BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

SHIRLEY CRUISE THOMAS	)	
Claimant	)	
VS.	)	
	)	Docket Nos. 104,746 & 114,219
GENERAL MOTORS CORPORATION	)	
Respondent	)	
Self-Insured	)	
AND	)	
	)	
KANSAS WORKERS COMPENSATION FUND	)	

ORDER

Respondent appeals from an Award entered by Administrative Law Judge Robert H. Foerschler on July 17, 1995. The Appeals Board heard oral argument on November 21, 1995.

APPEARANCES

Claimant appeared by her attorney James M. Sheeley of Kansas City, Kansas. Respondent, a qualified self-insured, appeared by its attorney Sean B. Summers of Kansas City, Missouri. The Kansas Workers Compensation Fund appeared by its attorney Robert L. Kennedy of Kansas City, Kansas.

RECORD AND STIPULATIONS

The Appeals Board has reviewed and considered the record listed in the Award. The Appeals Board has also adopted the stipulations listed in the Award.

ISSUES

On appeal, the two (2) issues respondent has raised are:

(1) What effect does claimant's death from independent and unrelated causes have on respondent's obligation to pay the benefits awarded?

Respondent contends the claimant's death prior to the Award relieves respondent of any obligation to pay any benefits. Claimant argues, on the other hand, that respondent is responsible for payment of benefits from the date of accident through the date of death which, in this case, would require payment of all 415 weeks of benefits.

(2) Respondent contends the Award should be reversed because claimant was allowed to file a submission letter some six (6) years after the original terminal date.

Respondent argues that the extension prejudiced respondent's ability to determine the nature and extent of claimant's injuries.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments of the parties, the Appeals Board finds:

(1) Claimant's death from independent and unrelated causes does not relieve the respondent of its obligation to pay benefits from the date of the accident to the date of death and the Award should, therefore, be affirmed.

Claimant filed this claim in 1986 alleging accidental injury to her low back in February of 1986. The claim initially became inactive and was then reinstated on August 10, 1988. Shortly thereafter claimant's counsel took the deposition of Dr. James C. Bolin. The Regular Hearing was held on October 21, 1988 and a terminal date for claimant's evidence set. Respondent took the deposition of Dr. Robert M. Murphy on January 11, 1989. On March 6, 1990 the claim was again moved to the inactive docket. Claimant later moved for an extension of the terminal date until September 28, 1992. The claim was reinstated to the active docket again on March 23, 1993. On August 15, 1994 claimant filed a motion to file submission letters out of time or, in the alternative, to extend claimant's date to August 19, 1994. The Administrative Law Judge ruled that claimant's terminal date could be extended to August 19, 1994 and granted the respondent and the Kansas Workers Compensation Fund an additional six (6) months to submit their case. Claimant died on February 9, 1995 of causes unrelated to her original work-related injury.

On July 17, 1995 Administrative Law Judge Robert H. Foerschler entered an Award against respondent in Docket No. 114,219 for a ten percent (10%) permanent partial general body disability because all of that amount would have been due as of the date of the Award. The Award was ordered to be paid in a lump sum.

Respondent argues that the claim should be dismissed on the basis of K.S.A. 1985 Supp. 44-510e(b) and Barncord v. Kansas Dept. of Transportation, 4 Kan. App. 2d 368, 606 P.2d 501 (1980), affirmed 228 Kan. 289, 613 P.2d 670 (1980). K.S.A. 1985 Supp. 44-510e(b) provides as follows:

> "(b) If a workman has received an injury for which compensation is being paid him, and his death is caused by other and independent causes, any payment of compensation already due him at the time of his death and then unpaid shall be paid to his dependents directly or to his legal representatives if he left no dependent, but the liability of the employer for the payments of compensation not yet due at the time of the death of such workman shall cease and be abrogated by his death."

Although the quoted statute relates specifically to the situation where the respondent is in fact paying benefits, the Appeals Board agrees that the statute expresses policy applicable to the current facts. Respondent argues that the compensation was not due in this case because none had been awarded. Respondent also argues that the Award would result in a "windfall" to claimant's heirs. Respondent's argument appears to hinge in part on an assertion that an employer has the right to defend the claim and is not obligated to pay benefits unless ordered to do so. The Appeals Board agrees that respondent has a right to assert and vigorously pursue any defense which it, in good faith, considers applicable. Respondent's argument nevertheless fails, in our opinion, to comply with the intent of the Workers Compensation Act. Respondent is obligated to pay benefits on a timely basis for a legitimate claim. Failure to do so can result in award of interest for late payments. Payments are due weekly. When the claim is defended, the subsequent award, as in this case, represents a finding that benefits were due on a weekly basis.

The Barncord decision was based upon a materially different set of facts. In that case the Court of Appeals was asked to determine whether a verbal settlement agreement was enforceable after the claimant's death. It does not appear from that case that the evidence was presented and awaiting a decision by the Administrative Law Judge. Certainly it does not appear that an award was ever entered in that case. The Court of Appeals found the settlement agreement not to be enforceable. In this case the claim had been litigated and an award entered. We find that the benefits were due as of the date of claimant's death.

(2) Respondent has established no prejudice from the decision to extend the terminal date and decision to allow claimant to file a submission letter.

As indicated in the above summary of the facts, claimant's testimony and the depositions of respondent's and claimant's physicians were taken in 1988. Respondent thereafter made no attempt to offer any additional evidence for approximately the next six (6) years. When the claimant asked to reopen the case in 1994, neither claimant nor respondent presented new evidence. Respondent asserts as prejudice that by 1994 claimant's condition had deteriorated from unrelated causes to the point that they could no longer legitimately evaluate the nature and extent of her impairment. As indicated, they had taken advantage of the opportunity to have her evaluated in 1988 at the time the claim was originally submitted. It would be a highly unusual circumstance for a respondent to have a claimant evaluated at the end of the eight (8) year period covered by the four hundred and fifteen (415) weeks' benefits. Respondent had the opportunity to and did obtain a timely evaluation of the claimant. Respondent and claimant presented their evidence prior to the original terminal date. Neither has presented new evidence after the last extension of terminal date. Respondent has not shown any prejudice from the delay.

AWARD

WHEREFORE AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Shirley Cruise Thomas, and against the self-insured respondent, General Motors, for accidental injuries sustained on February 26, 1986.

The claimant is entitled to 415 weeks at $36.34 per week or $15,081.10 for a 10% permanent partial general bodily disability, which is all due and owing and ordered paid in one lump sum less amounts previously paid.

Unauthorized medical expense pursuant to K.S.A. 1985 Supp. 44-510(c) in the amount of $350.00 is also awarded to the claimant.

Costs of transcripts in the record are taxed against respondent as a self-insured as follows:

Danny S. Peak	$ 187.10
Pittell & Associates, Inc.	$ 265.00
Hostetler & Associates, Inc.	$ 506.00
Pamela Knaus Court Reporting	$ 453.20
Richard Kupper & Associates	$ 784.60
John M. Bowen & Associates	$ 194.00

IT IS SO ORDERED.

Dated this ____ day of December 1995.

_____
BOARD MEMBER

_____
BOARD MEMBER

_____
BOARD MEMBER

c: James M. Sheeley, Kansas City, KS
Sean B. Summers, Kansas City, MO
Robert L. Kennedy, Kansas City, KS
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director