

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

ROSA PANTOJA)	
Claimant)	
V.)	
)	AP-00-0478-403
NATIONAL BEEF PACKING COMPANY)	CS-00-0451-212
Respondent)	
AND)	
)	
AMERICAN ZURICH INSURANCE CO.)	
Insurance Carrier)	

ORDER

Claimant appealed the August 23, 2023, Award entered by Administrative Law Judge (ALJ) Gary K. Jones. The Board heard oral argument on January 4, 2024.

APPEARANCES

Stanley R. Ausemus appeared for Claimant. Daniel Bangerter and Paige Bangerter Gilmore appeared for Respondent and its insurance carrier. Due to a conflict, Board Member Chris A. Clements recused himself from this appeal. Joseph Seiwert was appointed as a Board Member Pro Tem.

RECORD AND STIPULATIONS

The Board adopted the same stipulations and considered the same record as the ALJ, consisting of the following and the documents of record filed with the Division and the parties briefs.

1. Independent Medical Examination (IME) report of Dr. Terrence Pratt, dated May 12, 2020.
2. Independent Medical Examination (IME) report of Dr. Terrence Pratt, dated January 21, 2021.
3. Addendum to IME report of Dr. Terrence Pratt, dated May 7, 2021.
4. Addendum to IME report of Dr. Terrence Pratt, dated June 14, 2021.
5. Addendum to IME report of Dr. Terrence Pratt, dated September 1, 2021.
6. Addendum to IME report of Dr. Terrence Pratt, dated December 21, 2021.
7. Transcript of the deposition of Dr. George Fluter with exhibits, taken September 1, 2022.

8. Transcript of the deposition of Dr. Terrence Pratt with exhibits, taken September 22, 2022.
9. Transcript of the Regular Hearing with exhibit, held May 10, 2023.

ISSUES

1. Did Claimant's left knee injury arise out of and in the course of her employment and was the June 8, 2018, accident the prevailing factor for the medical condition of Claimant's left knee?
2. What is the nature and extent of Claimant's functional impairment?
3. Is Claimant entitled to future medical treatment?

FINDINGS OF FACT

On June 8, 2018, Claimant hit her left knee on a metal step while at work. Claimant had immediate pain in her left knee. Her supervisor took her to the nurse's station, and she received minor treatment. Claimant was sent to a doctor in Dodge City, who provided medication and cream for the pain. A July 9, 2018, MRI of the left knee showed chronic 3 compartment degenerative findings, more prominent in the medial compartment.

Claimant continues to have left knee pain radiating up into her hip. She continues to receive treatment paid for by Medi-Cal and Medicaid Claimant has problems walking, sitting, and standing too long.

Dr. Terrence Pratt examined Claimant on January 21, 2021, at the request of the Court, about complaints in her left knee. Her complaints were left knee discomfort with continuous anterior involvement from the region proximal to the ankle radiating to the hip or proximal lateral thigh with burning, tingling and pinching. Numbness and cold lower extremity on the left without discoloration were reported by Claimant. Her symptoms were exacerbated with prolonged sitting. Claimant has palliation with elevation of the extremity and walking short distances.

Dr. Pratt diagnosed Claimant with generalized left lower extremity symptoms of undetermined etiology; history of left leg contusion and degenerative joint disease of the left knee with a probable degenerative medial meniscus tear. Lumbar radiculopathy was ruled out. Dr. Pratt found it difficult to determine prevailing factor. He ordered electrodiagnostic testing of the left lower extremity and an MRI of the lumbar region before providing his opinion.

On June 14, 2021, Dr. Pratt provided an addendum to his IME report of May having received the electrodiagnostic testing of the left lower extremity results. He found the MRI and EMG suggested the left lower extremity involvement was related to the chronic lumbosacral involvement. The mechanism of injury was identified as hitting the mid-anterior left leg on a metal step. This would not result in the chronic lumbosacral involvement. He found it possible with an altered gait Claimant had some aggravation of the lumbosacral region.

On December 21, 2021, Dr. Pratt provided another addendum to his IME report. He did not recommend additional active medical care in direct relationship to the June 8, 2018, work accident. Claimant was found at maximum medical improvement. At his deposition, Dr. Pratt was asked if Claimant has an impairment related to the June 8, 2018, work accident. He opined the knee symptoms are due an aggravation of preexisting degenerative joint disease. His opinion referenced the findings of a July 9, 2018, MRI of the left knee.

Dr. George G. Flutter examined Claimant on January 11, 2022, at the request of her attorney. Dr. Flutter was asked to examine Claimant's back and left leg. Claimant presented with pain affecting the neck/upper back, both shoulder girdles, middle back, lower back, and left leg to mid-calf. She reported numbness and pins and needles sensation, pulling and aching. She rated her pain at an 8 to 9 out of 10 on the pain scale. Claimant described the pain as dull/aching, throbbing, burning, shooting, sharp, cramping, pressure, numbness, and tingling. Claimant reported standing, sitting, bending, twisting, exercise and ice made the pain worse. Medication and heat made the pain better. The pain was constant and tended to be worse in the morning and evening and while sleeping. Claimant received medications, trigger point injections, chiropractic care, and physical therapy for treatment, along with imaging and electrodiagnostic testing. Claimant denied any prior injuries or problems in these areas.

Dr. Flutter diagnosed Claimant with, in relation to the June 8, 2018, accident: left leg pain; probable left lower leg contusion; probable left knee strain/sprain; and possible left knee internal derangement. He opined the work accident was the prevailing factor for the injury, evaluation, treatment, impairment, and disability.

Dr. Flutter rated Claimant's functional impairment at 10 percent to the left lower extremity for mild knee range of motion deficits. He used the 6th Edition of *The Guides* as a starting point and competent medical evidence, as well as clinical judgment, education, training and experience. Dr. Flutter opined, at some point in the future, Claimant would be in need of some sort of surgical intervention.

Dr. Flutter assigned restrictions of limiting lifting, carrying, pushing, and pulling up to 20 pounds occasionally and 10 pounds frequently; minimizing stair climbing; and avoiding squatting, kneeling, crawling, and ladder climbing.

The ALJ found Claimant suffered a 3 percent impairment to the left knee for a sprain/strain as a result of the June 8, 2018, work injury. The ALJ found Claimant failed to meet her burden of proving she is entitled to future medical treatment and denied the request.

PRINCIPLES OF LAW AND ANALYSIS

Claimant argues her impairment should be 10 percent to the left leg based on the opinions of Dr. Flutter, which are a more accurate representation of her current condition.

Respondent argues Claimant's left lower extremity pain results from her personal condition, and therefore is not a compensable injury. Respondent asks the Board to reweigh the evidence regarding the knee injury and find the greater weight of the credible medical evidence shows the injury does not relate to work and is not compensable. In the alternative, Respondent argues the 3 percent impairment should be affirmed.

The Board's review of an order is de novo on the record.¹ A de novo hearing is decision of the matter anew, giving no deference to findings and conclusions previously made by the judge.² On de novo review, the Board makes its own factual findings.³

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.

K.S.A. 44-508 states in part:

(f)(1) "Personal injury" and "injury" mean any lesion or change in the physical structure of the body, causing damage or harm thereto. Personal injury or injury may occur only by accident, repetitive trauma or occupational disease as those terms are defined.

(2) An injury is compensable only if it arises out of and in the course of employment. An injury is not compensable because work was a triggering or precipitating factor.

¹ See *Helms v. Pendergast*, 21 Kan. App.2d 303, 899 P.2d 501 (1995).

² See *In re Tax Appeal of Colorado Interstate Gas Co.*, 270 Kan. 303, 14 P.3d 1099 (2000).

³ See *Berberich v. U.S.D. 609 S.E. Ks. Reg'l Educ. Ctr.*, No. 97,463, 2007 WL 3341766 (Kansas Court of Appeals unpublished opinion filed Nov. 9, 2007).

An injury is not compensable solely because it aggravates, accelerates or exacerbates a preexisting condition or renders a preexisting condition symptomatic.

...

(2)(B) An injury by accident shall be deemed to arise out of employment only if:

- (i) There is a causal connection between the conditions under which the work is required to be performed and the resulting accident; and
- (ii) the accident is the prevailing factor causing the injury, medical condition, and resulting disability or impairment.

...

(g) "Prevailing" as it relates to the term "factor" means the primary factor, in relation to any other factor. In determining what constitutes the "prevailing factor" in a given case, the administrative law judge shall consider all relevant evidence submitted by the parties.

Two doctors testified. Dr. Flutter examined Claimant once at the request of her attorney. Dr. Pratt examined Claimant at the request of the Court. Before rendering his opinion he had testing done. The Board finds Dr. Pratt's opinion more credible because he was the Court ordered neutral doctor and testing was done before rendering his opinion.

Dr. Pratt, the Court ordered neutral doctor, opined the injury to Claimant's left knee was aggravation of preexisting degenerative joint disease. Dr. Pratt referenced the July 9, 2018, MRI of Claimant's left knee showing only degenerative conditions, no acute trauma and no change in the physical structure. Claimant's injury and left knee complaints were due to degenerative conditions and the accident was not the prevailing factor for the left knee complaints. K.S.A. 44-508 requires for an injury to arise out of and in the course of employment it must not be due solely to an aggravation of a preexisting condition and the work accident must be the prevailing factor for the injury. That is not the case here. Therefore, the claim is not compensable and workers compensation benefits are denied.

Since the claim is found not to be compensable, the other issues are moot.

AWARD

WHEREFORE, it is the finding, decision and order of the Board the Award of ALJ Gary K. Jones, dated August 23, 2023, is reversed. The claim for injury to the left knee is not compensable and compensation is denied.

IT IS SO ORDERED.

Dated this _____ day of February, 2024.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: (Via OSCAR)

Stanley R. Ausemus, Attorney for Claimant
Daniel Bangerter and Paige Bangerter Gilmore, Attorneys for Respondent and its
Insurance Carrier
Hon. Gary K. Jones, Administrative Law Judge