

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

**STEVEN ALLEN BLOOM** )  
Claimant )  
 )  
VS. )  
 )  
**ADVANCED PERSONNEL, INC.** )  
Respondent )  
 )  
AND )  
 )  
**LIBERTY INSURANCE GROUP** )  
Insurance Carrier )

Docket No. 1,025,465

**ORDER**

Claimant requests review of the December 22, 2005 preliminary hearing Order entered by Administrative Law Judge John D. Clark.

**ISSUES**

The Administrative Law Judge (ALJ) found that claimant did not sustain his burden of proving he suffered a work-related injury. Accordingly, claimant's request for benefits was denied.

The claimant contends the ALJ erred and argues that he did prove he suffered a work-related injury on September 8, 2005, and each and every working day thereafter. Claimant asserts that he told a coworker about the injury on September 8 and reported the injury to his supervisor at Carlson Products the next day. Claimant argues that respondent's denial that an injury occurred is inconsistent with respondent's admission that claimant called to see if he could continue to receive wages for the time he was off and the fact that respondent authorized him to see Dr. Steven Hughes.

Respondent argues that although claimant reported his back pain to his supervisor, he did not report a work-related injury. Respondent further contends claimant is not credible and that claimant failed to persuade the ALJ that he had suffered a compensable work-related injury. Respondent, therefore, requests that the Order of the ALJ be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

Claimant had been placed at Carlson Products as a temporary worker by respondent, a personnel service, and had worked there for about three months before suffering his injury. Claimant testified that on September 8, 2005, he bent over to pick up a five-pound motor when he felt pain in his low back and felt like he pulled a muscle in his leg. He told a coworker what had happened and finished working the rest of the day. He returned the next day, but stated it was painful for him to work. He stated he told his supervisor, Ray Clarkson, that he had been hurt at work the day before, but Mr. Clarkson did not send him to a doctor. Claimant continued to work and thinks that it was on September 19 when he took off work to see a chiropractor. The record includes a September 19 record from a chiropractor, Dr. Charles Long. His records contain a reference to the treatment being for a work-related accident that occurred on September 8, 2005.

Claimant worked September 23, September 26, and a half day on September 27, when he notified respondent that he had injured himself while working. He claims that continuing to work after his accident caused his back to hurt worse. Claimant said he started to wear a back brace at work after the initial accident, which would have been noticeable to his coworkers because he wore it outside of his shirt. Claimant denies having any prior back problems and denies wearing a back brace at work before September 8, 2005.

Respondent sent him to see Dr. Hughes on September 28, 2005. Dr. Hughes' records indicate that claimant related his low back and left leg pain to bending and twisting activities at work. Claimant told Dr. Hughes that his symptoms started on September 8, 2005. Dr. Hughes noted that claimant was "hostile" and that claimant was "a little vague as far as exactly when the symptoms got better or worse."<sup>1</sup> Dr. Hughes ordered an MRI and after reviewing the results of the MRI, diagnosed claimant with a herniated lumbar L5-S1 disc with left sciatica and gave him restrictions of no bending, twisting or climbing and no lifting over 10 pounds. On October 28, 2005, Dr. Hughes wrote respondent's insurance carrier in response to a request concerning whether claimant's disc herniation could have been caused by lifting a five-pound motor. Dr. Hughes indicated that it was his medical opinion that "these findings on the MRI would not be consistent with an injury caused by this minimal activity."<sup>2</sup>

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<sup>1</sup>P.H. Trans., Cl. Ex. 1 at 18.

<sup>2</sup>*Id* at 17.

Claimant was also seen by Dr. Michael Munhall at the request of his attorney. Dr. Munhall diagnosed claimant with lumbar derangement syndrome with MRI evidence of L5-S1 herniation and left S1 radiculopathy. Dr. Munhall was of the opinion that there was a causal relationship between claimant's diagnosis and the injury he suffered on September 8, 2005, and each working day thereafter. He felt that claimant was in need of medical treatment, including physical therapy, medication management and epidural injections.

Ray Clarkson, who was claimant's supervisor at Carlson Products, testified that on Monday, September 12, 2005, claimant told him that he had irritated his back while working with his stepfather over the previous weekend trimming trees or roofing. Mr. Clarkson stated that claimant did not tell him he had hurt his back at work. Although Mr. Clarkson noticed that claimant wore a back brace to work, he said that claimant started wearing a back brace shortly after starting to work at Carlson Products, well before the alleged accident date of September 8, 2005. Mr. Clarkson said he accommodated claimant by moving him to a different job sometime after September 12, but claimant told him that his back continued to worsen.

Gary Meadows is president of respondent and testified that he hired claimant and placed him at Carlson Products. Mr. Meadows was notified by Carlson Products on September 27 that claimant had an issue, so he asked claimant to come into his office. Claimant told him that he had been going to see a chiropractor about some back problems. After about 20 minutes, claimant indicated that he wanted to report his back problems as a job injury. Mr. Meadows sent claimant to Dr. Hughes. Earlier, on September 22, claimant had left a message on Mr. Meadows' voice mail indicating that he had missed some work at Carlson Products and wanted to know if he could get paid for those days he missed.

Obviously, there is contradictory testimony about the alleged accident and about what was said to whom. Although the ALJ's two-sentence Order does not specifically state that he did not find claimant to be a credible witness, this was apparently the basis for his denial of benefits. The Board generally gives some deference to an ALJ's determination of credibility when the ALJ had the opportunity to observe the witnesses testify in person before him. Furthermore, it is the claimant that bears the burden of proof in these matters.<sup>3</sup> The Board has reviewed the testimony and, giving some deference to the ALJ, concludes that claimant has failed to meet his burden of proving that he suffered an accident at work in September 2005. Accordingly, the ALJ's Order denying benefits is affirmed.

As provided by the Act, preliminary hearing findings are not final but are subject to modification upon a full hearing on the claim.<sup>4</sup>

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<sup>3</sup>K.S.A. 2005 Supp. 44-501(a) and K.S.A. 2005 Supp. 44-508(g).

<sup>4</sup>K.S.A. 44-534a(a)(2).

**WHEREFORE**, it is the finding, decision and order of the Board that the Order of Administrative Law Judge John D. Clark dated December 22, 2005, is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of March, 2006.

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BOARD MEMBER

c: James Roth, Attorney for Claimant  
Kurt Ratzlaff, Attorney for Respondent and its Insurance Carrier  
John D. Clark, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director