BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

ANITA J. JACKSON Claimant VS. **NORTHWEST HEALTH CARE CENTER** Respondent AND **WAUSAU UNDERWRITERS INS. CO.** Insurance Carrier	))))))))))	Docket No. 172,646

ORDER

Claimant appeals from a Preliminary Hearing Order of November 29, 1994, wherein Administrative Law Judge John D. Clark denied claimant medical benefits. Ernest L. Johnson acted as Board Member Pro Tem in lieu of Board Member Kenton D. Wirth on this appeal.

APPEARANCES

The claimant appeared by and through her attorney, Mr. Chris Clements of Wilson, Lee & Gurney, Attorneys at Law, of Wichita, Kansas. The respondent and insurance carrier appeared by and through its attorney, Mr. P. Kelly Donley of McDonald, Tinker, Skaer, Quinn & Herrington, Attorneys at Law, of Wichita, Kansas. There were no other appearances.

RECORD

The record consists of the documents filed of record with the Division of Workers Compensation in this docketed matter, including the transcript of preliminary hearing before

Administrative Law Judge John D. Clark on November 29, 1994, and the exhibits attached thereto.

ISSUES

The Administrative Law Judge, in his Preliminary Hearing Order dated November 29, 1994, simply stated that claimant's request for additional medical treatment is denied. The claimant's Application for Board Review simply says the issue to be addressed is medical treatment. The transcript of the preliminary hearing and the briefs of the parties disclose, though, that the treatment sought by and denied to claimant concerned alleged injuries to her left hand. However, it appears that there is an issue of whether claimant met with personal injury to her left hand by accident arising out of and in the course of her employment with respondent. That particular issue is one that is specifically set forth in K.S.A. 44-534a(a)(2) as one which, if disputed, is subject to review by the Appeals Board.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

For preliminary hearing purposes only, the Appeals Board, having reviewed the entire record, makes the following findings of fact and conclusions of law:

(1) The evidence fails to establish that claimant's left hand was injured as a result of an accident that arose out of and in the course of employment with the respondent. Therefore, the Preliminary Hearing Order of Administrative Law John D. Clark, dated November 29, 1994, is affirmed.

There is no dispute that claimant suffered right hand and wrist injuries in the course of her employment with respondent. That injury was well documented in the records of the several doctors by whom she was seen. On June 25, 1992, while performing her duties for respondent as a charge nurse, claimant was grabbed on the right wrist by a patient. Right carpal tunnel syndrome developed, and claimant was provided authorized treatment through Dr. Pollock. Claimant last worked for respondent in November 1992. She continued to treat, though, with Dr. Pollock, who performed surgery to release the right carpal tunnel on January 28, 1993. After the surgery claimant continued to complain to Dr. Pollock about her right hand and wrist problems. She was seen by Dr. Gluck in August 1993 who recommended injections to treat the right thumb triggering problem that had developed. Dr. Jones saw claimant in January 1994 for another opinion on the need for additional treatment for the right upper extremity. Claimant's attorney had her see Dr. Blaty on April 15, 1994. His report focuses on the problems in the right upper extremity but makes no mention of any other injuries.

No medical depositions have been taken, but the medical records are voluminous. The first reference to any left upper extremity problem is contained in the chart from Dr. Pollock. The office note from a visit of May 20, 1994, indicates that claimant was returned to Dr. Pollock by her attorney to clear confusion regarding possible problems in her left wrist. Dr. Pollock reports that he had never been advised by claimant that she had any left upper extremity complaints.

In July 1994, claimant filed her amended E-1 alleging bilateral hand and arm injuries. Dr. Blaty, in his report of September 20, 1994, recommended that claimant be evaluated and, if necessary, treated for left wrist problems that had developed. Otherwise there are no references to left upper extremity problems in any of the reports or records. Respondent denied liability for the alleged left wrist problems and the preliminary hearing on those issues was held on November 29, 1994.

Claimant testified at that hearing that her left hand and wrist problems also developed while she was working for respondent. They arose because she was compensating for her right hand problems by overusing her left hand and wrist. She claims that some time after her accident she told Pam Perot, the assistant director for nursing with respondent, that her left was causing her problems. On cross-examination claimant acknowledged that she had recently talked to Ms. Perot, who had no recollection of left hand complaints.

Claimant testified that she had also told Dr. Pollock about her left hand problems shortly after her surgery of January 1993, and again in April 1994, around the time she was released by Dr. Pollock. She testified that she told Dr. Jones of left hand problems when she saw him in January 1994. Neither physician, by chart or report, confirms any mention by claimant of left hand problems at the times claimed.

In proceedings under the Workers Compensation Act, the burden of proof is on the claimant to establish his or her right to an award of compensation and to prove the various conditions on which such rights depend. Claimant does not appear to have been reluctant to advise the doctors of her complaints, and yet none of the physicians' charts or reports during the term of her authorized treatment through April 1994 confirm complaints of left hand problems. Claimant's testimony regarding the limited complaints she made to Dr. Pollock and Dr. Jones is not sufficiently persuasive to justify a finding that claimant has met her burden of proof on the issue at hand.

Based upon the evidence presented to date, the Administrative Law Judge was correct in his decision that medical treatment requested by claimant be denied, in that the claimant has failed to establish that she has experienced a left hand injury arising out of and in the course of her employment with the respondent.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge John D. Clark dated November 29, 1994, should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of July, 1995.

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BOARD MEMBER PRO TEM

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BOARD MEMBER

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BOARD MEMBER

cc: Chris Clements, Wichita, Kansas
P. Kelly Donley, Wichita, Kansas
John D. Clark, Administrative Law Judge
David A. Shufelt, Acting Director