted a joint letter to Dr. Moore asking whether Mr. Coleman's work injuries and/or surgical treatments were the prevailing factor for his current symptomatology. In a letter dated August 25, 2021, Dr. Moore replied:

At this point in time it is difficult to know for certain how much Chase Coleman's work injuries are the prevailing factors in his current symptomology or if some of his symptoms are a sequelae of his surgery/treatment. It is also difficult to know whether surgery would alleviate Chase's symptoms. The timing of his symptoms pre-dates his surgery but have subsequently worsened after surgery which makes attributing all of his symptoms to one or the other difficult.<sup>5</sup>

#### **PRINCIPLES OF LAW AND ANALYSIS**

K.S.A. 44-534a(a)(2) states, in part:

Upon a preliminary finding that the injury to the employee is compensable and in accordance with the facts presented at such preliminary hearing, the administrative law judge may make a preliminary award of medical compensation and temporary total disability compensation to be in effect pending the conclusion of a full hearing on the claim, except that if the employee's entitlement to medical compensation or temporary total disability compensation is disputed or there is a dispute as to the compensability of the claim, no preliminary award of benefits shall be entered without giving the employer the opportunity to present evidence, including

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<sup>4</sup> P.H. Trans. (Sept. 1, 2021), Cl. Ex. 1 at 4.

<sup>5</sup> P.H. Trans. (Sept. 1, 2021), Resp. Ex. 2 at 1.

testimony, on the disputed issues. A finding with regard to a disputed issue of whether the employee suffered an accident, repetitive trauma or resulting injury, whether the injury arose out of and in the course of the employee's employment, whether notice is given, or whether certain defenses apply, shall be considered jurisdictional, and subject to review by the board. Such review by the board shall not be subject to judicial review.... Except as provided in this section, no such preliminary findings or preliminary awards shall be appealable by any party to the proceedings, and the same shall not be binding in a full hearing on the claim, but shall be subject to a full presentation of the facts.

K.S.A. 44-551(l)(2)(A) states, in part:

If an administrative law judge has entered a preliminary award under K.S.A. 44-534a, and amendments thereto, a review by the board shall not be conducted under this section unless it is alleged that the administrative law judge exceeded the administrative law judge's jurisdiction in granting or denying the relief requested at the preliminary hearing.

In his brief, Mr. Coleman argues because the ALJ mentioned the phrase “prevailing factor” in reference to a joint letter sent to Dr. Moore, the ALJ relied upon the prevailing factor analysis in arriving at his conclusion Mr. Coleman was not entitled to additional medical treatment. The ALJ did not find Mr. Coleman’s injury was not the prevailing factor causing his need to medical treatment. He found the evidence did not support an order for additional medical treatment.

In his Order, the ALJ noted:

Dr. Moore agreed with Dr. Aks’ plan. Dr. Aks said injection therapies and medications could be beneficial, but initially recommended reevaluation by the surgeon. The surgeon, Dr. Davoren, reevaluated the claimant and said he was at maximum medical improvement.<sup>6</sup>

K.S.A. 44-534a(a)(2) grants a judge jurisdiction to decide issues concerning payment of medical compensation and temporary total disability compensation. “Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.”<sup>7</sup>

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<sup>6</sup> ALJ Order (Sept. 2, 2021) at 2.

<sup>7</sup> *Allen v. Craig*, 1 Kan. App. 2d 301, 303-304, 564 P.2d 552, rev. denied 221 Kan. 757 (1977).

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. 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 Hursh's preliminary finding Mr. Coleman required no additional treatment is present, Mr. Coleman's application for review must be dismissed.

**DECISION**

**WHEREFORE**, it is the finding, decision and order of the undersigned Board Member Mr. Coleman's appeal in the above matter should be, and is hereby, dismissed, and the Order of Administrative Law Judge Kenneth J. Hursh dated September 2, 2021, remains in full force and effect.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of October, 2021.

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HONORABLE SETH G. VALERIUS  
BOARD MEMBER

c: Via OSCAR

Jeff K. Cooper, Attorney for Mr. Coleman  
Weston A. Mills, Attorney for Respondent and its Insurance Carrier  
Hon. Kenneth J. Hursh, Administrative Law Judge