BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

MARSHA A. MEYERS	)	
Claimant	)	
VS.	)	
	)	Docket Nos. 1,008,010
	)	& 1,011,375
TARGET STORES	)	
Respondent	)	
AND	)	
	)	
CONSTITUTION STATE SERVICE COMPANY	)	
Insurance Carrier	)	

ORDER

Respondent and its insurance carrier appealed the September 2, 2003 Preliminary Decision entered by Administrative Law Judge Robert H. Foerschler.

ISSUES

This is a claim for repetitive traumas to claimant's knees. Claimant contends that she developed bilateral knee injuries due to repetitive trauma through May 27, 2003, when she last worked for Target Stores.

In the September 2, 2003 Preliminary Decision, Judge Foerschler determined claimant had injured her knees from crawling at work. Accordingly, the Judge granted claimant both medical benefits and temporary total disability benefits.

Respondent and its insurance carrier contend the Judge erred. They argue that claimant failed to prove that she injured her knees while working for respondent. They also argue that claimant failed to prove that she was temporarily and totally disabled. Accordingly, respondent and its insurance carrier request the Board to deny claimant's request for benefits.

Conversely, claimant argues that the September 2, 2003 Preliminary Decision should be affirmed. Claimant also argues that the Board does not have the jurisdiction to review at this juncture of the claim whether claimant is temporarily and totally disabled.

Finally, claimant argues that if the Board does address the temporary total disability issue the Board should award claimant additional weeks of those benefits.

The only issue before the Board on this appeal is whether claimant injured her knees due to the kneeling and crawling that she performed while carrying out her work duties for respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date and after considering the parties' arguments, the Board finds and concludes that the September 2, 2003 Preliminary Decision should be affirmed.

At the August 28, 2003 preliminary hearing, claimant testified that she had worked for respondent for approximately three years. When she began working for that store, claimant worked on the pricing team, whose job entailed marking down prices on clearance items. While performing that job, claimant began experiencing pain in her knees that would wax and wane. In the latter part of 2002, claimant's job duties changed as she became responsible for straightening the merchandise and pulling it forward on the shelves. And in late December 2002 or early January 2003, her job duties changed again as she became responsible for straightening racks of clothes, which again required her to kneel and crawl to pick up items under the racks. Claimant testified that after January 2003 her work fluctuated and some weeks she worked only two or three days per week and that she only knelt or crawled three or four times per shift. But she also testified that once she got down upon her knees to pick up items under a clothes rack she crawled around the rack until she picked up all the items. Moreover, she testified that in the women's department there were about 15 clearance racks, which would have a lot of clothing items under them.

In late May 2003, claimant saw her personal physician, Dr. Peter J. Cristiano. Dr. Cristiano took claimant off work and referred her to Dr. Dale D. Dalenberg, an orthopedic surgeon. Dr. Dalenberg saw claimant in early August 2003 and concluded that claimant's knee symptoms were very consistent with her history of crawling at work. Dr. Dalenberg's August 6, 2003 letter to Dr. Cristiano states, in part:

> Ms. Meyers is a 50 year old patient of yours who came to see me on your request for consultation today about her bilateral knee pain. She reports that she began to have symptoms about three years ago. She says the symptoms were related to the job. She was working as a pricer at Target Stores and had to do a lot of crawling on her knees over an extended period of time. She said the workplace offered knee pads but they were hard knee pads and hurt worse than the floor. She says about two and a half years into the complaint the workplace offered gardening pads which

> helped somewhat. She says she was recently reassigned to a different job and it also involved crawling. She says she has been off work two months because of these complaints. She recently filed an Occupational Disease Claim, but she says it was denied. She says she has a court hearing at the end of August to help resolve that issue. In the meantime, she is seeing me under her private insurance because she does not have an accepted work comp claim.
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> . . . .
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> **PLAN:** I have recommended physical therapy to work on a quadriceps rehab program and modalities for pain control. I would like her to get through her work comp hearing and have it be decided whether I am going to be her treating physician under work comp or whether this work comp claim will be accepted. **I think she has a good claim that should be accepted, since her history of crawling at work is very consistent with patellofemoral symptoms that she is having. . . .** (Emphasis added.)[1]

The Board finds and concludes that claimant has established that she developed bilateral knee symptoms due to the kneeling and crawling that she did while working for respondent. Accordingly, claimant has proven an accidental injury arising out of and in the course of her employment with respondent. Respondent and its insurance carrier's argument that claimant may have injured her knees working for other employers is not supported by the record compiled to date.

The Board does not have jurisdiction from a preliminary hearing order to address whether an injured worker is temporarily and totally disabled. There is no question that an administrative law judge has the authority and jurisdiction to address that issue at a preliminary hearing.[2] Accordingly, the Judge did not exceed his jurisdiction in awarding temporary total disability benefits. Moreover, the question of whether a worker is temporarily and totally disabled is not one of the jurisdictional issues listed in the Workers Compensation Act that the Board has the authority to address from a preliminary hearing order.[3]

WHEREFORE, the Board affirms the September 2, 2003 Preliminary Decision entered by Judge Foerschler.

IT IS SO ORDERED.

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[1] See P.H. Trans., Cl. Ex. 1.

[2] See K.S.A. 44-534a(a)(1).

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

Dated this ____ day of October 2003.

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BOARD MEMBER

c: Donald T. Taylor, Attorney for Claimant
Stephen P. Doherty, Attorney for Respondent and its Insurance Carrier
Robert H. Foerschler, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director