

concede that the work for respondent probably aggravated claimant's symptoms, although he did not believe the aggravation made the condition permanently worse.

Claimant was also examined by Dr. Revis C. Lewis. A May 18, 1994 report from Dr. Lewis was made an exhibit to the Preliminary Hearing. In that report, Dr. Lewis likewise diagnoses bilateral carpal tunnel syndrome and goes on to relate claimant's symptoms to be secondary to his occupation with respondent. It was pointed out by respondent that Dr. Lewis was not made aware of claimant having been working part-time as a truck driver for a sanitation company following his leaving the employment of respondent. This is an activity which Dr. Andrew included as among those which would tend to aggravate claimant's condition.

Claimant bears the burden of proof to establish his claim. "Burden of proof" is defined in K.S.A. 44-508(g) as ". . . the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record." The burden of proof is:

" . . . on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends. In determining whether the claimant has satisfied this burden of proof, the trier of fact shall consider the whole record." K.S.A. 44-501(a).

In order to recover, the claimant must establish he has sustained a personal injury by accident arising out of and in the course of his employment. K.S.A. 44-501(a). "Personal injury" is defined in K.S.A. 44-508(e) as:

" . . . any lesion or change in the physical structure of the body, causing damage or harm thereto, so that it gives way under the stress of the worker's usual labor. It is not essential that such lesion or change be of such character as to present external or visible signs of its existence. An injury shall not be deemed to have been directly caused by the employment where it is shown that the employee suffers disability as a result of the natural aging process or by the normal activities of day-to-day living."

The terms "injury" and "accident" are not synonymous. Each must be established by the claimant. An "accident" is ". . . an undesigned, sudden and unexpected event or events, usually of an afflictive or unfortunate nature and often, but not necessarily, accompanied by a manifestation of force." K.S.A. 44-508(d). An accident is an event which causes an injury. The injury is a change in the physical structure of the body which occurs as a result of the accident. Barke v. Archer Daniels Midland Co., 223 Kan. 313, 317, 573 P. 2d 1025 (1978).

Further, the claimant must establish that he has sustained an accident and injury arising out of the employment and in the course of the employment. These are separate elements which must be proven in order for the claim to be compensable. Newman v. Bennett, 212 Kan. 562, 512 P.2d 497 (1973). In order to establish that the incident "arose out of the employment", the claimant must show that there is some causal connection between the accident, injury and the employment. To do this, it must be shown that the injury arose out of the nature, conditions, obligations and incidents of the employment. Only risks associated with the work place are compensable. "In the course of the employment", relates to the time, place and circumstances under which the accident

occurred, and that the injury happened while the employee was at work at his or his employer's service. Hormann v. New Hampshire Ins. Co., 236 Kan. 190, 197, 689 P.2d 837 (1984).

The Kansas Supreme Court has ruled that it is not necessary for the injury to be caused by trauma or some form of physical force to be compensable. Demars v. Rickel Manufacturing Corporation, 223 Kan. 374, 379, 573 P.2d 1036 (1978). Personal injury or injury results from an accident which can occur in a single event or from a series of events which occur over time. The event or events do not have to be traumatic or manifested by force. Rather, an accident can occur when, as a result of performing his or her usual tasks in their usual manner, the employee suffers an injury. Downes v. IBP, Inc., 10 Kan. App. 2d 39, 41, 691 P.2d 42 (1984), rev. denied 236 Kan. 875 (1985). Also, it is well settled in this State that an accidental injury is compensable where the accident only serves to aggravate or accelerate an existing disease or intensifies the affliction. Harris v. Cessna Aircraft Co., 9 Kan. App. 2d 334, 678 P.2d 178 (1984). Demars v. Rickel Manufacturing Corporation, *supra*; Chinn v. Gay & Taylor, Inc., 219 Kan. 196, 547 P.2d 751 (1976).

Claimant's testimony is uncontroverted that his work activities with respondent aggravated his carpal tunnel syndrome by making what had been an asymptomatic condition, symptomatic. Even respondent's medical expert, Dr. Andrew, agrees that claimant's symptoms were aggravated by his work even if the underlying condition was not made permanently worse. Under these circumstances, claimant would be entitled to preliminary benefits of temporary partial disability compensation and medical treatment. The evidence of aggravation is uncontroverted in the record. Uncontradicted evidence which is not improbable or unreasonable may not be disregarded unless it is shown to be untrustworthy. Anderson v. Kinsley Sand & Gravel, Inc., 221 Kan. 191, 558 P.2d 146 (1976).

Whether claimant is temporarily totally or temporarily partially disabled or in need of medical treatment are not issues over which the Appeals Board has jurisdiction in an appeal from a preliminary order. K.S.A. 44-534a; K.S.A. 44-551.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the June 16, 1994 Order of Administrative Law Judge John D. Clark should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of February, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

LARRY FOSTER

4

DOCKET NO. 189,060

c: Kurtis I. Loy, Pittsburg, KS
John I. O'Connor, Pittsburg, KS
John D. Clark, Administrative Law Judge
George Gomez, Director