BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

VERA V. ROLAND Claimant VS. **UNIFIED SCHOOL DISTRICT NO. 259** Respondent AND **SELF-INSURED** Insurance Carrier	))))))))))	Docket No. 169,654

ORDER

ON the 14th day of April, 1994, the application of the respondent for review by the Workers Compensation Appeals Board of an Award entered by Special Administrative Law Judge William F. Morrissey, dated February 1, 1994, came on for oral argument.

APPEARANCES

The claimant appeared by and through her attorney, Timothy J. King of Wichita, Kansas. The respondent, a qualified self-insured, appeared by and through its attorney, Robert G. Martin of Wichita, Kansas. The Kansas Workers Compensation Fund having been dismissed by an agreed order on August 26, 1993, appeared not. There were no other appearances.

RECORD

The record as specifically set forth in the Award of the Special Administrative Law Judge is herein adopted by the Appeals Board.

STIPULATIONS

The stipulations as specifically set forth in the Award of the Special Administrative Law Judge are herein adopted by the Appeals Board.

ISSUES

(1) What is the nature and extent of claimant's injury and disability, if any?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire 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:

(1) Claimant has failed to prove by a preponderance of the credible evidence that she sustained any permanent impairment or disability as a result of her injury of May 29, 1991.

Claimant, a twenty-nine (29) year old engineer with Unified School District No. 259, was injured on May 29, 1991, when picking up a box of books weighing thirty to forty (30-40) pounds. On the date of the injury, claimant felt pain in her lower left back and down into her left leg. This injury was reported to the nurse. After advising her superior, claimant was transported to Wesley Hospital and then referred to Dr. Eyster, a board-certified orthopedic surgeon. Dr. Eyster first examined claimant on June 5, 1991. He diagnosed possible lower back strain and ordered x-rays which were negative. Over a period of several months, Dr. Eyster saw claimant on twelve separate occasions. During this time he reviewed MRIs, myelograms, and CT scans of the claimant all of which appeared negative with the exception of slight bulging at L4-5 which he considered to be insignificant. Dr. Eyster felt claimant did have some degenerative disc disease but also felt it was appropriate for a person of her age.

During the numerous examinations, claimant complained of ongoing symptomatology for which Dr. Eyster could find no objective support. Finding no justification for her complaints, Dr. Eyster assessed zero (0) functional impairment and released claimant to work without restrictions on September 10, 1991. This was the last time he saw claimant.

Claimant was also examined by Dr. Paul Stein, a board-certified neurosurgeon, with the first exam occurring on September 24, 1991. Claimant alleged pain in her back and left leg with the pain also encompassing her left buttock, back of left thigh and left calf. He also had the opportunity to request and review x-rays, myelograms, a post-myelogram CT and MRIs of the low back. He found the x-rays, myelograms and MRIs to be normal. The CT scan of the lumbar spine did show some slight bulging at L4-5 which he did not consider significant. During the examination he was unable to elicit muscle spasm and found claimant's straight leg raise to be normal. Claimant's examination indicated non-anatomical, non-physiological distributions of sensory loss meaning the loss of sensation did not follow any known nerve pattern. Dr. Stein was unable to reach a clear-cut diagnosis and could find no justification for the claimant's numerous complaints. One test did indicate a possible mass on claimant's cervix and Dr. Stein recommended she see a gynecologist. Claimant was released October 28, 1991, with no functional impairment and no work restrictions.

Dr. Stein admitted that, based upon the considerable complaints elicited from claimant, he did additional studies in order to ascertain the potential cause of her ongoing symptomatology. Dr. Stein was never able to identify any basis for these problems, nor any basis for any functional impairment rating.

Claimant was referred to Dr. Philip Mills, a board-certified physical medicine and rehabilitation specialist. Dr. Mills first examined claimant on December 23, 1991. During the physical examination, he found no neurological deficits but did find limited range of motion. He diagnosed a possible lumbosacral strain, chronic, and recommended a vigorous rehabilitation program. Claimant's referral to work hardening was not successful as she developed excruciating left hip pain after the work hardening program, for which the doctor recommended trigger point injections. The injections provided temporary relief only. Dr. Mills assessed claimant a five percent (5%) functional impairment to the body as a whole and provided specific work restrictions limiting claimant to no lifting greater than thirty-five (35) pounds on a regular basis. He also opined she should avoid prolonged walking greater than thirty (30) minutes at a time and she should only involve herself in occasional lifting up to one-third of the time with the thirty-five (35) pounds maximum above specified.

He recommended a functional capacity assessment and Cybex test. During the first tests, claimant displayed specific indications of symptom magnification during both the functional capacity evaluation and Cybex test. A second series of tests was judged to be valid and to more clearly indicate her true physical limitations. He also had the opportunity to review the MRI which he found to be normal with no objective support for disc or joint problems. The Cybex did indicate a chronic problem in the lumbar spine.

K.S.A. 44-501(a) states in part:

> "In proceedings under the workers compensation act, the burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends."

K.S.A. 44-508(g) defines burden of proof as follows:

> "'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."

Burden of proof is upon the claimant to establish her right to an award for compensation by proving all the various conditions on which her right to a recovery depends. This must be established by a preponderance of the credible evidence. Box v. Cessna Aircraft Co., 236 Kan. 237, 689 P.2d 871 (1984).

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 the 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 (1991).

The evidence in this matter is clearly contradictory in that neither Dr. Stein nor Dr. Eyster can find justification for claimant's ongoing medical complaints. Only Dr. Mills, who did not have the opportunity to examine claimant until December 23, 1991, would give credence to claimant's ongoing complaints. However, during his examination and testing, Dr. Mills found potential symptom magnification and medically unexplainable complaints by the claimant.

The Appeals Board finds the medical testimony of Dr. Eyster, a board-certified orthopedic surgeon, and Dr. Stein, a board-certified neurological surgeon, to be more persuasive. The Appeals Board is not persuaded by a preponderance of the credible evidence that claimant suffered any permanent impairment as a result of the injury of May 29, 1991.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Special Administrative Law Judge William F. Morrissey, dated February 1, 1994, is affirmed in part and reversed in part and that the claimant, Vera V. Roland, shall be and is denied any permanent award against the respondent, Unified School District No. 259, a qualified self-insured.

Claimant is awarded compensation against the respondent, Unified School District No. 259, a qualified self-insured, for 46 weeks of temporary total disability compensation at the rate of $278.00 per week in the total sum of $12,788.00.

As of August 31, 1994, there would be due and owing to claimant 46 weeks of temporary total disability compensation at the rate of $278.00 per week in the total sum of $12,788.00 due and payable in one lump sum minus any amounts previously paid.

Claimant is awarded unauthorized medical up to $350.00 statutory maximum upon presentation of an itemized statement.

Claimant is awarded future medical care only upon application to and approval by the Director.

Claimant's contract of employment with her attorney is approved insofar as it is consistent with the provisions of K.S.A. 44-536.

Fees necessary to defray the expenses of the administration of the Workers Compensation Act are assessed against the respondent, a qualified self-insured, to be paid as follows:

William F. Morrissey Special Administrative Law Judge	$150.00
Barber & Associates Transcript of Regular Hearing	$79.80
Barbara J. Terrell & Associates Deposition of Vera Roland	$89.50

Deposition of Philip R. Mills, M.D.	$75.50
Deposition of Jerry D. Hardin	$107.50
Kelly, York & Associates	
Deposition of Paul Stein, M.D.	$237.30
Deposition of Robert L. Eyster, M.D.	$186.75
Deposition of Monty Longacre	$233.90

IT IS SO ORDERED.

Dated this ____ day of September, 1994.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Timothy J. King, 300 West Douglas, Suite 430, Wichita, KS 67202
Robert G. Martin, 300 West Douglas, Suite 500, Wichita, KS 67202
William F. Morrissey, Special Administrative Law Judge
George Gomez, Director