

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

LORI STOTTS)
Claimant)
V.)
) AP-00-0483-224
KANSAS STAR CASINO LLC) CS-00-0473-111
Respondent)
AND)
)
ACE AMERICAN INSURANCE COMPANY)
Insurance Carrier)

ORDER

Respondent appeals the May 23, 2024, preliminary hearing Order entered by Administrative Law Judge (ALJ) Gary K. Jones.

APPEARANCES

David H. Farris appeared for Claimant. Timothy A. Emerson appeared for Respondent and its insurance carrier.

RECORD AND STIPULATIONS

The Board adopted the same stipulations and considered the same record as the ALJ, consisting of the Evidentiary Deposition of Lori Lauren Stotts taken May 25, 2023, with exhibits attached; the transcript of Preliminary Hearing from May 21, 2024, with exhibits attached; the documents of record filed with the Division and the parties' briefs.

ISSUE

Does the Board have jurisdiction to consider Respondent's appeal?

FINDINGS OF FACT

Claimant claims a series of repetitive injuries to her left hand from January 1, 2022, through February 24, 2022.

Dr. Alexander Bollinger, on authorization from Respondent, examined Claimant on March 10, 2022, for left hand pain. Claimant was diagnosed with trigger finger of the left

ring finger and palmar fascial fibromatosis, Dupuytren. Dr. Bollinger did not feel the trigger finger and Dupuytren were related to Claimant's work. Claimant was given a cortisone injection for the trigger finger and told to return in 6 weeks if there was no relief. Claimant had no restrictions.

On March 29, 2022, Claimant returned to Dr. Bollinger. Claimant improved from the injection but had increased pain in the ring finger radiating into the palm. Claimant was instructed to continue with activity and NSAIDs and if symptoms persist or worsen a trigger finger release surgery would be discussed.

On April 21, 2022, Dr. Bollinger discussed further treatment with Claimant and it was determined surgery was the next option. Dr. Bollinger told Claimant the surgery was not going to directly treat her palmar fibromatosis and additional surgery may be needed to treat that condition.

On May 6, 2022, Claimant had left trigger finger release surgery. Claimant testified she understood this surgery was not for and would not help the palmar fascial fibromatosis.

On June 16, 2022, Dr. Bollinger determined Claimant was at maximum medical improvement with no work restrictions.

Dr. Lowry Jones examined Claimant on August 30, 2023, at the request of the Court. Claimant complained of left hand and left elbow pain. Claimant reported increased swelling and increasing contracture in her left palm to where she is unable to fully extend her finger after her trigger finger release in her ring finger on her left hand. Claimant also complained of some tingling in her left and right hand. He recommended Claimant see an additional hand surgeon to see if Claimant would be a candidate for a Xiaflex injection for the left finger contracture.

Dr. Stephen V. Hiatt, who was authorized, examined Claimant on January 30, 2024, for evaluation of the left hand. Claimant reported no trigger finger problems until after the May 6, 2022, surgery. She reported an increase in the size of nodules on her left hand, lack of extension of the left ring finger and a dull ache radiating into the left hand and into the wrist.

Dr. Hiatt diagnosed Claimant with Dupuytren's contracture, primary osteoarthritis of first carpometacarpal joint of the left hand and left hand pain. He opined Claimant needed treatment for the left hand. He offered non-operative treatment or surgery to excise the Dupuytren's cords to the ring and small fingers. He also noted either treatment may not fully resolve the problem and it could recur. Claimant was allowed to continue working full duty.

Respondent views this as compensable claim: “we’ve (Respondent) never said it wasn’t a compensable claim.”¹

The preliminary hearing on May 21, 2024, was held because Claimant requests continued authorization of Dr. Hiatt, including surgery. Respondent acknowledges Dr. Hiatt is authorized. The ALJ authorized the surgery with Dr. Hiatt, including other treatment, tests and referrals.

PRINCIPLES OF LAW AND ANALYSIS

Respondent argues the Board should reverse the ALJ and find the Dupuytren's contracture is not related to Claimant's work, but rather a genetic condition with an unpredictable pathology and treatment for this condition should not be authorized. Respondent agrees this claim is compensable for the trigger finger injury, which was treated and resolved, but does not consider the Dupuytren contracture to be work-related or compensable and so the surgery recommended by Dr. Hiatt should be denied.

Claimant argues the Board does not have jurisdiction to hear this appeal as the only issue is whether or not the recommended surgery should be the responsibility of the Respondent. Claimant argues this appeal should be dismissed for lack of jurisdiction or in the alternative affirmed.

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

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 and in the course of employee’s employment, whether notice is given, or whether certain defenses apply, shall be considered jurisdictional, and subject to review by the board.

The term certain defenses refers to defenses disputing compensability of the injury under the Workers Compensation Act.²

The dispute is as to whether certain medical treatment by the authorized medial treater should be authorized. Respondent argues the compensable work injury is not the prevailing factor for the type of medical treatment Claimant requests be authorized. Prevailing factor only applies to the injury, the medical condition or impairment. There is nothing in the prevailing factor statute referring to the type of medical treatment.³

¹ P.H. Trans. (May 21, 2024) at 9.

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

³ See K.S.A. 44-508(f)(2)(B).

The Board does not have jurisdiction to consider a dispute about authorizing medical treatment of a preliminary hearing order. Respondent's appeal is dismissed.

DECISION

WHEREFORE, it is the finding, decision and order of the undersigned Board Member, Respondent's appeal is dismissed. The Order dated May 23, 2024, of the ALJ remains in full force and effect.

IT IS SO ORDERED.

Dated this _____ day of August, 2024.

REBECCA SANDERS
BOARD MEMBER

c: Via OSCAR

David H. Farris, Attorney for Claimant
Timothy A. Emerson, Attorney for Respondent and its Insurance Carrier
Hon. Gary K. Jones, Administrative Law Judge