

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

BELINDA A. WILLIAMS)	
Claimant)	
)	
VS.)	
)	
SIGN HERE, INC.)	
Respondent)	Docket No. 1,047,459
)	
AND)	
KANSAS BUILDING INDUSTRY WC FUND)	
DEPOSITORS INSURANCE CO./ALLIED¹)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier Depositors Insurance Co./Allied (Allied), requested review of the December 14, 2010 Award by Administrative Law Judge (ALJ) Marcia Yates Roberts. The Board heard oral argument on March 8, 2011.

APPEARANCES

Michael R. Wallace, of Shawnee Mission, Kansas, appeared for the claimant. Jeffery R. Brewer, of Wichita, Kansas, appeared for respondent and its insurance carrier Depositors Insurance Company/Allied (Allied). Kansas Building Industry WC Fund (Building Industry) was notified of the hearing but elected not to appear.

¹ Building Industry was originally identified as the appropriate carrier in this claim and was provided notice. But at the first preliminary hearing, counsel for respondent and Allied informed the ALJ that Allied was the appropriate carrier. And although the Division attempted to change its records to reflect Allied's admitted coverage, the caption on the Award reflects Building Industry as the carrier and the body of the Award enters judgment against respondent and Building Industry. Thus, both carriers have been listed and the Board's Order will address this issue.

RECORD AND STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Award with some modifications as indicated below.²

At oral argument, the parties announced there was no longer any dispute about the medical expenses referenced in the Award, or about the claimant's pre-injury average weekly wage (\$706.17). The parties also agreed that claimant's post-injury wage is presently \$200 per week and that claimant began that post-injury job approximately May 8, 2010.

ISSUES

The ALJ found claimant sustained a repetitive series of injuries culminating in an accident on September 15, 2009. She went on to award claimant 10.29 weeks of temporary total disability followed by a 52.5 percent work disability, which is based upon a 72 percent wage loss and a 33 percent task loss.³ The Award itself indicates that respondent and its carrier "**Kansas Building Industry Work Comp Fund**" are the responsible party.⁴ However, Building Industry was not represented at any of the proceedings in this matter. Respondent was represented by counsel retained by Allied *and at no time during the course of these proceedings did Allied indicate that it was not the carrier on the risk, even when the date of accident changed.* At the Regular Hearing Mr. Brewer entered his appearance on behalf of respondent and Allied.⁵ The ALJ noted on the record that claimant's alleged accident date was September 15, 2009 and that the carrier was Allied.⁶ Stipulation Number 4 of the Award reads as follows:

Insurance Carrier on the date of the alleged accident was Depositors Insurance Company [Allied].⁷

² The stipulations hereby adopted were those made at the Regular Hearing. Building Industry was not present at the Regular Hearing and made no such stipulations.

³ These percentages were offered by Dr. Prostic and adopted by the ALJ. Curiously, the ALJ did not comment on claimant's functional impairment but presumably, whatever functional impairment she might have found would have been less than the 52.5 percent work disability awarded by the ALJ.

⁴ ALJ Award (Dec. 14, 2010) at 1, 6.

⁵ R.H. Trans. at 3.

⁶ Id. At 3-4.

⁷ ALJ Award (Dec. 14, 2010) at 2.

After the Award was entered, Mr. Brewer, counsel for respondent and Allied, filed a Motion to Vacate the Award, advising the Court that Allied is not, in fact, the appropriate carrier. Rather, Builders Industry was the appropriate carrier for an accident date of September 15, 2009.

The respondent and Allied now requests review of this decision. Respondent and Allied contend the ALJ erred in determining September 15, 2009 to be claimant's "date of accident" inasmuch as *Mitchell*⁸ has now dictated that a claimant's date of accident is, under the "bright line rule", the last date worked. Here, that date would be July 2, 2009, as claimant originally alleged. And because claimant failed to provide timely notice of her injury as required by K.S.A. 44-510, her claim is statutorily barred.

In the event the Board finds claimant's appropriate date of accident is September 15, 2009, respondent and Allied argue that claimant sustained no permanent injury as a result of her accident as indicated by Dr. Zarr. Thus, she is entitled to no permanency. And even if claimant sustained a permanent injury, respondent's counsel suggests that claimant is not entitled to any permanent partial general (work) disability inasmuch as her average weekly wage *at the time of her purported September 15, 2009 accident* was zero, as she was no longer in respondent's employ on that date.⁹

Independent of those arguments, Allied contends the ALJ's Award has granted an award against the wrong carrier. Allied maintains that Building Industry is the appropriate insurer to respond to this claim given the judicially determined accident date of September 15, 2009.

Claimant contends the ALJ's Award should be affirmed in every respect.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings of fact and conclusions of law:

Claimant was employed by respondent as a production manager for a sign company. Her job duties consisted of clerical duties as well as the application of vinyl lettering to boats, vehicles and signs. In order to apply the signs, claimant frequently had to kneel or sit on the concrete floor and lift her arms up overhead to apply the lettering.

⁸ *Mitchell v. Petsmart, Inc.*, 291 Kan. 153, 239 P.3d 51 (2010).

⁹ Although average weekly wage was originally an issue, this particular argument was not presented to the ALJ, nor was it briefed to the Board. Rather, it was presented for the first time at oral argument before the Board, after respondent agreed to the average weekly wage figure.

Beginning in 2009, claimant noticed pain in her right lower back and her right leg. Sometime thereafter, she noticed pain in her left shoulder and a little bit into the right shoulder.¹⁰ Then, on March 31, 2009, she woke up with low back pain and numbness into her right leg. She sought treatment from her family physician, Dr. Kathryn Foos, but did not connect these symptoms with her work activities. Claimant continued to see Dr. Foos for her low back and leg complaints. She gave claimant some work restrictions on April 21, 2009 which directed her to limit her lifting no more than 5 pounds and no climbing up or down ladders.¹¹ Claimant testified that she presented these light duty restrictions to Kim Fesenmeyer¹², but failed to report that the restrictions were related to a work injury. Nevertheless, claimant went on to testify that she continued to work her normal duties up until July 2, 2009, when she was laid off.

Then, claimant testified that she and Dr. Foos had a conversation on August 31, 2009 about her pain complaints and Dr. Foos suggested to claimant that her problems were work-related. At that point, claimant initiated this claim. Claimant's lawyer served the Application for Hearing upon respondent on September 15, 2009.¹³

When no benefits were forthcoming, a preliminary hearing was held on October 29, 2009. During that hearing, counsel for respondent and Allied informed the Court that Allied was the appropriate carrier, not Builders Fund.¹⁴ The ALJ noted this as the correct carrier and advised that she would notify Topeka (the Topeka office of the Division of Workers Compensation) of the change. Up to this point in the proceedings, the Division's records reflected Builders Fund as the carrier as of July 2, 2009, the last date claimant was employed by respondent. But with Allied's representation, the Division "corrected" the identification of the responsible carrier.

The preliminary hearing was held and although claimant initially alleged July 2, 2009 (her last date of work) it became clear during the course of the hearing that claimant's "legal" date of accident under K.S.A. 44-508(d) was September 15, 2009, the date the E-1 was delivered to respondent. Claimant then amended her pleadings to reflect a September 15, 2009 accident date. Respondent contended claimant's date of accident was much earlier, either April 29, 2009, the date her personal physician gave her work restrictions, or at the latest July 2, 2009, her last date of work for respondent. At no point in this hearing did counsel for Allied indicate that it was not the carrier who was on the risk

¹⁰ P.H. Trans. at 14.

¹¹ *Id.* at 22.

¹² The Fesenmeyers, Kim and David, own respondent.

¹³ The parties have stipulated to this fact.

¹⁴ P.H. Trans. at 3.

during any of the relevant periods being discussed and litigated. To the contrary, counsel affirmatively represented that Allied was the appropriate carrier and did nothing to disavow that fact even when the date of accident was amended to September 15, 2009.

Following the preliminary hearing, benefits were awarded and claimant was referred to Dr. Terrence Pratt for treatment, at respondent's expense. Dr. Pratt provided physical therapy and medications and ultimately released claimant with restrictions on February 26, 2010. At this point, claimant was directed to avoid lifting anything over 40-70 pounds.¹⁵ The respondent would not take claimant back and claimant has not worked for respondent since July 2, 2009. Claimant ultimately found a job cleaning houses beginning on May 8, 2010 and presently earns \$200 per week. According to claimant, she has problems with her range of motion and experiences pain in her lower back along with trouble bending and twisting.¹⁶

At her attorney's request, claimant was examined by Dr. Edward Prostic on April 7, 2010. Dr. Prostic diagnosed a chronic sprain/strain and trochanteric bursitis.¹⁷ Although he conceded that claimant's complaints are mostly subjective, that she describes only tenderness and a loss of motion, and that her x-rays were all essentially normal, he found that she was entitled to a DRE II (5 percent) finding for the chronic sprain. He also assessed an additional 2 percent for the trochanteric bursitis and "a couple percent" for "problems about the cervical spine."¹⁸ When combined, Dr. Prostic testified that his entire rating, pursuant to the 4th edition of the *Guides*¹⁹ is 8 percent to the whole body. He went on to opine that claimant had sustained a 33 percent task loss based upon Mr. Dreiling's task analysis which outlined a total of 24 tasks.

In contrast to Dr. Prostic are the opinions of Dr. James Zarr, who examined claimant at the respondent's request on July 7, 2010 and diagnosed a persistent neck, bilateral shoulder and low back pain. He concluded that claimant's complaints were all subjective and outweighed any objective symptoms. Thus, he concluded that she sustained no permanent impairment as a result of her work-related activities, nor was she in need of any restrictions.

¹⁵ R.H. Trans. at 10.

¹⁶ *Id.* at 12.

¹⁷ Prostic Depo. at 10.

¹⁸ *Id.* at 11.

¹⁹ American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are to the 4th edition unless otherwise noted.

The ALJ concluded that claimant gave timely notice of her September 15, 2009 accident based upon the provisions of K.S.A. 44-508(d). She went on to award claimant a 52.5 percent permanent partial general (work) disability based upon a 72 percent wage loss and a 33 percent task loss.²⁰ Respondent and Allied appealed and also alleges Allied has no coverage for this claim based upon the September 15, 2009 accident date.

The Workers Compensation Act, K.S.A. 44-501 et seq. places the burden of proof upon the claimant to establish the right to an award of compensation and to prove the conditions on which that right depends.²¹ “Burden of proof” means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party’s position on an issue is more probably true than not true on the basis of the whole record.”²²

Resolution of this case first turns upon a decision as to the appropriate date of accident, an issue that often poses curious results in workers compensation claims owing to recent statutory amendments. For some time, our courts have adhered to a bright line test when determining an injured employee’s “date of accident” in those claims involving repetitive injuries. Recognizing the difficulty in determining an actual date of injury, a “bright line” rule was implemented, generally using the last date of work as the legal “date of accident”.²³ This sometimes yielded difficult results because as was often the case, the claimant would continue to work even as carriers would change, thus giving rise to new liability to an unaware carrier.

In an effort to address this situation and lend some degree of predictability to the process, K.S.A. 44-508(d) was amended by the Kansas legislature effective July 1, 2005. The definition of accident has been modified, with the date of accident in microtrauma cases being now defined by statute rather than by case law. The new date of accident determination is as follows:

(d) “Accident” means an undesigned, sudden and unexpected event or events, usually of an afflictive or unfortunate nature and often, but not necessarily, accompanied by a manifestation of force. The elements of an accident, as stated herein, are not to be construed in a strict and literal sense, but in a manner designed to effectuate the purpose of the workers compensation act that the employer bear the expense of accidental injury to a worker caused by the employment. **In cases where the accident occurs as a result of a series of events, repetitive use, cumulative traumas or microtraumas, the date of**

²⁰ The balance of her Award relating to medical bills is no longer at issue.

²¹ K.S.A. 2009 Supp. 44-501(a).

²² K.S.A. 2009 Supp. 44-508(g).

²³ *Treaster v. Dillon Companies, Inc.*, 267 Kan. 610, 987 P.2d 325 (1999); *Kimrough v. University of Kansas Med. Center*, 276 Kan. 853, 79 P.3d 1289 (2003).

accident shall be the date the authorized physician takes the employee off work due to the condition or restricts the employee from performing the work which is the cause of the condition. In the event the worker is not taken off work or restricted as above described, then the date of injury shall be the earliest of the following dates: (1) The date upon which the employee gives written notice to the employer of the injury; or (2) the date the condition is diagnosed as work related, provided such fact is communicated in writing to the injured worker. In cases where none of the above criteria are met, then the date of accident shall be determined by the administrative law judge based on all the evidence and circumstances; and in no event shall the date of accident be the date of, or the day before the regular hearing. Nothing in this subsection shall be construed to preclude a worker's right to make a claim for aggravation of injuries under the workers compensation act.²⁴ (Emphasis added.)

But this statute has given rise to what is likely an unintended consequence, as amply demonstrated by this case.

Under the present facts and when looking exclusively at the statute, it is clear that September 15, 2009 is the appropriate accident date. It is undisputed that claimant's injury is the result of repetitive injuries while working for respondent. Thus, the first question to answer is whether and when an authorized physician took claimant off work. Here, claimant received work restrictions on April 21, 2009. However, those restrictions were imposed by her personal physician, not an authorized physician. Thus, April 21, 2009 does not trigger the provisions of this statute.

The statute goes on to provide two alternative criteria to consider and from those, the earliest date will be considered the "legal" date of accident. Here, there is no evidence that claimant's work-related diagnosis was ever communicated to claimant in writing before September 15, 2009. Thus, the earliest (and only) date available is September 15, 2009, the date claimant provided written notice to respondent of her injury.

But, respondent notes that the Kansas Supreme Court has recently muddied the waters in this area with its decision in *Mitchell*, which purports to resurrect the bright-line rule of *Kimbrough*.²⁵ The Court, citing both *Kimbrough* and K.S.A. 2009 Supp. 44-508(d), discussed the bright-line rule for deciding dates of accident. The Court in *Mitchell* affirmed the Board's finding of the last day worked as the date of accident.²⁶ But, the Court did not explain whether its decision was intended to limit the effect of the statute or whether *Mitchell* was an unexplained anomaly. Were the Court intending to limit the effect of K.S.A.

²⁴ K.S.A. 2005 Supp. 44-508(d).

²⁵ *Mitchell v. Petsmart, Inc.*, 291 Kan. 153, 239 P.3d 51 (2010).

²⁶ Date of accident was not an issue presented to the Board in *Mitchell*.

2009 Supp. 44-508(d), a more specific finding and detailed analysis would have been anticipated. The Board further notes that claimant's date of accident in *Mitchell* was not in dispute.

It is a fundamental rule of statutory construction, to which all other rules are subordinate, that the intent of the legislature governs if that intent can be ascertained.²⁷

Here, the statute defines date of accident with specific criteria to be considered and followed.

When construing statutes, we are required to give effect to the legislative intent if that intent can be ascertained. When a statute is plain and unambiguous, we must give effect to the legislature's intention as expressed, rather than determine what the law should or should not be. A statute should not be read to add that which is not contained in the language of the statute or to read out what, as a matter of ordinary language, is included in the statute.²⁸

The legislative language of K.S.A. 2005 Supp. 44-508(d) is clear. Claimant's date of accident was decided when she served written notice on September 15, 2009 to her employer claiming injury. With all due respect to the Kansas Supreme Court and its confusing recitations in *Mitchell*, this Board must follow the clear intent of the statute and finds that claimant's legal date of accident is September 15, 2009. Accordingly, the ALJ's finding as to the date of accident is affirmed.

Having concluded the date of accident is September 15, 2009, the Board can summarily affirm the ALJ's corresponding factual finding that claimant timely notified respondent of her injury as required by law.

K.S.A. 44-520 states:

Except as otherwise provided in this section, proceedings for compensation under the workers compensation act shall not be maintainable unless notice of the accident, stating the time and place and particulars thereof, and the name and address of the person injured, is given to the employer within 10 days after the date of the accident, except that actual knowledge of the accident by the employer or the employer's duly authorized agent shall render the giving of such notice unnecessary. The ten-day notice provided in this section shall not bar any proceeding for compensation under the workers compensation act if the claimant shows that a failure to notify under this section was due to just cause, except that

²⁷ *Matter of Marriage of Killman*, 264 Kan. 33, 42, 955 P.2d 1228 (1998) (citing *City of Wichita v. 200 South Broadway*, 253 Kan. 434, 436, 855 P.2d 956 [1993]).

²⁸ *Casco v. Armour Swift-Eckrich*, 283 Kan. 508, 154 P.3d 494, reh. denied (May 8, 2007).

in no event shall such a proceeding for compensation be maintained unless the notice required by this section is given to the employer within 75 days after the date of the accident unless (a) actual knowledge of the accident by the employer or the employer's duly authorized agent renders the giving of such notice unnecessary as provided in this section, (b) the employer was unavailable to receive such notice as provided in this section, or (c) the employee was physically unable to give such notice.

Again, respondent's frustration at receiving notification of an injury several months after claimant left its employ is understandable. But under K.S.A. 2005 Supp. 44-508(d), claimant's date of accident is September 15, 2009, the same day she gave respondent notice. Thus, claimant provided timely notice compelled by K.S.A. 44-520.

Turning now to the nature and extent of claimant's impairment, the Board has carefully reviewed both physicians' testimony and concludes that neither physician is more persuasive than the other in light of claimant's complaints, their physical findings and ultimate opinions as to her functional impairment.²⁹ Accordingly, the Board finds that claimant sustained a 4 percent functional impairment to the whole body.

When, as here, an injury does not fit within the schedules of K.S.A. 44-510d, permanent partial general disability is determined by the formula set forth in K.S.A. 44-510e(a), which provides, in part:

Permanent partial general disability exists when the employee is disabled in a manner which is partial in character and permanent in quality and which is not covered by the schedule in K.S.A. 44-510d and amendments thereto. **The extent of permanent partial general disability shall be the extent, expressed as a percentage, to which the employee, in the opinion of the physician, has lost the ability to perform the work tasks that the employee performed in any substantial gainful employment during the fifteen-year period preceding the accident, averaged together with the difference between the average weekly wage the worker was earning at the time of the injury and the average weekly wage the worker is earning after the injury.** In any event, the extent of permanent partial general disability shall not be less than the percentage of functional impairment. Functional impairment means the extent, expressed as a percentage, of the loss of a portion of the total physiological capabilities of the human body as established by competent medical evidence and based on the fourth edition of the American Medical Association Guides to the Evaluation of Permanent Impairment, if the impairment is contained therein. **An employee shall not be entitled to receive permanent partial general disability compensation in excess of the percentage of functional impairment as long as the employee is engaging in any work for wages equal to 90% or more of the average gross**

²⁹ For whatever reason, the ALJ failed to make any finding as to claimant's functional impairment.

weekly wage that the employee was earning at the time of the injury.
(Emphasis added.)

This statute makes it clear that when an injured employee is earning less than 90 percent of her pre-injury wages, there are two components which are to be considered when awarding permanent partial general (work) disability. The first component is wage loss and the second is task loss, considering the tasks identified from the claimant's last 15 years of employment. Based upon recent case law,³⁰ determining an injured employee's work disability is a simple mathematical exercise. Here, claimant is no longer employed by this respondent but has gone on to obtain subsequent employment earning \$200 per week beginning May 8, 2010. Before that time she had been unemployed. The record indicates that she was released from treatment on February 26, 2010. Respondent would not take her back and she remained unemployed until May 8, 2010. Accordingly, when compared to her pre-injury wage with respondent, she has a 100 percent wage loss from February 26, 2010 and then her wage loss decreased to 72 percent wage loss when she became employed.

Although respondent's counsel belatedly argued that claimant is not entitled to a work disability because on her date of accident September 15, 2009 she had no wage - because she had ceased working for respondent and was apparently receiving unemployment benefits, the Board disagrees. Respondent contends that because she had no wage on the date of her accident she has no wage loss and is therefore not entitled to a work disability. This argument was not made to the ALJ and it is the Board's policy not to consider arguments that have not been made to the ALJ.³¹ Moreover, the claimant's date of accident is a legal fiction, an arbitrary date chosen for purposes of determining the commencement of a claim. For purposes of average weekly wage, the Board continues to use the last date worked before the date of accident for purposes of determining average weekly wage. Accordingly, the claimant's actual wage loss *when compared to her average weekly wage* will be utilized.

The ALJ adopted the task loss opinion contained provided by Dr. Prostic, which was 33 percent. But Dr. Zarr opined that claimant required no restrictions and presumably had no task loss. Under these facts and circumstances, neither opinion is more persuasive and the claimant's actual task loss most likely falls in between the two. Accordingly, as with the functional impairment finding, the Board will average the two opinions and modifies the Award to reflect a 16.5 percent task loss.

When these wage and task loss opinions are averaged, the result is as follows:

³⁰ *Casco v. Armour Swift-Eckrich*, 283 Kan. 508, 154 P.3d 494, reh. denied (May 8, 2007); *Bergstrom v. Spears Manufacturing Company*, 289 Kan. 605, 214 P.3d 676 (2009).

³¹ *Robinson v. Stone Masons Inc.*, No. 205,004, 1999 WL 292834 (Kan. WCAB (Apr. 30, 1999)); *James L. Kincade v. Cargill, Inc.*, No. 210,398, 1999 WL 722460 (Kan. WCAB Aug. 25, 1999).

For the period February 26, 2010, claimant had a 100 percent wage loss and a 16.2 percent task loss which yields a 58.25 work disability. Then, when she obtained employment and began earning \$200 per week, her wage loss decreased to 72 percent and when averaged with the 16.5 percent task loss, the resulting average is a 44.25 percent work disability. The Award is hereby modified to reflect the 58.25 percent work disability beginning February 26, 2010 which then decreases to a 44.25 percent work disability effective May 8, 2010.

Although counsel for Allied now contends it is not responsible for this Award, the Board is unwilling to shift liability to a carrier based upon this belated unilateral assertion. Admittedly, Building Industry was originally a party to this claim and was notified of the oral arguments. And even though the ALJ identified Building Industry as the carrier in her Award, it appears she did so in error given that the Award contained the stipulation that Allied was the insurance carrier on the risk on the date of the alleged accident and she did not serve that Award upon counsel for Building Industry. But there is no dispute that this respondent is insured and as of September 15, 2009, an accident date that has been alleged since the preliminary hearing in 2009, either Allied or Building Industry is the appropriate carrier.

The policy and purpose behind the Workers Compensation Act is to furnish a remedy which is both expeditious and free from proof of fault.³² This claimant should not be drawn into the quagmire of coverage that has emerged since the inception of this claim. Accordingly, in order to avoid that miscarriage of justice and any unnecessary delay, the Board finds both carriers, Allied and Building Industry, jointly and severally liable for this Award.³³ This will avoid any delay to claimant in receiving any monies due and allow the carriers to carry on their dispute in another forum.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Marcia Yates Roberts dated December 14, 2010, is modified as follows:

The claimant is entitled to 10.43 weeks of temporary total disability compensation at the rate of \$470.80 per week or \$4,910.44 followed by 10.00 weeks of permanent partial disability compensation at the rate of \$470.80 per week or \$4,708.00 for a 58.25 percent work disability followed by 173.64 weeks of permanent partial disability compensation at the rate of \$470.80 per week or \$81,749.71 for a 44.25 percent work disability, making a total award of \$91,368.15.

³² *Olds-Carter v. Lakeshore Farms, Inc.*, 2011 WL 576080 ___ P. 3d ___ (2011).

³³ See e.g., *Tull v. Atchison Leather Products, Inc.*, 37 Kan. App. 2d 87, 150 P.3d 316 (2007).

As of March 31, 2011 there would be due and owing to the claimant 10.43 weeks of temporary total disability compensation at the rate of \$470.80 per week in the sum of \$4,910.44 plus 56.86 weeks of permanent partial disability compensation at the rate of \$470.80 per week in the sum of \$26,769.69 for a total due and owing of \$31,680.13, which is ordered paid in one lump sum less amounts previously paid. Thereafter, the remaining balance in the amount of \$59,688.02 shall be paid at the rate of \$470.80 per week for 126.78 weeks or until further order of the Director.

This Award is against Respondent AND both of its carriers, Allied and Building Industry jointly and severally.

IT IS SO ORDERED.

Dated this _____ day of March 2011.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Michael R. Wallace, Attorney for Claimant
- Jeffery R. Brewer, Attorney for Respondent and Depositors Insurance Co./Allied
- Roy Artman, Attorney for Kansas Building Industry Work Comp Fund
- Marcia Yates Roberts, Administrative Law Judge