



**ISSUES**

Claimant alleges the ALJ erred in his finding that claimant did not meet with personal injury by accident arising out of and in the course of her employment with USD 637 in Docket No. 1,020,191.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board (Board) finds the Post-Award Medical & Preliminary Order of the ALJ should be affirmed.

This is the third time the Board has been asked to review this claimant's requests for benefits. Claimant originally suffered an accidental injury arising out of and in the course of her employment with USD 609, when, on March 15, 2001, an autistic child she was working with grabbed her right arm. Claimant suffered injuries to her right shoulder and neck and was awarded benefits by the ALJ for a 13 percent permanent partial whole body disability. The Board, in its award of February 20, 2004, increased the disability to a 17 percent whole body disability. In this award, claimant was allowed additional medical treatment, as recommended by treating physician Paul S. Stein, M.D., a board certified neurological surgeon, in his letter of November 18, 2005. Additional medical treatment for claimant's claimed carpal tunnel syndrome and cubital tunnel condition, and added permanent disability for the March 15, 2001 injury were denied in Docket No. 1,003,648.

Claimant filed a second claim in Docket No. 1,020,191, alleging an accidental injury while employed with USD 637 for a series of accidents through November 18, 2004. Claimant argued that the repetitive nature of her work caused her to develop bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome. The ALJ, in reviewing the medical evidence of Dr. Stein and board certified orthopedic surgeon Edward J. Prostic, M.D., found claimant's allegations to not be supported by the record. While Dr. Prostic testified the repetitious nature of claimant's work for respondent aggravated claimant's conditions, the record did not support claimant's allegations of repetitious work. Instead, the testimony of Carole A. Rink, respondent's gifted facilitator, contradicted claimant's allegations of repetitious work. In fact, Ms. Rink testified that claimant was actually doing much less work than was required of her job. While claimant claimed to grade many papers daily, Ms. Rink found that claimant was only handing out one page per child per class, which would calculate to only grading 17 to 18 papers per day. This is far less than claimed by claimant.

The ALJ found the testimony of Dr. Stein to be the more credible and denied claimant any permanent disability for the alleged carpal tunnel and cubital tunnel conditions. The Board, after reviewing the same medical evidence as was presented at

the earlier preliminary hearing where both the ALJ, and later the Board, denied claimant benefits, finds the decision of the ALJ should again be affirmed.

In workers compensation litigation, it is the claimant's burden to prove her entitlement to benefits by a preponderance of the credible evidence.<sup>1</sup>

The burden of proof means the burden of a party to persuade the trier of fact by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record.<sup>2</sup>

The Board finds that claimant has failed to prove that she suffered an accident arising out of and in the course of her employment in Docket No. 1,020,191 with an accident date alleged as a series through November 18, 2004. Therefore, the Post-Award Medical & Preliminary Order of May 24, 2006, should be affirmed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Post-Award Medical & Preliminary Order of Administrative Law Judge Kenneth J. Hursh dated May 24, 2006, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of September, 2006.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: William L. Phalen, Attorney for Claimant  
Anton C. Andersen, Attorney for Respondent and its Insurance Carrier

<sup>1</sup> K.S.A. 44-501 and K.S.A. 2004 Supp. 44-508(g).

<sup>2</sup> *In re Estate of Robinson*, 236 Kan. 431, 690 P.2d 1383 (1984).