

The two issues raised by the claimant are issues enumerated in K.S.A. 44-534a(a)(2), which grants the Appeals Board jurisdiction to review a preliminary hearing order.

(1) The claimant in a workers compensation case has the burden to prove her right to receive compensation benefits by establishing the various conditions on which her right depends. K.S.A. 44-501(a). It is the claimant's burden to persuade the trier of facts by a preponderance of the credible evidence based on the whole record. K.S.A. 44-508(g). In this case, the Administrative Law Judge found in regard to the issue as to whether the claimant sustained an accidental injury arising out of and in the course of her employment with respondent, that the claimant had not met her burden of proof. After a careful examination of the whole record, the Appeals Board affirms the Administrative Law Judge's decision in regard to this issue.

The claimant alleges that she sustained an injury to her back, neck and shoulders on December 20, 1993, while employed as a school bus driver for the respondent, Lawrence Bus Company, owned by Chris Ogle. Claimant testified that on December 20, 1993, she noticed pain when she was driving the school bus. The pain was in the back of her neck and down her shoulders. The pain intensified to a point that she lost control of the bus and ran up and over the curb. She alleges she told the dispatcher employed by the respondent, George Schumock, that she could not drive the school bus because of the intense pain. Mr. Schumock also testified in this matter and specifically denied any knowledge that the claimant told him that her health problems were work related. Claimant was laid off, as was the normal practice for the Christmas holidays, on December 21, 1993. She applied for unemployment benefits on December 23, 1993, indicating that she was able to work.

The first medical treatment that claimant sought was with her family physician, Ross A. Sciara, D.O., on December 24, 1994. Complaints of pain were made in the claimant's lower back that shot up to her neck and shoulders. Dr. Sciara diagnosed her condition as general osteoarthritis, prescribing medication, heat and cold packs. At that time, claimant did not indicate to the doctor that her complaints were work related. She was seen by Dr. Sciara for her continuing complaints on five subsequent visits for treatment without indicating any connection with her work. Finally, on March 9, 1994, Dr. Sciara noted that claimant needed to go through workers compensation for her injuries because welfare would not issue her a medical card. Also noted was that the claimant's shoulder, back and neck pain were due to her manual turning of the steering wheel on a large bus.

At a meeting held on January 18, 1994, between claimant and respondent's owner, Chris Ogle, the claimant, in a voluntarily signed statement, denied that her health problems were work related

On April 12, 1994, claimant was examined and evaluated by P. Brent Koprivica, M.D., of Kansas City, Kansas, in reference to a disability claim not related to her employment. Dr. Koprivica found soft tissue pain involving the paracervical and parathoracic muscles. He concluded that a causal relationship between these complaints and her employment was questionable.

(2) The claimant has alleged a date of accident of December 20, 1993. Accordingly, in regard to the notice issue, the statute that was in effect at that time contained the July 1, 1993 amendments to K.S.A. 44-520. This statute generally requires the claimant to give the respondent notice of a work-related accident within ten (10) days, except actual notice

or notice to respondent's agent shall render notice unnecessary. However, the ten (10) day notice requirement is not a bar to the claim, if just cause is shown within seventy-five (75) days from date of accident.

In the case at hand, claimant claims she notified the respondent's dispatcher, George Schumock, of her accidental injury within ten (10) days. However, Mr. Schumock contradicts this claim, testifying that the claimant did not notify him that her health problems were work connected. Additionally, the claimant voluntarily signed a statement of January 18, 1994, that stated her health problems were not work connected. This is further evidence that the claimant did not allege a work-related injury within ten (10) days.

Therefore, the first notice that the respondent received from the claimant in reference to a work-related claim was a letter from claimant's attorney on March 31, 1994, over one-hundred (100) days after the alleged date of accident. The Appeals Board finds and concludes that the greater weight of evidence establishes that the first notice the claimant provided the respondent that her injury was work related was March 31, 1994. This being over seventy-five (75) days from the alleged date of accident of December 20, 1993, bars the claimant's request for benefits.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order entered by Administrative Law Judge Floyd V. Palmer, dated November 2, 1994, denying claimant's request for benefits, is affirmed and remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of January, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Sally G. Kelsey, Lawrence, KS
- Matthew W. Tills, Kansas City, MO
- Floyd V. Palmer, Administrative Law Judge
- George Gomez, Director