

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

<b>JUNELLA MANUES</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,023,608
<b>PRESBYTERIAN MANORS, INC.</b>	)	
Self-Insured Respondent	)	

**ORDER**

Respondent appealed the February 28, 2007, preliminary hearing Order entered by Administrative Law Judge Kenneth J. Hursh.

**ISSUES**

Claimant alleges she injured her left thumb and wrist as a result of her work activities for respondent. In the February 28, 2007, Order, Judge Hursh determined claimant had proven she aggravated a preexisting condition in her left thumb or wrist and that such aggravation arose out of and in the course of her employment. The Judge then awarded claimant medical benefits.

Respondent contends Judge Hursh erred. Respondent contends claimant did not present any evidence her job duties exacerbated the arthritis in her left thumb or wrist that preexisted her alleged work injury. Accordingly, respondent requests the Board to reverse the February 28, 2007, preliminary hearing Order on the basis that claimant has failed to prove she sustained personal injury by accident arising out of and in the course of her employment.

Conversely, claimant contends the Order should be affirmed. Claimant argues the evidence establishes she injured her left thumb at work from moving patients and changing beds. Accordingly, claimant asserts she has proven she has sustained an accidental injury under the Workers Compensation Act.

The only issue on this appeal is whether claimant's work activities aggravated the arthritis in her left thumb or wrist.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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

Claimant worked for respondent for 24 years. Claimant first injured her right shoulder at work in January 2004 and underwent surgery by Dr. Kevin M. Mosier. When she returned to work on limited duty in the spring of 2004, she tried to protect her right upper extremity and approximately two months later began experiencing pain and discomfort in her left thumb. Gradually the discomfort went up into the left wrist, elbow and higher. Claimant attributes those symptoms to overusing the left arm while compensating for the right shoulder injury. Claimant felt changing bed linens at night when the facility was short-handed particularly aggravated her left thumb.

After claimant prepared an incident report regarding her left upper extremity symptoms, respondent referred claimant back to Dr. Mosier. The doctor advised claimant she needed left shoulder surgery. That surgery was accomplished in January 2006. Following the left shoulder surgery, claimant returned to work for respondent for only part of one day.

Despite telling Dr. Mosier about the symptoms in her left thumb, wrist, and elbow, claimant received no treatment for those symptoms. According to claimant, she had no left thumb problems before returning to work following her right shoulder surgery.

At this juncture, the record contains little that specifically addresses claimant's left thumb, wrist, or elbow. But there is an August 2005 medical record from Dr. Kenneth W. Johnson, who wrote that claimant had left upper extremity tendonitis from overuse and CMC joint osteoarthritis that had been exacerbated. The doctor, however, indicated the arthritis was a preexisting condition and not a work-related injury.

Dr. Mosier noted in July 2006 claimant had left thumb basilar type pain and subluxation of the thumb that was consistent with osteoarthritis. But those same records do not indicate whether the doctor believed the arthritis had been aggravated by claimant's work.

Dr. Edward J. Prostic examined claimant in both November 2005 and December 2006. The doctor diagnosed severe osteoarthritis of the basal joint of the left hand for which he recommended surgery. Although Dr. Prostic found that claimant had injured her upper extremities working for respondent, the doctor did not specifically relate the arthritis in claimant's left hand to her work. The doctor wrote in pertinent part:

It continues to be my opinion that Junella F. Manues sustained injury to her upper extremities during the course of her employment at Parsons Presbyterian Manaors [*sic*], Inc. [respondent], January 20, 2004[,] and thereafter. She has a better result of the surgery to her right shoulder than the left. She has severe osteoarthritis of the basal joint of the left hand that can be improved by surgery. . . .<sup>1</sup>

At this juncture, the undersigned Board Member affirms the Judge's finding that claimant's work activities aggravated the arthritis in the area of her left thumb and wrist. An injury is compensable under the Workers Compensation Act even when work only serves to aggravate a preexisting condition.<sup>2</sup> The test is not whether the work caused a particular condition but, instead, whether the work aggravated or accelerated a preexisting condition.<sup>3</sup> Consequently, claimant has established that she sustained personal injury by accident arising out of and in the course of her employment with respondent and the February 28, 2007, Order should be affirmed.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.<sup>4</sup> Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2006 Supp. 44-551(i)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

**WHEREFORE**, the February 28, 2007, Order entered by Judge Hursh is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of May, 2007.

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BOARD MEMBER

c: Kala Spigarelli, Attorney for Claimant  
Kathleen N. Wohlgemuth, Attorney for Respondent  
Kenneth J. Hursh, Administrative Law Judge

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<sup>1</sup> P.H. Trans., Cl. Ex. 1 at 2.

<sup>2</sup> *Odell v. Unified School District*, 206 Kan. 752, 481 P.2d 974 (1971).

<sup>3</sup> *Woodward v. Beech Aircraft Corp.*, 24 Kan. App. 2d 510, 949 P.2d 1149 (1997).

<sup>4</sup> K.S.A. 44-534a.