

- (1) Whether claimant met with personal injury by accident on April 8, 1990.
- (2) Whether claimant's alleged accidental injury arose out of and in the course of his employment.
- (3) The nature and extent of claimant's injury and/or disability.
- (4) Claimant's entitlement to reimbursement for past and future medical expense.
- (5) Claimant's entitlement to unauthorized medical expense.
- (6) Respondent's entitlement to a credit for overpayment of temporary total disability compensation.
- (7) The claimant's average weekly wage on the date of injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein and, in addition, the stipulations of the parties, the Appeals Board makes the following findings of fact and conclusions of law:

In order to recover benefits, a claimant must prove that he suffered personal injury by accident arising out of and in the course of his employment. K.S.A. 44-501(a).

It is the claimant's burden of proof in proceedings under the Workers Compensation Act to establish claimant's right to an award of compensation by proving the various conditions on which the claimant's right depends. K.S.A. 44-501(a).

"'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." K.S.A. 44-508(g).

It is the function of the trier of fact to decide which testimony is more accurate and/or credible and to adjust the medical testimony along with the testimony of claimant and any other testimony that may be relevant to the question of disability. The trier of fact is not bound by medical evidence presented in the case and has a responsibility of making its own determination. Tovar v. IBP, Inc., 15 Kan. App. 2d 782, 817 P.2d 212, rev. denied 249 Kan. 778 (1991).

Claimant alleged accidental injury arising out of and in the course of his employment with respondent on April 8, 1990 when he suffered a slip and fall while carrying a box of lettuce for respondent. There were no witnesses to this accident and claimant completed his regular period of employment on that date. He has alleged as a result of the slip and fall to have injured his right knee, low back and, further, to have suffered a hernia in the groin area.

In this instance, as there were no witnesses to the accident, the Appeals Board must rely upon the testimony of the claimant in order to ascertain exactly what happened on that date. The case law dictates that uncontradicted evidence which is not unprovable or unreasonable may not be disregarded unless it is shown to be untrustworthy. Anderson v. Kinsley Sand & Gravel, Inc., 221 Kan. 191, 558 P.2d 146 (1976). In this instance, a review of this extensive record uncovers countless episodes where claimant's testimony is shown to be untrustworthy. Claimant contradicts his own testimony on numerous

occasions and his testimony is contradicted by documented evidence on even more numerous occasions. Claimant is caught in countless lies and is even shown to have collected temporary total disability benefits while working on more than one job for which he was paid wages.

The medical evidence presented to the Appeals Board, rather than comprising information from the treating physicians, instead involves reports of doctors hired long after claimant's alleged date of injury solely for the purpose of evaluating claimant, his injury and work history and to provide both functional impairment ratings and work restrictions for the purpose of work disability. The medical evidence in a case such as this is only as reliable as the information provided to the doctors. It is apparent from the medical testimony of both Dr. Edward Prostic and Dr. P. Brent Koprivica that the information provided to the doctors was at times inaccurate and misleading, going beyond exaggeration or magnification of symptoms.

Testimony from investigators, coupled with video tape evidence presented, provides further indication that claimant's credibility has been justifiably questioned throughout this entire litigation.

The purpose of the Workers Compensation Act is to provide benefits to an injured worker for accidental injury arising out of and in the course of that worker's employment. In this instance, the Appeals Board finds that the numerous episodes wherein claimant's credibility is not only questioned but actually impeached convinces the Appeals Board that claimant has not proven by a preponderance of the credible evidence that he suffered accidental injury arising out of and in the course of his employment with respondent on the date alleged. As such, all benefits to claimant for this alleged injury are denied.

The claimant objects to the Award of the Administrative Law Judge arguing that the Administrative Law Judge was in some way prejudiced against the claimant and rejected evidence which would have been favorable to the claimant.

The Administrative Law Judge, as a trier of fact, is required, by his or her position, to decide which testimony is more accurate and/or credible. *Tovar, supra* at 786. The Appeals Board as the ultimate trier of fact is also handed this same responsibility. In reviewing the evidence the Appeals Board finds claimant's conflicting testimony not only to be inaccurate but also to lack credibility.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge James R. Ward shall be, and is hereby, reversed and the claimant Roy W. Patrick, Sr. is denied any award against respondent Taco Tico, Inc. and Continental National America Group and the Kansas Workers Compensation Fund for an alleged injury arising on April 8, 1990.

Further award is made that respondent and its insurance carrier shall recover from the Workers Compensation Fund all compensation, medical benefits and expenses heretofore paid during this litigation.

The fees necessary to defray the expense of the administration of the Workers Compensation Act are hereby assessed against the claimant to be paid as follows:

Appino & Biggs Reporting Service	\$1,739.70
Curtis, Schloetzer, Hedberg, Foster & Associates	434.94
Correll Reporting Service	87.50
Gene Dolginoff Associates, Ltd.	378.95
Metropolitan Court Reporters, Inc.	956.70
(Except the depositions of Jay D. Rohrs and Chester Gaston, amounts unknown.)	

IT IS SO ORDERED.

Dated this ____ day of December 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: John J. Bryan, Topeka, KS
John David Jurcyk, Lenexa, KS
Jeffrey K. Cooper, Topeka, KS
James R. Ward, Administrative Law Judge
Philip S. Harness, Director