

Hospital and Medical Center emergency room on September 16, 2003, complaining of back pain. However, claimant failed to advise the hospital personnel of any work-related connection to her back complaints, claiming instead that her symptoms began the day before, which would have been September 15, 2003. Respondent placed into evidence claimant's attendance record, which shows that claimant did not appear for work on September 15, 16 or 17, 2003, with all three being unexcused absences. Additionally, the weekend of September 13 and 14, 2003, was a weekend that claimant was not scheduled to work. Therefore, claimant's last day worked prior to the examination at St. Francis Hospital would have been September 12, 2003. Claimant, as noted above, failed to advise the emergency room personnel of any work-related connection to her back complaints.

Claimant did provide a light duty slip to respondent, talking to her supervisor, Lewis Hopkins, and the plant manager, Mike Sneed, but Mr. Sneed, who testified at the preliminary hearing, stated that claimant failed to advise them of any work-related connection to these complaints. Instead, Mr. Sneed stated that claimant told him it had occurred over the weekend.

The first indication provided to respondent that claimant was alleging a work-related claim for these injuries occurred on October 27, 2003, when claimant requested to see an occupational doctor.

Additionally, it is noted on the attendance record that after September 19, claimant was listed as unexcused absence through the end of October 2003. Claimant was ultimately terminated from her employment due to her attendance problems.

In workers' compensation litigation, it is claimant's burden to prove her entitlement to benefits by a preponderance of the credible evidence.¹ In this instance, the Board finds that claimant has failed to prove that she suffered accidental injury to her low back on the dates alleged.

Additionally, K.S.A. 44-520 mandates that notice of accident be given to the employer within 10 days of the date of accident. In this instance, claimant's first notice of a work-related connection to her complaints did not occur until October 27, 2003, well beyond the 10-day limit. While K.S.A. 44-520 does extend that time period to 75 days if just cause is shown, there is no indication in this record that claimant argued or proved just cause for her failure to provide timely notice of accident to the employer. The Board, therefore, finds claimant has also failed to prove that she provided timely notice of accident under K.S.A. 44-520. Therefore, the Order of the Administrative Law Judge should be affirmed.

¹ K.S.A. 44-501 and K.S.A. 2003 Supp. 44-508(g).

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Brad E. Avery dated February 19, 2004, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of April 2004.

BOARD MEMBER

c: Roger D. Fincher, Attorney for Claimant
Anton C. Andersen, Attorney for Respondent
Brad E. Avery, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director