

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

TERRY D. VAUGHN)	
Claimant)	
VS.)	
)	Docket No. 1000292
VIA CHRISTI REGIONAL MED. CTR.)	
Respondent)	
AND)	
)	
LIBERTY MUTUAL INS. CO.)	
Insurance Carrier)	

ORDER

Claimant appealed Administrative Law Judge Jon L. Frobish's January 8, 2002, preliminary hearing Order.

ISSUES

The Administrative Law Judge (ALJ) denied claimant's request for medical treatment for a lipoma located on the posterior of claimant's right shoulder. The ALJ found claimant failed to prove the lipoma was related to a January 7, 1998, work-related accident. Moreover, the ALJ also found the claim was barred for failure to serve upon the respondent a timely written claim for compensation.

Dr. J. Mark Melhorn examined claimant on October 9, 2001, and found claimant with a painful right shoulder and a mass on the posterior scapula diagnosed as a probable lipoma based on a MRI examination completed on September 20, 2001. Claimant argues that Dr. Melhorn, in a medical note dated October 18, 2001, proved that the lipoma was related to claimant's traumatic right shoulder injury of December 1998 and thus compensable as he opined "the lipoma was probably pre-existing but could have been aggravated by the traumatic event as described to us." Further, claimant argues, since respondent provided medical treatment for claimant's lipoma on August 16, 2001, the written accident report that claimant completed on August 16, 2001, satisfies the timely written claim requirement and the claimant's Application for Hearing filed on November 1, 2001, was also timely filed.

Respondent failed to file a brief before the Appeals Board (Board). Thus, the Board does not have the benefit of respondent's contentions and arguments.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record, and considering the arguments contained in the claimant's brief, the Board makes the following findings and conclusions:

The claimant did not testify at the January 8, 2002, preliminary hearing. The only evidence contained in the preliminary hearing record are medical records and respondent's Employer Report of Injury/Employee Health Center Authorization completed by claimant's supervisor and claimant, plus signed by claimant on August 16, 2001. In that report, claimant described his injury as follows:

This is from an injury that occurred in 1998. Around August 1 I started noticing pain come from my right shoulder. In certain positions I feel pain around to the front side.

In claimant's Application for Hearing filed November 1, 2001, claimant alleges a December 1998 accidental injury to his neck and right shoulder. No subsequent aggravation is alleged. The medical records admitted into evidence at the preliminary hearing show claimant was first treated at respondent's Employee Health Center on January 14, 1998, for a January 7, 1998, accident and then was seen for the second time on January 29, 1998. Claimant was not taken off work and the January 29, 1998, medical note instructed claimant to return in two weeks for further treatment, if needed. There is no additional documentation of claimant requesting additional medical treatment for a right shoulder and neck strain or for a symptomatic lipoma again until August 16, 2001.

On August 16, 2001, claimant saw Dr. James A. Littell at the Employee Health Center with right shoulder pain which claimant attributed to the 1998 right shoulder injury. Dr. Littell referred claimant to Bernard A. Hearon, M.D. But Dr. Littell, in his August 16, 2001, medical note, indicated he told claimant that if the lesion on his right shoulder was a lipoma that the lipoma itself was not work-related.

An injured worker is required to serve upon the employer a written claim for compensation within 200 days after the accident, or in cases where compensation has been suspended within 200 days after last payment of compensation.¹ But the injured worker's time to serve a written claim for compensation on the employer is extended to one year from the date of accident, suspension of payment of compensation or date of last medical treatment authorized by the employer, if the employer fails to file a report of accident with the director of workers compensation.²

¹ See K.S.A. 44-520a (Furse 1993).

² See K.S.A. 44-557(c) (Furse 1993).

The preliminary hearing record contains no evidence that the employer filed an accident report for claimant's January 7, 1998, accident. But the only evidence contained in the preliminary hearing record that claimant filed a written claim for compensation for the January 7, 1998, accident is the August 16, 2001, accident report completed and signed by claimant. Thus, the only written claim for compensation that claimant served upon respondent was on August 16, 2001, clearly more than one year from claimant's January 7, 1998, accident date and January 29, 1998, the date respondent last furnished medical treatment for claimant's work-related injuries.

Additionally, no proceedings shall be maintained under the workers compensation act unless an application for hearing is filed with the director of workers compensation within three years of the date of accident or within two years of the date of the last payment of compensation, whichever is later.³ Here, claimant did not file his Application for Hearing until November 1, 2001. This is clearly out of time. Claimant is alleging a date of accident of January 7, 1998, and the last medical treatment furnished by the respondent was January 29, 1998. The November 1, 2001, Application for Hearing, therefore, was filed some three years and nine months after respondent last furnished medical treatment for claimant's January 7, 1998, work-related accident.

The Board, therefore, affirms the ALJ's preliminary hearing Order that found that claimant's compensation claim was barred because he failed to serve upon the respondent a timely written claim and further he failed to file a timely application for hearing for a January 7, 1998, work-related accident.

WHEREFORE, it is the finding, decision, and order of the Board that ALJ Jon L. Frobish's January 8, 2002, preliminary hearing Order, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of March 2002.

BOARD MEMBER

c: James A. Cline, Attorney for Claimant
Edward D. Heath, Jr., Attorney for Respondent
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Workers Compensation Director

³ See K.S.A. 44-534(b) (Furse 1993).