

The Appeals Board considered the record and adopts the stipulations listed in the Award on Remand of the Administrative Law Judge.

ISSUES

The issues for Appeals Board review are the same as those presented for decision by the Administrative Law Judge and include the following:

- (1) Whether claimant met with personal injury by accident on the dates alleged.
- (2) Whether claimant's accidental injuries arose out of and in the course of his employment with respondent.
- (3) Whether claimant made timely written claim.
- (4) The nature and extent of claimant's disability, if any.
- (5) Whether claimant is entitled to payment of future medical expenses.
- (6) Whether claimant should have been permitted to amend his date of accident to include a series of accidents from April 2, 1992 through his last day worked.
- (7) The liability of the Workers Compensation Fund.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire record and having considered the briefs and arguments of the parties, the Appeals Board finds that the Award on Remand entered by the Administrative Law Judge should be modified to find two separate accident dates. The Appeals Board also finds that payment of the ultimate disability and costs of this award should be the responsibility of the Workers Compensation Fund.

The Appeals Board specifically finds that claimant suffered personal injury by accident arising out of and in the course of his employment with respondent on April 2, 1992, and that he suffered a series of aggravations each and every day worked thereafter culminating on his last day worked in February 1993. For purposes of award, the Appeals Board finds claimant's first accident date to be April 2, 1992 and the accident date for the subsequent series of aggravations to be February 22, 1993. The Appeals Board concurs with the findings by the Administrative Law Judge concerning the nature and extent of claimant's ultimate disability. However, claimant has failed to meet his burden of proof as to the nature and extent of his injury and the disability resulting from the April 2, 1992 accident. Although the record does not contain a specific medical opinion apportioning the claimant's ultimate impairment as between the April 2, 1992 injury and the subsequent work-related aggravations thereof, it is clear that claimant was a handicapped

worker after the April 2, 1992 injury and that his subsequent aggravations would not have occurred but for claimant's preexisting condition and the initial injury of April 2, 1992. Accordingly, except for those benefits provided claimant by USF&G prior to the termination of its coverage, the Workers Compensation Fund shall be responsible for this award. The Findings of Fact and Conclusions of Law, as enumerated in the Award on Remand, are otherwise found to be accurate and appropriate and to the extent they are not inconsistent with the findings and conclusions enumerated herein, they are hereby adopted by the Appeals Board as its own as if specifically set forth herein.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award on Remand entered by Administrative Law Judge Bruce E. Moore should be, and is hereby, modified as follows:

Paragraph 28 of the Award on Remand is corrected to read that USF&G is only liable for benefits provided claimant prior to termination of its coverage, and 50 percent of the costs. The Workers Compensation Fund is otherwise liable for the entire award. Claimant is entitled to 79.29 weeks of temporary total disability compensation at \$299 per week or \$23,707.71, followed by 335.71 weeks of permanent partial disability compensation at \$174.12 per week or \$58,453.83 making a total award of \$82,161.54.

WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Kevin Schwartz and against the respondent, Kelly Maclaskey Oilfield Services, its insurance carrier, USF&G and Commercial Union, and the Workers Compensation Fund, for an accidental injury which occurred February 22, 1993, and based upon an average weekly wage of \$746.18 for 79.29 weeks of temporary total disability compensation at the rate of \$299 per week or \$23,707.71, followed by 335.71 weeks of permanent partial disability compensation at the rate of \$174.12 per week or \$58,453.83, for a 35% work disability, making a total award of \$82,161.54.

As of February 24, 1997 there is due and owing claimant 79.29 weeks of temporary total disability compensation at the rate of \$299 per week or \$23,707.71, followed by 129.71 weeks of permanent partial disability compensation at the rate of \$174.12 per week in the sum of \$22,585.11 for a total of \$46,292.82, which is ordered paid in one lump sum less any amounts previously paid. The remaining balance of \$35,868.72 is to be paid for 206 weeks at the rate of \$174.12 per week, until fully paid or further order of the Director.

All other orders by the Administrative Law Judge are hereby adopted by the Appeals Board as its own to the extent they are not inconsistent with the above orders.

IT IS SO ORDERED.

Dated this ____ day of February 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Jeffrey D. Wicks, Great Bend, KS
Billy E. Newman, Topeka, KS
Kendall R. Cunningham, Wichita, KS
M. John Carpenter, Great Bend, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director