

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

TROY SHAW)	
Claimant)	
VS.)	
)	Docket No. 1,001,959
MEDICALODGE OF EUREKA)	
Respondent)	
AND)	
)	
TRAVELERS INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Respondent's insurance carrier appealed the April 11, 2002 preliminary hearing Order for Compensation entered by Administrative Law Judge Brad E. Avery.

ISSUES

This is a claim for a January 2, 2002 accident, which allegedly aggravated a preexisting back injury. Respondent and its insurance carrier admit that claimant sustained personal injury by accident arising out of and in the course of employment on January 2, 2002. But they contest that claimant's need for medical treatment, if any, stems from that accident.

In the April 11, 2002 preliminary hearing Order, Judge Avery granted claimant's request for both medical benefits and temporary total disability benefits. The Judge also determined that the appropriate date of accident for this claim was January 2, 2002.

Respondent and its insurance carrier contend Judge Avery erred. They argue the January 2, 2002 accident was far too minor to cause the injury alleged and that the need for medical treatment was actually caused by claimant moving furniture at home the previous weekend.

Conversely, claimant contends the preliminary hearing Order should be affirmed as the evidence supports the Judge's conclusion that claimant injured her back while working

for respondent on January 2, 2002, rather than while watching others move furniture days before.

The only issue before the Board on this appeal is whether claimant's present need for medical treatment stems from an accidental injury that arose out of and in the course of employment with respondent on January 2, 2002, or whether claimant injured her back in late December 2001 when furniture was rearranged at her home.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Board finds and concludes:

The preliminary hearing Order for Compensation should be affirmed. The Board finds that it is more probably true than not that claimant aggravated her back on January 2, 2002, when she almost collided with a coworker and almost fell.

Before the January 2002 incident, claimant was recovering from work-related back injuries, including an August 2001 incident in which she had been thrown against a wall by a combative patient, and had been undergoing back treatment for several months. But after the January 2002 incident, claimant's symptoms increased, prompting her to return immediately to her physician for additional treatment. Respondent's director of nursing was present at the time of the near collision and witnessed claimant shake for a couple of seconds following the incident, after which claimant reported that she was shaking because of back pain.

The record does not support the contention that claimant injured her back moving furniture at home. Claimant testified that she did not move any of the furniture and limited her lifting to small figurines. That testimony was corroborated by the testimony of claimant's husband and by the notarized written statement by Karen Harrell, the friend who helped claimant's husband with the furniture. The greater weight of the evidence is that claimant limited her participation in rearranging her furniture and wall hangings to lifting small figurines.

At this juncture, claimant has established that she aggravated her back on January 2, 2002, and, therefore, she is entitled to receive workers compensation benefits for that injury.

WHEREFORE, the Board affirms the April 11, 2002 preliminary hearing Order for Compensation entered by Judge Avery.

IT IS SO ORDERED.

Dated this ____ day of June 2002.

BOARD MEMBER

- c: Russell B. Cranmer, Attorney for Claimant
Jon E. Newman, Attorney for Respondent
Brian R. Collignon, Attorney for Respondent and its Insurance Carrier
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Workers Compensation Director