

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

<b>JANET KAY MARDIS</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 183,524
<b>THE BOEING COMPANY</b>	)	
Respondent	)	
AND	)	
	)	
<b>AETNA CASUALTY &amp; SURETY CO.</b>	)	
Insurance Carrier	)	
AND	)	
	)	
<b>WORKERS COMPENSATION FUND</b>	)	

**ORDER**

This matter was remanded to the Workers Compensation Appeals Board from the Court of Appeals of the State of Kansas which, in its opinion filed January 3, 1997, reversed the Order of the Appeals Board which granted claimant a general body work disability during the period of time between the claimant's date of accident and the date of claimant's layoff from respondent. The Court remanded for a determination of claimant's functional disability during the period in question and ordered a recalculation of benefits.

**ISSUES**

The nature and extent of claimant's injury and/or disability during the period from June 30, 1992, through August 30, 1993.

### APPEARANCES

Claimant appeared by and through her attorney Jim L. Lawing of Wichita, Kansas. Respondent and its insurance carrier appeared by and through their attorney Vaughn Burkholder of Wichita, Kansas. The Kansas Workers Compensation Fund appeared by and through its attorney Scott J. Mann of Hutchinson, Kansas. There were no other appearances.

### RECORD AND STIPULATIONS

The record and stipulations as specifically set forth in the June 8, 1995, Award of the Special Administrative Law Judge were considered by the Appeals Board and adopted for purpose of this Order. The Appeals Board also accepted the January 24, 1996, stipulation of the parties which confirmed that claimant's average weekly wage for the period June 30, 1992, through April 23, 1993, was \$567.08.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter was remanded to the Appeals Board with instructions from the Court of Appeals to recalculate claimant's permanent partial disability during the period June 30, 1992, through August 30, 1993. During this time claimant was either on light duty with respondent or being paid temporary total disability compensation while she underwent surgery to her shoulder. When claimant attempted to return to work on August 30, 1993, she was laid off from the respondent employer.

As a part of claimant's medical treatment she underwent surgeries with Dr. Miguel Pireal-Cruz to both her right and left shoulders. The left shoulder surgery occurred on May 7, 1993, with the right shoulder surgery occurring in June 1994. Subsequent to those surgeries Dr. Cruz opined that claimant had suffered a 15 percent permanent partial functional impairment to the body as a whole. The Appeals Board, in its Order of October 30, 1995, awarded claimant a 42 percent permanent partial general body work disability with no consideration given for the time claimant was on light duty with respondent. The memorandum opinion of the Court of Appeals mandates that appropriate consideration be given for this period. The Court of Appeals also noted in its opinion that claimant did not challenge the arguments raised by respondent and the Kansas Workers Compensation Fund for said period and a review of the record fails to uncover evidence overcoming the statutory presumption of no work disability contained in K.S.A. 1992 Supp. 44-510e. Therefore, the Appeals Board finds claimant entitled to an award of permanent partial disability based upon her percentage of functional impairment during the period of time in question. See Lee v. Boeing Military Airplanes, 21 Kan. App. 2d 365, 899 P.2d 516 (1995)

In reviewing the record, the Appeals Board finds the opinion of Dr. Pireal-Cruz granting claimant a 15 percent whole body functional impairment to be appropriate evidence upon which to base a functional award. The Appeals Board notes both the respondent and the Kansas Workers Compensation Fund, in their briefs, argue that claimant should be entitled to a 15 percent functional disability. Therefore, based upon the evidence, the Appeals Board grants claimant permanent partial disability based upon a functional impairment of 15 percent for the period beginning June 30, 1992, and ending August 30, 1993, excluding the time when claimant was receiving temporary total disability compensation.

In the stipulation filed with the Appeals Board on January 24, 1996, the claimant, respondent, and the Workers Compensation Fund agreed to an average weekly wage of \$567.08 for the period June 30, 1992, through April 23, 1993. The Appeals Board adopts same for purpose of this award. Claimant was on temporary total disability compensation commencing April 24, 1993, through August 27, 1993, and was laid off on August 30, 1993. There is no indication as to claimant's average weekly wage for the period August 28, 1993, through August 30, 1993. For this period, the Appeals Board adopts the average weekly wage of \$567.08.

The parties further agreed that subsequent to August 30, 1993, claimant's average weekly wage was \$733.68.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board, in concurrence with the Memorandum Opinion of the Court of Appeals of the State of Kansas that claimant is entitled to an award of permanent partial disability based upon a functional impairment of 15% to the body as a whole for the period June 30, 1992, through August 30, 1993, and based upon an average weekly wage of \$567.08. Thereafter claimant is entitled to a 42% permanent partial general body work disability based upon an average weekly wage of \$733.68.

Claimant is entitled to 34.71 weeks temporary total disability compensation at the rate of \$289 per week, totaling \$10,031.19, and 42.86 weeks permanent partial whole body functional disability at the rate of \$56.71 per week, totaling \$2,430.59 followed thereafter by 337.43 weeks permanent partial general body work disability at the rate of \$205.44 per week totaling \$69,321.62 for a total award of \$81,783.40.

As of March 5, 1997, claimant is entitled to 34.71 weeks temporary total disability compensation at the rate of \$289 per week totaling \$10,031.19, and 42.86 weeks permanent partial general body functional impairment at the rate of \$56.71 per week totaling \$2,430.59 followed thereafter by 166.57 weeks permanent partial general body work disability at the rate of \$205.44 in the amount of \$34,220.14 for a total due and owing of \$46,681.92 which is ordered paid in one lump sum minus amounts previously paid.

Thereafter claimant is entitled to benefits at the rate of \$205.44 per week for 170.86 weeks in the amount of \$35,101.48 until fully paid or until further order of the Director.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of March 1997.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

- c: Jim L. Lawing, Wichita, KS
- Vaughn Burkholder, Wichita, KS
- Scott J. Mann, Hutchinson, KS
- John D. Clark, Administrative Law Judge
- Philip S. Harness, Director