

The single issue raised by the claimant for Appeals Board review is whether claimant's accidental injury arose out of and in the course of his employment with the respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

The Administrative Law Judge denied claimant's claim for workers compensation benefits finding claimant had failed to prove that he sustained an accidental injury that arose out of and in the course of his employment with the respondent. The Administrative Law Judge emphasized in his findings that he had the opportunity to personally observe claimant testify before him in person and he had retained an independent recollection of claimant's testimony. The Administrative Law Judge concluded that the claimant's testimony contained exaggerations and subjective magnifications.

The Appeals Board finds that the outcome of this case hinges on the credibility of the claimant. In addition to claimant's testimony, five physicians testified in this case, three treating physicians and two examining physicians. Claimant's subjective complaints indicated that he had a serious injury in his chest area. On the other hand, the objective findings of the physicians generally did not support such an injury. Claimant's testimony also did not correspond to the history he contemporaneously gave to medical personnel at the time he was treated for his alleged chest injury due to lifting activities at work on both April 15, 1992 and June 4, 1992. Claimant testified he was treated for the injury on April 15, 1992 by Robert E. Wray, D.O., of Kinsley, Kansas. The parties stipulated into the evidentiary record a letter from Dr. Wray dated May 18, 1994 that stated claimant had never been a patient of Dr. Wray. Claimant testified that after the June 4, 1992 lifting incident at work he told Dr. R. Friesen, at the Pratt Regional Medical Center that his chest pain was a result of a lifting incident at work. However, the hospital records did not reflect that history. Dr. Friesen also testified that claimant did not relate his chest pains on June 4, 1992 to a lifting incident at work.

The Appeals Board finds that some deference should be given to the Administrative Law Judge in this case, as he was able to personally observe the demeanor of the claimant and assess claimant's credibility. Accordingly, after reviewing the whole evidentiary record and giving due deference to the findings and conclusions of the Administrative Law Judge, the Appeals Board affirms the Administrative Law Judge's Award that denied claimant's request for compensation benefits.

The Appeals Board also finds that the Administrative Law Judge has set out his findings of fact and conclusions of law in some detail in his Award. It is unnecessary 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 we adopt those findings and conclusions as our own.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge George R. Robertson dated September 27, 1994, should be, and is hereby, affirmed in all respects.

All other orders of the Administrative Law Judge are adopted by the Appeals Board.

IT IS SO ORDERED.

Dated this ____ day of June 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Robert E. Tilton, Topeka, KS
C. Stanley Nelson, Salina, KS
Glenda Cafer, Topeka, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director