

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

PAMELA WHITING-ENGEL)	
Claimant)	
V.)	
)	
UNIVERSITY OF KANSAS HOSPITAL AUTHORITY)	AP-00-0482-186
Respondent)	CS-00-0446-902
AND)	
)	
SAFETY NATIONAL CASUALTY CORP.)	
Insurance Carrier)	

ORDER

Respondent appeals the March 22, 2024, preliminary hearing Order entered by Administrative Law Judge (ALJ) Julie A.N. Sample.

APPEARANCES

Bradley Avery appeared for Claimant. Frederick Greenbaum appeared for Respondent and its insurance carrier.

RECORD AND STIPULATIONS

The Board has adopted the same stipulations and considered the same record as did the ALJ, consisting of the transcript of the Regular Hearing from May 17, 2023, with exhibits attached; the transcript of the Settlement Hearing from June 20, 2023, with exhibits attached; the transcript of Preliminary Hearing from March 20, 2024, with exhibits attached, the documents of record filed with the Division and the parties' briefs.

ISSUES

1. Did the ALJ exceed her jurisdiction in finding Respondent responsible for the emergency room bill for medical treatment rendered on July 12, 2020?
2. Does the Board have jurisdiction to consider this appeal?

FINDINGS OF FACT

Claimant worked for Respondent as a receptionist. She greeted patients, scheduled visits, and assisted the nurses. On August 12, 2019, Claimant suffered injuries to her right wrist, right forearm, left ankle and left foot. Due to her foot issues, Claimant developed low back and left hip pain.

Claimant received treatment, which included surgery on her left ankle. On Saturday July 11, 2020, about four months post-surgery, Claimant took her ankle brace off and stepped down causing instant pain throughout her foot. Her authorized treating physician, Dr. Kneidel, told Claimant earlier in the week she could take off her ankle brace to walk around her house for a couple of steps. She was not able to bear any weight and had excruciating severe pain.

Claimant attempted to contact her case manager and Dr. Kneidel, the authorized treating physician several times and was unable to reach either of them.

On Sunday July 12, 2020, Claimant's pain became so severe she went to Belton Hospital emergency room (ER) for treatment. At the ER, x-rays were taken showing there were no fractures, or dislocations. Claimant was prescribed medication for pain and nausea. Claimant was released and instructed to see her own doctor and no weight bearing on her ankle. ER personnel attempted to reach Dr. Kneidel with no success.

The case manager arranged for Claimant to see Dr. Kneidel on July 14, 2020.

On January 31, 2022, a letter was sent from MediCredit to Patterson Legal Group, who represented Claimant seeking payment of the Belton Regional Medical Center bill in the amount of \$5,051.38. On July 22, 2022, Claimant's attorney sent a demand letter to Respondent requesting payment of the bill from Belton Regional Medical Center for emergency room treatment on July 12, 2020, in the amount of \$5,051.38. There is no record of Respondent's response to the request for payment of the bill.

A regular hearing was held on this claim on May 17, 2023. At the hearing, an agreement was reached on the claim. The agreement was documented in a "Agreed Award Based on Settlement-Nunc Pro Tunc" dated June 16, 2023. It was agreed Claimant had a 13 percent body as whole impairment, which included the left ankle, low back and the right arm. Future medical was left open for conservative treatment to the low back only. It was noted medical benefits were paid in the amount of \$67,321.61. There was no itemization of what medical benefits were paid.

On June 20, 2023, a settlement hearing was held. The case was settled on the same terms as set out in the Agreed Award Nunc Pro Tunc dated June 16, 2023. Review and

Modification was left open. Medical benefits in the amount of \$67,321.61 were paid. There was no appeal filed to either the Agreed Order Nunc Pro Tunc or the settlement order.

On January 16, 2024, Claimant filed an application for preliminary hearing seeking payment of the Belton Regional Medical Center bill of July 12, 2020. A hearing was held on March 20, 2024, as a preliminary hearing proceeding. There was no preliminary hearing request filed prior to the regular hearing, requesting payment of the Belton Hospital bill.

The ALJ ordered Respondent and its carrier to pay the Belton Regional Medical Center bill, subject to the statutory fee schedule. The ALJ concluded even though Respondent did not expressly refuse to pay the bill, the lack of response over a two-day period was tantamount to an implicit refusal under K.S.A. 44-510j(h). The ALJ further found due to the timing of the medical need and Claimant's numerous attempts to get approval for medical treatment justifies Respondent paying the bill.

PRINCIPLES OF LAW AND ANALYSIS

Respondent argues Claimant failed to prove she is entitled to medical compensation beyond the \$500 limit in relation to the July 12, 2020, Belton Regional Medical Center bill. Respondent argues it promptly provided treatment for Claimant's new foot symptoms. Respondent argues Claimant did not receive authorization to seek treatment at the ER, and therefore the bill is unauthorized and not their responsibility. Respondent argues the ALJ's Order should be reversed because the ALJ exceeded her authority to hold Respondent responsible for the bill.

Claimant argues the ALJ's order should be affirmed. She tried to contact her case manager and Dr. Kneidel several times before going to the ER and had no other choice but to seek medical treatment due to her extreme pain.

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

If an administrative law judge has entered a preliminary hearing 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 relief requested at the preliminary hearing.

Administrative law judges and the Workers Compensation Appeals Board are not courts of equity and are strictly subject to case law and statutory procedures.

A settlement of this case was entered on June 20, 2023. The amount of \$67,321.61 in medical benefits were paid. There was no itemization of what medical benefits were paid.

There was an outstanding bill incurred on July 12, 2020, by Claimant for emergency room medical treatment in the amount of \$5,051.38. On July 22, 2022, Claimant's attorney sent a demand letter to Respondent to pay the bill. There is no record Respondent specifically refused to pay nor is there a record of any further action to have the bill paid, until an application for preliminary hearing was filed January 16, 2024, requesting the July 12, 2020, bill be paid. A hearing was held and Respondent was ordered to pay the bill.

Kansas Workers Compensation Law provides for two procedures after an award has been entered. One is to request or deny post-award medical treatment.¹ The other is a review or modification procedure, which is a process where the original award is changed based on competent evidence warranting a change or modification.²

A post-award request to pay a medical bill incurred before the award was entered has no remedy under Kansas Workers Compensation Law. The ALJ exceeded her jurisdiction in issuing her order.³ Therefore the Order entered by the ALJ is null and void and vacated.

DECISION

WHEREFORE, it is the finding, decision and order of the undersigned Board Member the Order of the ALJ Julie A.N. Sample dated March 22, 2024, exceeded her jurisdiction and is null and void and vacated.

IT IS SO ORDERED.

Dated this _____ day of July, 2024.

REBECCA SANDERS
BOARD MEMBER

c: Via OSCAR

Bradley Avery, Attorney for Claimant
Frederick Greenbaum, Attorney for Respondent and its Insurance Carrier
Hon. Julie A.N. Sample, Administrative Law Judge

¹ K.S.A. 44-510k.

² K.S.A. 44-528.

³ See *Lemmons v. Ryder Integrated Logistics Inc.*, No. 1,036,335, 2013 WL 3368470 (Kan. WCAB June 7, 2013).