BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

PAUL ROBERTS	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,008,445
C A HILL CONSTRUCTION, INC.	)	
Respondent	)	
AND	)	
	)	
KANSAS BUILDING INDUSTRY	)	
WORKERS COMPENSATION FUND	)	
Insurance Fund	)	

ORDER

Claimant appealed the March 6, 2003 preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes.

ISSUES

Claimant alleges he injured his back in early March 2002 by falling approximately six feet when scaffolding collapsed underneath him. In the March 6, 2003 preliminary hearing Order, the Judge determined claimant had failed to prove that he had sustained a work-related accident.

Claimant contends Judge Barnes erred. In his brief to this Board, claimant argues that his testimony regarding the accident is uncontradicted as respondent's owner has not denied any of claimant's allegations. Accordingly, claimant requests the Board to reverse the preliminary hearing Order and to find that claimant injured his back while working for respondent.

The issues before the Board on this appeal are:

1. Did claimant injure his back as the result of an accident that arose out of and in the course of employment with respondent?

2. If so, did claimant provide timely notice and make timely written claim for benefits?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

Claimant testified that in early March 2002, he fell approximately six feet to the ground when scaffolding collapsed underneath him. Approximately one week later, claimant allegedly notified respondent's owner, Mr. Craig Hill, of the accident when Mr. Hill returned to town. Claimant also testified that he discussed workers compensation benefits with Mr. Hill but was told that the company should not be responsible for claimant's medical bills as the accident was due to claimant's stupidity.

It is undisputed that claimant began seeking medical treatment on his own and on March 18, 2002, claimant saw Dr. Jesus Suero. On March 28, 2002, claimant saw Dr. Bernard T. Poole. But it is also undisputed that claimant initially told neither Dr. Suero nor Dr. Poole that he had fallen off a scaffold at work. On the other hand, Dr. Poole's medical records indicate that claimant initially provided a history that he had been having low back pain for approximately two weeks but there was no known injury.

Claimant testified that he did not provide Dr. Poole an accurate history as Mr. Hill did not want the accident on his workers compensation insurance. Claimant testified, in part:

> Q. (Mr. Seiwert) Did you have another discussion with him [Mr. Hill] about workers' compensation and health insurance?
>
> A. (Claimant) I sat there and I told him -- because I found out where the injury was and it wasn't, you know, like he, you know, he was trying to say it was a pre-existing. And I said, well, this is what it is, you know. It is not pre-existing, it's from the fall. I want workman's comp to cover it. And he said, well, he was planning on canceling the health insurance. And he said, we'll keep the health insurance going and I will help you along and that way it won't go on my workman's comp.
>
> Q. Did he tell you to put it on the health insurance?
>
> A. Yes, he did.[1]
>
> . . . .
>
> Q. (Mr. Seiwert) And why didn't you tell Dr. Poole about that?

[1] P.H. Trans. at 11-12.

> A. (Claimant) Because Craig [Hill] wanted it kept off his workman's comp and I at least needed the [health] insurance to pay for it. And if I would have said I got hurt at work that insurance wouldn't pay for it. And Craig said he would say nothing happened and wouldn't claim it on workman's comp.[2]

Following the alleged March 2002 accident, claimant continued working for respondent until sometime in August 2002. Claimant then worked for approximately two months with another construction company until he was laid off. When claimant testified in February 2003 at the preliminary hearing, he had not worked since approximately October 2002.

At the preliminary hearing the parties agreed that on January 15, 2003, claimant provided respondent with written claim for workers compensation benefits.

This case hinges on claimant's credibility. Claimant is accurate in stating that Kansas law provides that uncontradicted evidence should generally be regarded as conclusive. But, more importantly, the law also requires that uncontradicted evidence must be credible and trustworthy before it is deemed conclusive. In light of the medical history that claimant initially provided, the Board finds that claimant's testimony is contradicted. Moreover, the medical history that claimant initially provided to Dr. Poole casts some doubt upon whether claimant's testimony is entirely trustworthy. The Judge had the opportunity to watch claimant testify and gauge claimant's credibility in light of the other evidence presented. After carefully weighing the evidence, the Judge determined claimant had failed to establish that he had injured his back while working for respondent. Based upon this record, the Board agrees. The Board, however, does note that claimant's testimony is plausible.

Due to the above findings and conclusion, the issues regarding notice and written claim are moot.

As provided by the Workers Compensation Act, preliminary hearing findings are not final as they may be modified upon a full hearing of the claim.[3]

WHEREFORE, the Board affirms the March 6, 2003 preliminary hearing Order entered by Judge Barnes.

IT IS SO ORDERED.

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[2] *Id.* at 15.

[3] K.S.A. 44-534a(a)(2).

Dated this ____ day of April 2003.

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BOARD MEMBER

c: Joseph Seiwert, Attorney for Claimant
Edward D. Heath, Jr., Attorney for Respondent and its Insurance Fund
Nelsonna Potts Barnes, Administrative Law Judge
Director, Division of Workers Compensation