

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

TRAVIS J. KERSHNER)	
Claimant)	
VS.)	
)	Docket No. 181,280
PEPSI COLA)	
Respondent)	
AND)	
)	
AMERICAN MOTORIST INSURANCE COMPANY)	
Insurance Carrier)	
AND)	
)	
WORKERS COMPENSATION FUND)	

ORDER

Claimant appeals from the Award of Administrative Law Judge John D. Clark dated July 30, 1996. The Appeals Board heard oral argument on February 12, 1997.

APPEARANCES

Norman I. Cooley of Wichita, Kansas, appeared on behalf of the claimant. Frederick L. Haag of Wichita, Kansas, appeared on behalf of the respondent and its insurance carrier. Christopher J. McCurdy of Wichita, Kansas, appeared on behalf of the Workers Compensation Fund.

RECORD AND STIPULATIONS

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

ISSUES

This claim, Docket No. 181,280 was tried with Docket No. 181,279. Both involved injury to claimant's low back. In Docket No. 181,279, the Administrative Law Judge awarded benefits for an 8.5 percent permanent partial general disability. No appeal was taken from that finding. In this case, Docket No. 181,280, the Administrative Law Judge found that the claimant had failed to establish accidental injury arising out of and in the course of his employment. The Administrative Law Judge found that all of claimant's permanent disability related to the injury

in the claim which was not appealed, that is Docket No. 181,279. On appeal claimant argues that he suffered additional injury after the injury for which benefits have been awarded. If the Appeals Board finds that the decision by the Administrative Law Judge should be reversed, the claimant asks the Appeals Board to make findings on notice, written claim, average weekly wage, and nature and extent of disability. Claimant argues that he is entitled to a work disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board finds that the Award by the Administrative Law Judge should be affirmed for the reasons stated in the original Award. Specifically, the Appeals Board finds that the Award in Docket No. 181,279 for an 8.5 percent permanent partial general disability represents an award for the full extent of the disability the claimant suffered. The Appeals Board also finds that claimant has failed to meet his burden of proving a new accident or additional permanent impairment from his work activities.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge John D. Clark, dated July 30, 1996, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of February 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Norman I. Cooley, Wichita, KS
- Frederick L. Haag, Wichita, KS
- Christopher J. McCurdy, Wichita, KS
- John D. Clark, Administrative Law Judge
- Philip S. Harness, Director