

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

<b>BETTY DIX</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 168,393
<b>NAVISTAR</b>	)	
Respondent	)	
AND	)	
	)	
<b>AETNA CASUALTY &amp; SURETY COMPANY</b>	)	
<b>CIGNA INSURANCE COMPANY</b>	)	
Insurance Carriers	)	
AND	)	
	)	
<b>KANSAS WORKERS COMPENSATION FUND</b>	)	

**ORDER**

Both the respondent and its insurance carrier, Aetna Casualty & Surety Company, and the Kansas Workers Compensation Fund appealed an Award entered by Administrative Law Judge Steven J. Howard dated August 24, 1995. The Appeals Board heard oral argument by telephone conference on January 25, 1996.

**APPEARANCES**

Claimant appeared by and through her attorney, Ronald J. Laskowski of Topeka, Kansas. The respondent and its insurance carrier, Aetna Casualty and Surety Company, appeared by their attorney John David Jurcyk of Lenexa, Kansas. Respondent and its insurance carrier, CIGNA Insurance Company, appeared by their attorney Marcia Gearheart of Kansas City, Missouri. The Kansas Workers Compensation Fund appeared by its attorney, B. Scott Tschudy of Overland Park, Kansas. There were no other appearances.

**RECORD AND STIPULATIONS**

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

**Issues**

Respondent and its insurance carrier, Aetna Casualty & Surety Company, and the Kansas Workers Compensation Fund (Fund) requested Appeals Board review of the following issues:

- (1) Whether claimant suffered an accidental injury arising out of and in the course of her employment with the respondent on October 18, 1991.
- (2) Whether timely written claim was served on the employer.
- (3) The nature and extent of claimant's disability.

The Fund requested Appeals Board review of the following additional issue:

- (4) The liability of the Fund for reimbursement to CIGNA Insurance Company for temporary total disability benefits and medical expenses paid in this claim.

During oral argument the claimant raised the following issue for Appeals Board review:

- (5) Whether the Administrative Law Judge exceeded his jurisdiction when he assessed one-third of the court reporter fees incurred in the prosecution of this claim against the claimant.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record, considering the briefs and hearing the arguments of the parties, the Appeals Board finds as follows:

The Appeals Board finds that the Administrative Law Judge's Award should be affirmed in all respects.

- (1) The evidentiary record supports the finding that the claimant suffered bilateral shoulder injuries while performing repetitive work activities for the respondent. These injuries caused her to leave work on October 18, 1991, which is the appropriate date of accident following the principles set forth in Berry v. Boeing Military Airplanes, 20 Kan. App.2d 220, 885 P.2d 1261 (1994).

(2) The Appeals Board finds the parties stipulated that the written claim was received by the respondent on April 20, 1992, which is timely when utilizing a date of accident of October 18, 1991.

(3) The Appeals Board finds that the evidentiary record supports the Administrative Law Judge's finding that the claimant was entitled to a 54.5 percent permanent partial general disability based on work disability. The Administrative Law Judge found the uncontradicted testimony of vocational expert Monty Longacre, M.S., was persuasive evidence on the issue of work disability. In determining the loss of labor market component of the work disability test, Mr. Longacre found a 44 percent loss utilizing the restrictions imposed by Dr. Edward J. Prostic, the independent medical examiner appointed by the Administrative Law Judge with the acquiescence of the parties. The 54.5 percent work disability was determined by averaging this labor market loss with Mr. Longacre's wage loss opinion of 65 percent. See Hughes v. Inland Container Corp., 247 Kan. 407, 799 P.2d 1011 (1990).

(4) The Fund argued that the Administrative Law Judge erred in ordering the Fund to reimburse CIGNA Insurance Company for temporary total disability benefits and medical benefits paid pursuant to a preliminary hearing order. The Fund's major argument concerning this issue was that the specific amount of the temporary total disability benefits and the medical expenses was not included in the record and, furthermore, the Administrative Law Judge did not submit any legal authority for the reimbursement order. The record of this case contains a preliminary hearing Order dated October 28, 1992, that ordered Aetna and CIGNA to equally divide the costs of temporary total disability benefits and medical expenses. The Appeals Board finds that the Administrative Law Judge has the authority to order such a reimbursement. This is provided for in K.S.A. 44-534a(b) along with the procedure to follow when seeking reimbursement. The Appeals Board, therefore, finds that the Administrative Law Judge had specific authority to order such reimbursement pursuant to that statute. The Appeals Board further finds the amount of the reimbursement is not required to be specified in this proceeding.

(5) The claimant at oral argument also questioned the jurisdiction of the Administrative Law Judge to assess any portion of the court reporter fee against the claimant. The Appeals Board finds that K.S.A. 44-555 specifically grants the Administrative Law Judge the authority to assess all or part of the court reporter fees to any party involved in the proceedings for compensation. The Appeals Board's standard of review is de novo on the record. In this instance, after a review of the whole record, we affirm the Administrative Law Judge's decision to assess one-third of the court reporters' fees against the claimant.

The Appeals Board finds that the Administrative Law Judge has set out his findings of fact and conclusions of law in some detail in his Award. Therefore, the Appeals Board finds it is not necessary to repeat those findings and conclusions in this Order. The findings and conclusions of the Administrative Law Judge are found to be accurate and appropriate, and the Appeals Board adopts those findings and conclusions as its own as if specifically set forth in this Order.

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Steven J. Howard dated August 24, 1995, should be, and is hereby, affirmed in all respects.

All other orders of the Administrative Law Judge that are set out in his Award are herein adopted by the Appeals Board.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August 1996.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

- c: Ronald J. Laskowski, Topeka, KS
- John David Jurcyk, Lenexa, KS
- Marcia Gearheart, Kansas City, MO
- B. Scott Tschudy, Overland Park, KS
- Steven H. Howard, Administrative Law Judge
- Philip S. Harness, Director