BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

REBECCA WHEATLEY	)	
Claimant	)	
V.	)	
	)	
VITALCORE HEALTH STRATEGIES LLC	)	AP-00-0482-952
Respondent	)	CS-00-0478-065
AND	)	
	)	
SUNZ INSURANCE COMPANY	)	
Insurance Carrier	)	

ORDER

The respondent and its insurance carrier (respondent), through Eric Lanham, requested review of Administrative Law Judge (ALJ) Ali Marchant's preliminary hearing Order, dated May 3, 2024. Phillip Slape appeared for the claimant.

RECORD AND STIPULATIONS

The Board adopted the same stipulations and considered the same record as the ALJ, consisting of the: (1) preliminary hearing transcript, held April 22, 2024, with exhibits; (2) documents of record filed with the Division; and (3) parties' briefs.

ISSUE

Did the claimant's work accident cause the partial amputation of her right leg?

FINDINGS OF FACT

The claimant worked for the respondent as a Registered Nurse (RN). On July 24, 2023, the claimant tripped over the wheel of a gurney and injured her right ankle. She reported the accident to her supervisor and was sent to urgent care. According to the claimant, she was diagnosed with an ankle sprain and taken off work for a week. When she returned to urgent care the following week, she was advised she just had a sprain and to remain off work another week. The medical records from the claimant's treatment at urgent care are not in evidence.

Following her second visit at urgent care, the claimant felt her ankle was not going to heal correctly, so she went to the emergency room. She testified her ankle was straight and her foot was facing left. The claimant presented to the emergency room on August 1, 2023, and was diagnosed with: (1) right pilon fracture dislocation, (2) hypertension, (3) diabetes mellitus type 2 with hyperglycemia, (4) hypokalemia, (5) tobaccoism, and (6) dyslipidemia. The discharge summary stated, "Per ED provider, she had blister formation and thinning of the skin over the medial malleolus consistent with the fracture site."[1]

On August 3, 2023, the claimant underwent a closed reduction with manipulation of right pilon fracture dislocation and application of uniplanar external fixation systems spanning the ankle by Brandon Scott, M.D. The operative report noted "[t]his was a significant traumatic injury to right lower extremity that will require staged reconstruction."[2]

On August 9, 2023, the claimant began treating with John Childs, D.O., for post-operative right ankle care. Dr. Childs provided the following plan: "Discussed with the patient has multiple wounds on her leg that preclude any type of ORIF. We discussed intramedullary nail of the hindfoot without any joint prep and the risks and benefits of this were going to proceed. Will also remove her external fixator."[3] By August 21, 2023, the doctor noted the claimant's surgical incisions appeared to be healing and fracture blisters were deflated with firm eschar in place.

On August 29, 2023, the claimant returned to Dr. Childs for suture removal. Dr. Childs diagnosed the claimant with displaced bimalleolar fracture of right lower leg, subsequent encounter for closed fracture with routine healing. The notes from his examination stated:

> Patient is doing well 2 weeks postoperatively. The surgical incisions appear healed, sutures were removed, steristrips placed over incision and ace wrap applied today. She does have some firm eschar in place, fracture blister on medial ankle as well as firm eschar present over posterior Achilles. We will refer her to Wesley wound care for future evaluation and treatment.[4]

On September 13, 2023, the claimant followed up with Dr. Childs. She was awaiting a return call from wound care. The doctor noted the claimant was doing okay four weeks

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[1] P.H. Tran., Cl. Ex. A at 43.

[2] *Id.*, Cl. Ex. A at 41.

[3] *Id.*, Cl. Ex. A at 36.

[4] *Id.*, Cl. Ex. A at 17.

postoperatively and stated, "She does have some increased maceration to her heel incision and does appear to have some full-thickness breakdown with fibrin wound base."[5]

According to the claimant, she started wound care in September 2023. Records from wound care are not in evidence. The claimant testified:

> I went to wound care. They started me on antibiotics. I went to wound care three times a week and then they started me on antibiotics. They took wound cultures, and then - - and sometimes they would change the antibiotic. Then they put a wound vac on and things didn't get any better. Things got worse, and it just exploded from there. Just more wounds all the time. Lots of drainage, blood. Until when I saw Dr. Childs the last time in the office and I already knew. You know, I told him "I think this is going to lead to an amputation." He's like "That's the only thing we can do." It just blew up.[6]

The claimant denied having any sores, blisters or scabs on her right leg prior to the accident. The claimant testified the sores and scabs appeared when she went to the hospital about a week after the accident and it was her understanding they were related to swelling and a delay in treatment.

On October 11, 2023, the claimant returned to Dr. Childs. The doctor noted the claimant had wounds to right second toe eschar present, anterior present full thickness with fibrin wound base, dorsal foot eschar present, plantar calcaneal incision with maceration present full thickness breakdown with fibrin in wound base. Post Achilles tendons exposed.

The claimant followed up with Dr. Childs on November 20, 2023. The doctor noted a worsening of wounds on the claimant's right foot. Dr. Childs described it as follows:

> Wounds to right 2nd toe Full[]thickness present, anterior present full thickness with fibrin in wound base, dorsal foot eschar Full[]thickness wound, plantar calcaneal incision with maceration present full thickness breakdown with fibrin in wound base. Post Achilles tendons exposed.
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> Increased breakdown to calcaneus with full thickness ulcers, excessive amounts of fibrin.[7]

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[5] *Id.*, Cl. Ex. A at 15.

[6] *Id.* at 16-17.

[7] *Id.*, Cl. Ex. A at 8.

Dr. Childs took x-rays and listed additional associated diagnoses of type 2 diabetes mellitus with foot ulcer, other acute osteomyelitis, right ankle and foot, and non-pressure chronic ulcer of other part of right foot with necrosis of bone. The doctor recommended a right below-the-knee amputation, stating:

> Patient presents today with worsening of wounds and would like to discuss a below knee amputation. She has multiple calcaneus wounds that do seem to probe and osteomyelitis present visible on x ray. . . . We discussed a Right hindfoot nail removal, right below knee amputation possible irrigation and debridement . . . . We discussed risks, benefits, complications, alternatives including but not limited to wound complications, infection, blood clots, etc. Pt would like to proceed.[8]

On November 30, 2023, Dr. Childs performed below-the-knee amputation. His preoperative and postoperative diagnosis was right trimalleolar ankle fracture complicated by infection, status post hindfoot nail. On December 26, 2023, the doctor noted post operative pathology showed acute osteomyelitis. The claimant's incisions appeared healed and sutures were removed. Dr. Childs prescribed a shrinker, prosthetic, aftercare, as well as physical therapy, and a prosthetic evaluation.

On December 26, 2023, Michael Driks, M.D., without examining the claimant, authorized a causation report at the request of the respondent. Dr. Driks stated:

> In conclusion, [the claimant] clearly suffered a work related closed right ankle trimalleolar fracture requiring surgical management. Prior to the injury, but relevant to the outcome, she suffered with poorly controlled diabetes, hypertension and hyperlipidemia, and smoked tobacco. Though diagnosed after her injury, she clearly also had pre-existing severe peripheral arterial disease. After the injury and consequent surgeries, her course was characterized by progressive non-healing wounds. Whereas the calcaneal wound with exposed achilles tendon is easily labelled a surgical wound, other wounds of the dorsal and plantar foot may have related more to pressure concerns and the peripheral vascular disease itself. The available record does not address whether [the claimant] may have had diabetic peripheral neuropathy as well. Whether she would have developed non-healing wounds in the absence of diabetes and peripheral arterial disease is doubtful. But whether she would have developed non healing wounds in the absence of fractures and surgery, so soon after the injury, is also doubtful. Thus, I conclude that [the claimant]'s wounds and eventual amputation are multifactorial; the injury and subsequent surgeries on the one hand, the underlying diabetes, peripheral arterial disease and smoking on the other. It is impossible to quantify the contribution of each, but in my medical opinion, I estimate they share about equally.

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[8] *Id.*, Cl. Ex. A at 9.

> Finally, with respect to infection, there is little information in the record that points to any active infection. Though antibiotics were employed, one note specifically indicates prophylaxis rather than treatment of infection. Though one orthopedics note mentions bone necrosis and osteomyelitis, there was never mention of fever, erythema, purulent drainage, laboratory abnormalities, culture, radiographic changes or surgical pathology to raise the specter of infection of viable tissue. Despite being at high risk, I do not believe that [the claimant] was infected.[9]

On February 23, 2024, Dr. Childs addressed causation, stating: "With a reasonable degree of medical probability, this work injury **does** meet prevailing factor."[10]

The claimant testified she was diagnosed with diabetes in 2004 or 2005, and diabetic neuropathy in 2019. She admitted her diabetes was a little high prior to her work accident. As a result of her diabetic neuropathy, she does not have a lot of feeling in her foot and experiences pain sometimes at night. She has smoked for about ten years and currently smokes a half a pack a day. She has high blood pressure which is treated medically. The claimant sees her doctor for diabetes every month and wears a glucose monitor that checks her blood sugar and sends the results to her doctor. She testified her diabetes treatment is going well and is under control.

The claimant is currently doing well and has experienced no more problems with infection. She is interested in getting a prosthetic in order to have some independence.

The ALJ ruled:

> In the present case, Claimant's testimony is uncontroverted that she did not have any sores, scabs, or wounds on her right lower extremity prior to her work-related accident. There is also no dispute that Claimant had diabetes prior to her work-related injury that she has struggled at times to keep well controlled, and Claimant agreed that she has had diabetic neuropathy for the past five years. Claimant's work-related right ankle fracture was not diagnosed by the initial treating physician, and by the time Claimant presented to the emergency room approximately a week after her work-related accident with increasing pain complaints, she had developed fracture blisters on her ankle. After her surgery, her surgical incision did not properly heal, and Claimant developed other wounds on her right lower extremity that also did not heal despite treatment with a wound care clinic.
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> The question the Court must determine is whether Claimant's right lower extremity wounds and resulting below knee amputation are a natural and probable

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[9] *Id.*, Resp. Ex. A at 2-3.

[10] *Id.*, Cl. Ex. B (bold emphasis in original).

consequence of her work-related injury and whether Claimant's work-related accident is the prevailing factor causing them. Claimant points to the opinions of Dr. Childs in support of her position that her work-related accident is the prevailing factor causing her right lower extremity wounds and resulting amputation. Respondent, on the other hand, argues that Dr. Driks's opinions support a finding that Claimant's work-related accident is not the prevailing factor causing her right lower extremity below knee amputation.

After reviewing all of Claimant's medical records and the opinions of both Dr. Childs and Dr. Driks, the Court finds that Claimant has met her burden to prove that her work-related accident is the prevailing factor causing her right lower extremity wounds and resulting amputation and that Claimant's amputation is a natural and probable consequence of her work-related injury. Dr. Childs was Claimant's authorized treating physician from one week after her accident at work and was able to witness first hand the progression of her condition, including the development of wounds and infection and eventual need for an amputation. Although the Court appreciates Dr. Driks's opinion that the cause for Claimant's need for a below knee amputation of her right lower extremity was multi-factorial and related to both her pre-existing diabetes and her work-related injuries, the Court does not believe that his opinions sufficiently undermine Dr. Childs's opinions. This is especially the case given that Dr. Driks did not actually examine Claimant or speak with her, and Dr. Driks agreed that Claimant's work-related accident was at least an equal factor causing her need for an amputation.

The Court finds that Claimant has met her burden to prove that her July 23, 2023, work-related accident is the prevailing factor causing her right lower extremity injuries, including her below knee amputation. The Court further finds that Claimant is entitled to medical treatment for her right lower extremity injury and amputation, including prosthetic placement. Dr. John Childs is designated as Claimant's authorized treating physician for all treatment, tests, and referrals for her work-related injuries to her right lower extremity, including the below knee amputation and prosthetic placement. Respondent is further ordered to pay Claimant's medical bills related to her right below knee amputation as authorized medical treatment pursuant to the Kansas Workers Compensation Fee Schedule upon presentation of the bills in the proper HCFA billing format.[11]

PRINCIPLES OF LAW AND ANALYSIS

The respondent argues the claimant's amputation injury was not a consequence of a risk distinctly associated with her job. The respondent contends the risks of infection leading to the amputation were risks peculiar to the claimant and not her employment because the claimant suffered from poorly controlled diabetes and severe peripheral

[11] ALJ Order at 8-9.

arterial disease. The claimant maintains the preliminary hearing Order should be affirmed, arguing Dr. Childs provided the most credible opinion.

An employer is liable to pay compensation to an employee incurring personal injury by accident arising out of and in the course of employment.[12] The burden of proof shall be on the employee to establish the right to an award of compensation, and to prove the various conditions on which the right to compensation depends.[13] The trier of fact shall consider the whole record.[14]

K.S.A. 44-508 states:

> (d) "Accident" means an undesigned, sudden and unexpected traumatic event, usually of an afflictive or unfortunate nature and often, but not necessarily, accompanied by a manifestation of force. An accident shall be identifiable by time and place of occurrence, produce at the time symptoms of an injury, and occur during a single work shift. The accident must be the prevailing factor in causing the injury. "Accident" shall in no case be construed to include repetitive trauma in any form.
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> . . .
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> (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.
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> (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. An injury is not compensable solely because it aggravates, accelerates or exacerbates a preexisting condition or renders a preexisting condition symptomatic.
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> . . .
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> (B) An injury by accident shall be deemed to arise out of employment only if:
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> (i) There is a causal connection between the conditions under which the work is required to be performed and the resulting accident; and

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[12] K.S.A. 44-501b(b).

[13] See K.S.A. 44-501b(c).

[14] See *id*.

(ii) the accident is the prevailing factor causing the injury, medical condition, and resulting disability or impairment.

(3)(A) The words "arising out of and in the course of employment" as used in the workers compensation act shall not be construed to include:

(i) Injury which occurred as a result of the natural aging process or by the normal activities of day-to-day living;

(ii) accident or injury which arose out of a neutral risk with no particular employment or personal character;

(iii) accident or injury which arose out of a risk personal to the worker; or

(iv) accident or injury which arose either directly or indirectly from idiopathic causes.

. . .

(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.

"[I]njured employees are . . . entitled to compensation for any secondary injuries that are the natural and probable result of the primary injury: this is known as the secondary-injury rule. E.g., *Casco v. Armour Swift–Eckrich*, 283 Kan. 508, 515–16, 154 P.3d 494 (2007); *Jackson v. Stevens Well Service*, 208 Kan. 637, 643, 493 P.2d 264 (1972)."[15]

The undersigned makes the following conclusions:

1. The ALJ's ruling is well-supported and is affirmed.

2. There was a causal connection between the conditions under which the work is required to be performed and the resulting accident.

3. The accident was the prevailing factor causing the injury, medical condition, and resulting disability or impairment.

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[15] *Buchanan v. JM Staffing, LLC*, 52 Kan. App. 2d 943, 950, 379 P.3d 428 (2016).

4. The claimant's amputation was the direct and natural result of her original injury. The claimant's amputation was not due to her preexisting diabetes or peripheral artery disease.

5. The opinion of the treating physician, Dr. Childs, is afforded more evidentiary weight than the opinion of Dr. Driks.

WHEREFORE, the undersigned Board member affirms the preliminary hearing Order, dated May 3, 2024.

IT IS SO ORDERED.

Dated this _____ day of July, 2024.

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JOHN F. CARPINELLI
BOARD MEMBER

c: (via OSCAR)
Phillip Slape
Eric Lanham
Hon. Ali Marchant