

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

VICTOR BRANNAN)	
Claimant)	
VS.)	
)	Docket No. 1,008,179
AGCO CORPORATION)	
Respondent,)	
Self-Insured)	

ORDER

Claimant appealed the April 14, 2003 preliminary hearing Order entered by Administrative Law Judge Bruce E. Moore.

ISSUES

Claimant alleges that he injured his back on November 13, 2002, while working for respondent. But in the April 14, 2003 preliminary hearing Order, Judge Moore denied claimant's request for benefits after finding that claimant failed to prove that he sustained an accidental injury that arose out of and in the course of employment.

Claimant contends the Judge erred. Claimant argues that he has proven his back injury occurred at work through the opinion of Dr. Pedro A. Murati. Accordingly, claimant requests the Board to reverse the April 14, 2003 Order and grant him workers compensation benefits.

The only issue before the Board on this appeal is whether claimant has proven that he injured his back at work.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Board finds and concludes that the preliminary hearing Order should be affirmed.

On November 13, 2002, following a day of work repetitively bending and hanging parts on hooks, claimant began experiencing sharp back pain at home when he got up from watching television. Moreover, the pain symptoms commenced within approximately two weeks of claimant performing strenuous work digging out and repairing a water line

that had flooded the basement in his house. According to claimant, he experienced no back pain before leaving work on November 13, 2002. Additionally, according to claimant, he experienced no symptoms from working on the water line other than feeling tired and worn out.

Claimant presented a January 29, 2003 medical report from Dr. Pedro A. Murati. The doctor, who examined claimant in January 2003 at the request of claimant's attorney, diagnosed low back pain secondary to degenerative disk disease with radiculopathy and left sacroiliac joint dysfunction. Dr. Murati, however, dictated a history that was somewhat contrary to that provided by claimant at the preliminary hearing. The report read, in part:

This 41-year-old, right-hand dominant, Caucasian male sees me today at the request of his attorney. He was involved in a work-related injury during his employment with Agco Corporation where he was employed for one and a half years as an assembler. The patient states he is not sure how he got injured. He states he cannot recall a specific injury that would have caused his pain. He states he gradually started to experience pain in the low back radiating down both hips. He states his family doctor thought it was work-related. He states the day his back started hurting, he was doing a lot of lifting, twisting, and turning his back. . . . The patient states he was doing a lot of climbing in and out of beams at work, as well as stretching and twisting of his back. The patient states back in March 2002, he started to develop low back pain. It resolved.

As noted by the Judge in comments made at the conclusion of the preliminary hearing, on its face Dr. Murati's opinion does not account for the arduous work that claimant performed digging out the water line. Moreover, the history recited by Dr. Murati does not mention that claimant's back pain began when he arose from watching television. Consequently, the history that Dr. Murati relied upon is different than that provided by claimant.

Considering Dr. Murati's report in light of the entire record compiled to date, the Board affirms the Judge's conclusion that claimant has failed to prove that on November 13, 2002, he injured his back at work.

WHEREFORE, the Board affirms the April 14, 2003 Order entered by Judge Moore.

IT IS SO ORDERED.

Dated this ____ day of June 2003.

BOARD MEMBER

c: Kevin T. Stamper, Attorney for Claimant
Larry D. Shoaf, Attorney for Respondent
Bruce E. Moore, Administrative Law Judge
Director, Division of Workers Compensation