

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

MARTHA QUEZADA
Claimant

VS.

THE HAYES COMPANY, INC.
Self-Insured Respondent

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Docket No. 1,018,162

ORDER

Claimant appealed the November 4, 2004 preliminary hearing Order entered by Special Administrative Law Judge E. L. Lee Kinch.

ISSUES

Claimant alleges she injured her back working for respondent on June 2, 2003, and each workday after that date. Respondent does not contest that claimant injured her back on June 2, 2003. But respondent contends claimant recovered from the June 2, 2003 accident and that she has failed to prove that she injured her back at work after that date.

In the November 4, 2004 Order, Judge Kinch denied claimant's request for workers compensation benefits after finding "insufficient evidence of causation."

Claimant contends the Judge erred. Claimant argues her testimony established her present back problems and need for medical treatment are directly related to the work she performed for respondent. Accordingly, claimant requests the Board to reverse the November 4, 2004 Order.

Conversely, respondent contends the Order should be affirmed. Respondent argues claimant presented no evidence that her present back problems are from either her June 2, 2003 back injury or her work for respondent.

The only issue before the Board on this appeal is whether claimant has established her present back complaints and need for medical treatment are from an accident that arose out of and in the course of her employment with respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date and considering the parties' arguments, the Board finds and concludes the preliminary hearing Order should be affirmed.

The parties agree claimant injured her back on June 2, 2003, while working for respondent. The parties also agree claimant received medical treatment for her back injury from a Dr. Davis. On July 11, 2003, Dr. Davis released claimant from treatment, noting her symptoms had resolved.

But due to a seasonal layoff and a hysterectomy, claimant did not return to work for respondent until December 15, 2003. Claimant resumed her regular work doing housekeeping duties for respondent. By May 2004, claimant was experiencing numbness in her right leg. Claimant reported her symptoms to her supervisor and the company nurse. According to claimant, her supervisor suggested claimant use her own insurance to seek medical treatment.

On May 5, 2004, claimant sought medical treatment from her personal physician, Dr. H. O. Fernandez. The doctor ordered a MRI and recommended claimant consult a surgeon. When claimant presented respondent with papers from Dr. Fernandez, respondent sent her home. The record is not clear if claimant worked for respondent after that date.

The parties agreed claimant should see Dr. Paul S. Stein to be evaluated for purposes of this claim. The doctor saw claimant on September 7, 2004, at which time claimant noted she was having pain in the right lumbar area with radiation down the back of the right leg to the foot. The doctor noted claimant's pain was a pinching-type pain that was initiated by walking and aggravated by standing, walking, and driving.

Dr. Stein reviewed, among other doctors' records, Dr. Fernandez's medical records from May 5, 2004, which indicated claimant had numbness in her right leg when walking "x 1 week."¹ Dr. Stein also reviewed the radiology report from the May 17, 2004 MRI that Dr. Fernandez had ordered. The MRI showed mild lower lumbar degenerative disease and a far posterolateral right disk bulge at L5-S1, which was narrowing the neural foramen.

After examining claimant and reviewing the various medical records that had been provided, Dr. Stein concluded he could not relate claimant's present problems to her June 2003 back injury at work. The doctor did not provide any opinion whether claimant's

¹ P.H. Trans., Resp. Ex. 1 at 2.

present back problems were related to the work she performed for respondent after her December 2003 return.

The only expert medical opinion in the record is from Dr. Stein.

The Board affirms the Judge's conclusion that claimant has failed to prove her present back symptoms and present need for medical treatment are due to an accidental injury that arose out of and in the course of her employment with respondent. Claimant's request for benefits should be denied.

As provided by the Workers Compensation Act, preliminary hearing findings are not final or binding but, instead, subject to modification upon a full hearing of the claim and full presentation of the evidence.²

WHEREFORE, the Board affirms the November 4, 2004 Order entered by Judge Kinch.

IT IS SO ORDERED.

Dated this ____ day of March 2005.

BOARD MEMBER

c: Chris A. Clements, Attorney for Claimant
Terry J. Torline, Attorney for Respondent
E. L. Lee Kinch, Special Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

² K.S.A. 44-534a.