

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

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|--|---|----------------------|
| MICHAEL POLK |) | |
| Claimant |) | |
| VS. |) | |
| |) | Docket No. 1,002,102 |
| EAGLE AUTO WASH & DETAILING SALON |) | |
| Respondent |) | |
| AND |) | |
| |) | |
| CONTINENTAL WESTERN INSURANCE COMPANY |) | |
| Insurance Carrier |) | |

ORDER

Claimant appealed the April 25, 2002 preliminary hearing Order entered by Administrative Law Judge Bryce D. Benedict.

ISSUES

This is a claim for a November 14, 2001 accident and alleged aggravation to claimant's back. In the April 25, 2002 Order, Judge Benedict denied claimant's request for medical treatment, finding claimant failed to prove that he sustained a new accidental injury and failed to prove that he provided timely notice to respondent.

Claimant contends Judge Benedict erred. Claimant argues that on November 14, 2001, he either injured or aggravated his back while washing towels. He also contends that he provided respondent notice of the accidental injury the day after it occurred. Accordingly, claimant requests the Board to reverse the Judge's preliminary hearing findings and to find that he is entitled to receive medical benefits in this claim.

Conversely, respondent and its insurance carrier contend the Judge's decision is supported by the credible evidence and, therefore, should be affirmed. They argue claimant has suffered from chronic low back complaints following a December 1998 work-related accident and that claimant's present need for medical treatment is the result of that accident rather than claimant's November 14, 2001 work activities. They also argue claimant did not provide respondent with timely notice of the alleged November 14, 2001

accident as notice was not provided until January 21, 2002, which is well beyond the initial 10 days allotted for giving notice. Moreover, they contend claimant did not have just cause for failing to provide notice within that initial 10-day period following the alleged accident and, thus, the notice period was not extended to 75 days.

The only issues before the Board on this appeal are:

1. Did claimant either injure or aggravate his back while working for respondent on November 14, 2001?
2. If so, did claimant prove his present need for medical treatment is directly related to that work-related incident?
3. If so, did claimant provide respondent with timely notice of the accidental injury or aggravation?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

The preliminary hearing Order should be affirmed. The Board finds claimant has failed to prove that his present need for medical treatment is related either to a November 2001 back injury or aggravation that he sustained at work.

Claimant testified how his back symptoms have increased following November 14, 2001, when he washed and dried towels at work. But claimant has experienced intermittent back symptoms since December 1998, when he was struck by a car while at work. Claimant initiated a workers compensation claim for that accident and settled the claim, reserving his right to seek additional medical treatment. According to claimant, his doctors advised that he might eventually need back surgery as a result of the 1998 accident. Moreover, the medical evidence introduced at the preliminary hearing does not support claimant's position.

The only medical evidence claimant introduced that addresses claimant's condition following the November 14, 2001 alleged accident is a December 10, 2001 medical note from Dr. Jonson Huang. Although that note contains a history that claimant experienced a flare-up of pain at work, the note does not address the issue of whether claimant sustained additional injury at work in November 2001 or whether claimant's symptoms were the natural and probable result of the December 1998 accident. Dr. Huang's office note reads, in part:

Michael Polk was seen in followup [sic] regarding low back pain with history of chronic low back pain, previously evaluated, 1/19/99, with subsequent orthopedic evaluation without recommendation for surgical intervention with lumbar spondylosis-spondylolisthesis L4 on 5. Low back pain relatively controlled until approximately one month ago, while at work. Subsequently, low back pain has persisted without radicular leg symptoms, gait impairment, sphincter incontinence, leg swelling, or discoloration. History of motor vehicle accident approximately five months ago with low back pain, gradually improved, prior to one month ago with evaluation at Stormont-Vail Emergency Room, records not available for review. . . .

. . .

IMPRESSION:

1. Recurrent low back pain with history of lumbar spondylosis-spondylolisthesis L4 on 5. . . .

On the other hand, respondent and its insurance carrier presented the April 4, 2002 medical report from Dr. Sergio Delgado, who examined claimant in April 2002. Dr. Delgado found no objective signs indicating claimant was injured, needed medical treatment or was incapable of returning to his usual work activities. The doctor wrote, in part:

I find no objective residuals of injury at this time with Mr. Polk showing excellent range of motion of the entire back, no evidence of spasm, guarding or scoliosis and with only subjective complaints related to the mid thoracic and lower back regions and no significant disability to activities in my office such as standing, sitting, walking, removing clothes or redressing. There is no evidence of sciatic radiculopathy.

I do not see any need for additional medical treatment for his complaints. In addition, his low back complaints have existed for a long period of time and would be expected to continue in view of the pathology originally found and the permanent impairment rendered as I would expect that his symptoms would continue and if not, his previous impairment would have been 0%. I find no reason why Mr. Polk cannot return to previous work activities at this time.

Due to the finding that claimant has failed to prove his present need for medical treatment is directly related to his washing and drying towels at work on November 14, 2001, the remaining issues are rendered moot.

WHEREFORE, the Board affirms the April 25, 2002 preliminary hearing Order entered by Judge Benedict.

IT IS SO ORDERED.

Dated this ____ day of July 2002.

BOARD MEMBER

- c: Steven R. Jarrett, Attorney for Claimant
Ronald J. Laskowski, Attorney for Respondent and its Insurance Carrier
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Workers Compensation Director