

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

MICHEAL D. ROARK
Claimant

VS.

PRESBYTERIAN MANORS, INC.
Self-Insured Respondent

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Docket No. 1,012,896

ORDER

Respondent appeals from the November 20, 2003 Order of Administrative Law Judge (ALJ) Steven J. Howard. This Order granted claimant medical treatment and directed the parties to “agree upon [a] specialist to examine and treat claimant if necessary”.¹ Respondent contends that claimant failed to establish he suffered an accidental injury that arose out of and in the course of his employment. Respondent further argues claimant failed to provide timely notice.²

ISSUES

The only issues to be determined are whether claimant met his burden of proof on the issues of accidental injury, whether the injury arose out of and in the course of his employment and timely notice.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Claimant testified he sustained an injury on March 17, 2003, while tending to a patient in the regular course of his duties as a CNA. This evidence is uncontroverted. Claimant told his house supervisor, Pat Larson, about the injury. Ms. Larson filled out the appropriate documentation, and claimant was provided with treatment that same day through an occupational medicine facility. He was placed on light duty for one week and returned to full duty on March 24, 2003.

¹ ALJ Order (Nov. 20, 2003).

² While respondent also contends the ALJ erred in awarding compensation, the Appeals Board (Board) has no jurisdiction to address this claim as it is not an issue specifically set forth in K.S.A. 44-534a.

Claimant continued to work at his normal duties and apparently made no further complaints nor requested treatment. According to Pat Larson, claimant had problems with his work attendance after his accident. In connection with one absence from work, Ms. Larson testified claimant reported hurting his back doing yard work. On another day, it was reported that claimant hurt his back and could not come to work. However, when this issue was fully explored at the preliminary hearing, it is clear that this information was not something Ms. Larson knew firsthand but came to her through others who did not testify.

On September 29, 2003, claimant filed a request for preliminary hearing seeking additional medical treatment for the March 17, 2003 injury. The preliminary hearing was held on November 18, 2003, and an Order followed on November 20, 2003. The ALJ's Order directed the parties to "agree upon [a] specialist to examine and treat claimant if necessary". Although not expressly stated in the Order, it is clear the ALJ found claimant's claim was compensable and that he was, therefore, entitled to medical treatment.

Respondent contends claimant failed to meet his burden of proof on the fundamental compensability issues during the preliminary hearing and the Board should reverse the ALJ's decision. Additionally, respondent maintains whatever physical complaints claimant now has are attributable to the intervening and non-work-related accidents he sustained after March 17, 2003.

As claimant correctly points out, it is undisputed that claimant sustained an accidental injury on March 17, 2003, while he was working for respondent. He provided notice as required by the Act³ and respondent directed him to an occupational medicine facility for treatment. The suggestion that claimant "injured his back while working in his yard"⁴ or by moving furniture and could not work is merely that, a suggestion. There is no independent or corroborating evidence to support this allegation. In fact, the medical records all consistently reference the low back injury that occurred at work as the source of his pain. Claimant denies he was injured in any other manner or subsequent to March 17, 2003, and the basis for respondent's argument is less than persuasive. When assessing the credibility of a witness' testimony, the Board often gives some deference to the conclusions and findings of the ALJ, who has the opportunity to personally observe the claimant during testimony.⁵ In this instance, the ALJ not only heard claimant's testimony but that of Pat Larson. After considering the testimony, he found in favor of the claimant. The Board finds no reason to disturb the ALJ's analysis and hereby affirms the ALJ's Order in all respects.

³ See K.S.A. 44-520.

⁴ Respondent's Brief at 6 (filed Jan. 7, 2004).

⁵ *Newsom v. Lodging Enterprises, Inc.*, No. 222,875, 1997 WL 556166 (Kan. WCAB Aug. 14, 1997).

WHEREFORE, the ALJ's Order dated November 20, 2003, should be and is hereby affirmed.

IT IS SO ORDERED.

Dated this ____ day of January 2004.

BOARD MEMBER

c: Robert W. Harris, Attorney for Claimant
Kathleen N. Wohlgemuth, Attorney for Respondent
Steven J. Howard, Administrative Law Judge
Anne Haught, Acting Workers Compensation Director