

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

JOAN GONZALEZ)	
Claimant)	
)	
VS.)	
)	
VENTURE CORPORATION)	
Respondent)	Docket No. 1,016,184
)	
AND)	
)	
BUILDERS ASSOC. SELF INSURERS)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier (respondent) request review of the February 22, 2005 preliminary hearing Order entered by Administrative Law Judge (ALJ) Bruce E. Moore.

ISSUES

The ALJ concluded claimant satisfied the written claim requirement in K.S.A. 44-520a by tendering a note from an ER physician and verbally informing her supervisor that she had sustained an accident on April 24, 2003. Accordingly, he granted her request for medical treatment.

The respondent requests review of whether claimant's injury arose out of and in the course of employment and whether claimant filed a timely written claim. Respondent contends that claimant's history of her alleged injury has been inconsistent and therefore, the ALJ erred in concluding claimant injured herself while in respondent's employ. Respondent also argues that the document she allegedly gave her supervisor is legally insufficient and does not satisfy the statutory written claim requirement. Accordingly, respondent requests that the Board reverse the ALJ's Order.

Conversely, claimant requests that the Board affirm the ALJ's Order in all respects. Claimant asserts that she has consistently relayed the facts and circumstances surrounding her accident when receiving medical treatment. In addition, she contends she offered respondent a detailed and timely account of what happened when presenting her written follow-up restrictions on May 2, 2003. Thus, claimant believes the ALJ correctly concluded that she had satisfied the written claim requirements contained in K.S.A. 44-520a.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board finds the ALJ's preliminary hearing Order should be affirmed.

Claimant alleges she injured her back on April 24, 2003, when she slipped on some mud while stepping up a tall step into respondent's scale house. This accident was not witnessed and claimant admits she did not immediately report the incident. On May 2, 2003, claimant sought treatment from the Edwards County Hospital in Kinsley, Kansas complaining of low back pain, which she attributed to the April 24th incident at work. The records from the emergency room reflect a history of injury at work while pulling up into the scale house.¹ Claimant submitted the cost of this hospital visit to her private health insurance provider.

Claimant was referred to her private physician for follow-up and was given some written follow up restrictions on a prescription notepad. Claimant recalls that the instructions directed her to take time off work, if necessary, and recommended the use of hot and cold compresses to relieve her pain and to see her own doctor. Claimant testified that she took these written follow-up restrictions to Dane Locke, her supervisor with respondent. As noted by the ALJ, "[s]he did not ask him to take any specific action, *but did present the restrictions with her verbal report of the April 24, 2003 accident.*"² Claimant then took two days off, without pay.

Unfortunately, the document claimant says she gave her supervisor is not in evidence. Claimant did not retain a copy, nor did the hospital. Respondent cannot find a copy. Nonetheless, Dane Locke, did not contest claimant's allegation that she gave him the document and reported to him the circumstances surrounding her accident.

A few days later claimant was visited by Nancy Ziegler, respondent's personnel and safety director. Ms. Ziegler informed claimant that respondent was denying her claim because she had failed to report her injury within 24 hours of the accident as required by

¹ P.H. Trans., Cl. Ex. 1 at 1.

² ALJ Order (Feb. 22, 2005) at 1 (Emphasis in original).

the company's policy. The two also discussed the additional treatment recommended by the hospital staff and claimant indicated she wanted to pursue the treatment outlined by the hospital. Unfortunately, the treatment was not provided and claimant did not follow-up with her personal physician.

The parties' concede that respondent timely filed its statutory "Employer's Report of Accident" with the Division of Workers Compensation on May 12, 2003. Claimant, however, denies receiving any information from the Division of Workers Compensation about how to file a claim for compensation. In fact, she took no further action on her claim until February 12, 2004, when she completed a written claim form and had it delivered to respondent through her lawyer on April 8, 2004.

K.S.A. 44-520a(a) provides for written claim to be served within 200 days of the accident date. The Kansas Supreme Court has noted that a written claim-

need not take on any particular form so long as it is in fact a claim. In determining whether or not a written claim was in fact served on the respondent the trial court will examine the various writings and all the surrounding facts and circumstances, and after considering all these things, place a reasonable interpretation upon them to determine what the parties had in mind.³

Whether claimant met the statutory requirements turns upon the legal impact of the written document claimant says she gave to her employer on May 2, 2003. This is because the only other written document that could satisfy this requirement was served on April 8, 2004, well after the 200 day period set forth in the statute.

After considering the evidence, the ALJ concluded claimant satisfied the requirements for a timely written claim. He reasoned that:

The writing relied upon is not in evidence and its contents are unclear. The writing was, however, a set of recommendations to [c]laimant to address her continued discomfort, including suggestions that she take time off work and that she use heat or cold compresses. She presented those restrictions to [r]espondent in conjunction with her report that she had been injured on April 24, 2003 and that the injuries which prompted her trip to the hospital and resulting treatment recommendations derived from that work accident.⁴

The ALJ correctly noted that the determination of the issue of timely written claim required consideration of the surrounding circumstances. He considered the contents of the document claimant described, *which remained uncontroverted*, as well as her

³ *Ours v. Lackey*, 213 Kan. 72, 515 P.2d 1071 (1973).

⁴ ALJ Order (Feb. 22, 2005) at 2.

statements to her supervisor. He also considered the conversations that took place between claimant and Ms. Ziegler, during which they discussed the respondent's decision that her claim would be denied. He then stated that "[t]he only 'reasonable interpretation' that can be placed upon these facts is that [c]laimant wanted and expected [r]espondent to comply with the recommendations and provide the additional treatment recommended."⁵

The Board agrees with the ALJ's findings of fact and conclusions of law.

WHEREFORE, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Bruce E. Moore dated February 22, 2005, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of April, 2005.

BOARD MEMBER

c: Kevin T. Stamper, Attorney for Claimant
Vince A. Burnett, Attorney for Respondent and its Insurance Carrier
Bruce E. Moore, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

⁵ *Id.* at 3.