

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

<b>EDWARD M. DUMBAULD</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 187,935
<b>BEECH AIRCRAFT CORPORATION</b>	)	
Respondent	)	
Self-Insured	)	
AND	)	
	)	
<b>KANSAS WORKERS COMPENSATION FUND</b>	)	

**ORDER**

On the 2nd day of July 1996, the application of the respondent for review by the Workers Compensation Appeals Board of an Award entered by Administrative Law Judge John D. Clark dated January 5, 1996 came on before the Appeals Board for oral argument.

**APPEARANCES**

Claimant appeared by and through his attorney, Bill H. Raymond of Wichita, Kansas. Respondent, a qualified self-insured, appeared by and through its attorney, Terry J. Torline of Wichita, Kansas. The Workers Compensation Fund appeared by its attorney, Edward D. Heath, Jr., of Wichita, Kansas.

**RECORD AND STIPULATIONS**

The record considered by the Appeals Board is the same as that enumerated in the Award of the Administrative Law Judge. The stipulations of the parties are, likewise, set forth in the Award and are hereby adopted by the Appeals Board for purposes of this review.

**ISSUES**

On appeal, respondent raised the following issues:

- (1) The nature and extent of claimant's disability, specifically, the amount of any preexisting impairment of function.
- (2) Whether all or any portion of the Award should be assessed against the Workers Compensation Fund.

During oral argument, counsel for the Workers Compensation Fund (hereinafter Fund) also raised an issue as to the claimant's date of accident.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire record, the Appeals Board finds that the Award of the Administrative Law Judge should be modified to find an accident date of August 21, 1994, but should otherwise be affirmed.

Our finding of claimant's date of accident is dispositive of all issues raised in this appeal. That is because the Fund is only liable for payment of awards to handicapped workers for injuries occurring prior to July 1, 1994. See K.S.A. 44-566a; K.S.A. 44-567; Farrell v. Unified School District #229, Docket No. 196,840 (January 26, 1996); Jones v. The Boeing Company-Wichita, Docket No. 196,447 (January 24, 1996). It is also because in finding claimant's date of accident to be the last day he worked prior to his August 22, 1994 surgery, the Appeals Board finds claimant's bilateral carpal tunnel syndrome condition to have been caused by a series of mini-traumas occurring each and every day worked. In so finding, there is no preexisting impairment upon which Fund liability can be based nor for which respondent can claim a credit or offset. Since we find no preexisting impairment of function, the claimant's permanent partial disability award is not reduced by the mandate of K.S.A. 44-501(c) which reads:

"The employee shall not be entitled to recover for the aggravation of a preexisting condition, except to the extent that the work-related injury causes increased disability. Any award of compensation shall be reduced by the amount of functional impairment determined to be preexisting."

The Administrative Law Judge found an accident date of March 20, 1994, the date claimant first sought medical treatment for and was initially diagnosed with bilateral carpal tunnel syndrome. In so holding, the Administrative Law Judge correctly cited the controlling authority of Berry v. Boeing Military Airplanes, 20 Kan. App. 2d 220, 885 P.2d 1261 (1994), for the proposition that the date of injury in a carpal tunnel syndrome case will ordinarily be the last date claimant worked for respondent. The Kansas Court of Appeals in Berry specifically rejected using the date an injury first manifested itself or the date on which an injury is first diagnosed as the date from which disability is computed. This rule was later clarified in Condon v. Boeing Co., 21 Kan. App. 2d 580, 903 P.2d 775 (1995), which stands for the proposition that in cases where a worker injured by micro-traumas does not leave work due to his injury, the date of accident is not always the last day the

claimant worked. In this case, claimant continued to work and, thereby, continued to suffer the same micro-traumas, up until the date he left work for surgery. Accordingly, the Appeals Board finds under the facts and circumstances of this case that the appropriate date for fixing the date from whence compensation is to be computed for claimant's bilateral carpal tunnel syndrome is August 21, 1994, the last date claimant worked prior to surgery.

As pointed out by the Court of Appeals in Berry, carpal tunnel syndrome is a condition that defies any attempt to affix the precise date the accident occurred. The bright line rule established in Berry set the date of injury in carpal tunnel syndrome cases at the last day worked where the employment came to an end due to the employee no longer being capable of continuing his job because of the condition. This bright line rule was established because of the complexities of locating the date of injury in a carpal tunnel syndrome case. Noting that injuries caused by continuing repetitive activity over a period of time are not subject to being defined as occurring on a specific date, the Court of Appeals in Condon determined for cases where, unlike Berry, a claimant is not forced to quit work because of his or her injury, the date of injury will not always be the last day the worker worked.

The Administrative Law Judge adopted the date when claimant first sought medical treatment for the condition. However, the record indicates claimant sought medical treatment on March 20, 1994 at the Hertzler Clinic for a variety of symptoms and complaints. In addition, he had been treated by respondent's on-site clinic on numerous occasions for upper extremity complaints including, on some of those occasions, for symptoms akin to those which were ultimately diagnosed as being caused by the bilateral carpal tunnel syndrome condition. Therefore it is difficult to pinpoint which of these instances would be "the onset of pain which necessitates medical attention". 20 Kan. App. 2d at 224. In addition, claimant continued to perform his work for respondent after each of these medical visits. Therefore, he presumably continued to sustain the micro-traumas which had ultimately led to his carpal tunnel syndrome condition. Applying the logic of the Court of Appeals as announced in Berry would lead to a finding of claimant's date of accident to be his last date worked prior to his carpal tunnel release surgeries. When he returned to work with respondent following these two surgeries, it was with permanent restrictions. Accordingly, we find an accident date of August 21, 1994.

Bruce G. Ferris, M.D., was the only medical expert to testify in this case. Dr. Ferris was asked how much of claimant's present impairment of function preexisted March 25, 1994. He opined that 90 percent of claimant's permanent impairment of function preexisted March 25, 1994. Of course, it is not argued by any of the parties that claimant's injury was the result of a sudden onset or single traumatic event occurring on March 25, 1994 or on any other single date. Dr. Ferris agrees that claimant's bilateral carpal tunnel syndrome was the result of repetitive gripping, extension and flexion of the wrists constituting a series of accidents or minor traumas which were suffered over a period of time, primarily from his work with respondent. The selection of a single date is for purposes of finding "accident" or "occurrence" and for computation of benefits. It does not presuppose that all repetitive mini-traumas and the resulting impairment which preceded

the accident date are to be considered to be preexisting conditions either for purposes of Fund liability or a reduction in benefits under K.S.A. 44-501(c). Instead, they are all treated as part of one injury. There are circumstances where preexisting repetitive use injuries can be established within sufficiently defined perimeters of time and with sufficient medical evidence of separate impairment to establish Fund liability or a percentage of preexisting impairment. However, the circumstances in this case do not fit within either of those categories. Under the facts of this case we do not find claimant's bilateral carpal tunnel syndrome to constitute an aggravation of a preexisting condition.

### AWARD

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge John D. Clark dated January 5, 1996 is modified to find an accident date of August 21, 1994, but is otherwise affirmed as follows:

**WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE IN FAVOR OF** the claimant, Edward M. Dumbauld, and against the respondent, Beech Aircraft Corp., for an accidental injury sustained on August 21, 1994.

The claimant is entitled to 9 weeks temporary total disability at the rate of \$319.00 per week or \$2,871.00 followed by 95.45 weeks at \$319.00 per week or \$30,448.55 for a 23% permanent partial general bodily disability making a total award of \$33,319.55. As of July 12, 1996, there would be due and owing to claimant 9 weeks temporary total compensation at \$319.00 per week in the sum of \$2,871.00 plus 89.71 weeks permanent partial compensation at \$319.00 per week in the sum of \$28,617.49 for a total due and owing of \$31,488.49 which is ordered paid in one lump sum less amounts previously paid. Thereafter, the remaining balance in the amount of \$1,831.06 shall be paid at \$319.00 per week for 5.74 weeks or until further order of the Director.

All other orders of the Administrative Law Judge are adopted herein as if specifically set forth in this order.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July 1996.

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BOARD MEMBER

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BOARD MEMBER

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**BOARD MEMBER**

- c: Bill Raymond, Wichita, KS
- Terry J. Torline, Wichita, KS
- Edward D. Heath, Jr., Wichita, KS
- John D. Clark, Administrative Law Judge
- Philip S. Harness, Director