

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

VIOLA BROZEK)	
Claimant)	
VS.)	
)	Docket No. 114,275
SEDGWICK COUNTY)	
Respondent)	
Self-Insured)	
AND)	
)	
WORKERS COMPENSATION FUND)	

ORDER

Claimant requested Appeals Board review of the Award dated March 4, 1997, entered by Special Administrative Law Judge Michael T. Harris. The Appeals Board heard oral argument on October 1, 1997.

APPEARANCES

Robert L. Nicklin of Wichita, Kansas, appeared for the claimant. E. L. Lee Kinch of Wichita, Kansas, appeared for the respondent. Christopher J. McCurdy of Wichita, Kansas, appeared for the Workers Compensation Fund.

RECORD AND STIPULATIONS

The record considered by the Appeals Board and the parties' stipulations are listed in the Award.

ISSUES

The Special Administrative Law Judge awarded claimant permanent partial disability benefits for a 5 percent whole body functional impairment and denied respondent's claim

against the Workers Compensation Fund. The only issues raised before the Appeals Board on this review are:

- (1) What is the nature and extent of claimant's injury and disability?
- (2) What is the Workers Compensation Fund's liability?

FINDINGS OF FACT

After reviewing the entire record, the Appeals Board finds as follows:

For the reasons below, the Award should be affirmed.

- (1) Claimant worked for the respondent, Sedgwick County, at the Youth Residence Hall for 17½ years as a third-shift supervisor. Claimant's job duties included building checks, filing, admissions, dorm checks, laundry, occasionally preparing breakfast, and supervising others. Claimant's job was supervisory in nature and involved minimal physical labor.
- (2) On January 6, 1986, claimant tripped and fell while walking down a dark hall to turn off lights at the Youth Residence Hall. Immediately after the fall, claimant experienced sharp pain in her left knee. Later, claimant began to experience pain in her low back.
- (3) Due to the accident claimant missed several weeks from work in August and September 1986. Upon her return to work in September 1986, claimant returned to her supervisory duties and worked until her retirement on August 22, 1991. Claimant testified she retired because she felt she could not continue to work for respondent on a full-time basis because of her progressively worsening physical condition. Claimant was 67 years old at retirement.
- (4) Claimant has a history of low back pain going back to 1977 when she began chiropractic treatment with Loyd E. Lunsford, D.C. Orthopedic surgeon Eugene Kaufman, M.D., of Wichita, Kansas, treated claimant in July and September 1983 for low back pain. In November 1983, Dr. Jane Drazek of Wichita, Kansas, saw claimant for low back pain. In late 1983 and then later in December 1984, claimant saw board-certified orthopedic surgeon Robert L. Eyster, M.D., for low back treatment. In December 1984, Dr. Eyster sent claimant for a CT scan which showed degenerative changes in claimant's low back.
- (5) Despite the medical treatment claimant received for back complaints before January 1986, claimant was not given medical restrictions or work limitations. Before January 1986, claimant did not complain to her supervisors regarding her low back and missed little, if any, work. Before the January 1986 accident, claimant was able to perform all of her job duties without difficulty.

(6) After the January 1986 accident, claimant sustained additional injuries to her low back and left knee when she fell from a chair in September 1988 while filing paperwork and when she tripped on an uneven sidewalk in October 1990. In December 1990, claimant fell in the snow while at home which caused low back and left knee pain. Finally, in April 1992 claimant was involved in an automobile accident which aggravated her low back.

(7) Dr. Eyster, who initially treated claimant for several months after the January 1986 fall, believes claimant did not sustain additional impairment as a result of the January 1986 accident and that her ongoing symptoms are due to the natural progression of the preexisting degenerative changes in her spine. Orthopedic surgeon Bernard T. Poole, M.D., treated claimant for low back pain during 1986 and 1987 and believes claimant sustained no more than a 5 percent whole body functional impairment as a result of the January 1986 accident. Claimant's chiropractor, Dr. Lunsford, who has treated claimant's back on numerous occasions since 1977, believes claimant has at a minimum a 5 percent whole body functional impairment due to her low back condition.

CONCLUSIONS OF LAW

Claimant sustained personal injury by accident on January 6, 1986. The accident arose out of and in the course of claimant's employment with the respondent. As a result of that accident, claimant aggravated a preexisting arthritic condition in her low back which comprises a 5 percent whole body functional impairment.

Because hers is an "unscheduled" injury, claimant's entitlement to permanent partial disability benefits is governed by K.S.A. 44-510e (Ensley) which provides in part:

The extent of permanent partial general disability shall be the extent, expressed as a percentage, to which the ability of the workman to engage in work of the same type and character that he was performing at the time of his injury, has been reduced.

The Kansas Supreme Court interpreted the above-quoted language and held that the pivotal question under that definition of permanent partial general disability was what portion of claimant's job requirements is he or she unable to perform because of the injury. See Ploutz v. Ell-Kan Co., 234 Kan. 953, 676 P.2d 753 (1984).

The Appeals Board finds that despite the January 1986 accident, claimant retained the ability to perform all of the job duties and job requirements she was performing on the date of accident. Claimant returned to work for respondent in 1986 and performed her regular job duties until her retirement in August 1991 at the age of 67. The Appeals Board is not persuaded the residual effects from the January 1986 accident caused claimant's retirement. Claimant has osteoporosis and wide-spread degenerative arthritis in her neck, shoulders, hands, low back, and both knees. Claimant's job supervising others required minimal physical labor and was of such a nature that she could continue to perform it despite the injuries received in the January 1986 accident. In reaching that conclusion, the Appeals Board is cognizant of the five separate incidents occurring after January 1986 in which

claimant injured either her left knee or back, or both, and which have also contributed to claimant's physical condition as indicated by Dr. Lunsford.

After reviewing the entire record, the Appeals Board finds claimant has a 5 percent permanent partial disability as a result of the January 6, 1986, accident.

The Workers Compensation Fund has no liability in this proceeding. Before January 1986, respondent did not have knowledge that claimant was a handicapped employee as that term is defined in K.S.A. 1985 Supp. 44-566. Claimant had no medical restrictions or work limitations placed upon her before January 1986 and by her own testimony did not complain to her supervisors about her back. In addition, claimant missed little, if any, work before January 1986 due to her back or left knee.

Because respondent did not have knowledge that claimant was a handicapped employee before January 1986, the Fund has no liability in this proceeding. See K.S.A. 1985 Supp. 44-567.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award dated March 4, 1997, entered by Special Administrative Law Judge Michael T. Harris should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of October 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Robert L. Nicklin, Wichita, KS
- E. L. Lee Kinch, Wichita, KS
- Christopher J. McCurdy, Wichita, KS
- Nelsonna Potts Barnes, Administrative Law Judge
- Philip S. Harness, Director