

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

|  |   |                    |
|--|---|--------------------|
| <b>KAREN MUNSELL-WOLF</b>                        | ) |                    |
| Claimant   | ) |                    |
| VS.  | ) |                    |
|  | ) | Docket No. 189,400 |
| <b>FIRST CHOICE SUPPORT SERVICES</b>             | ) |                    |
| Respondent                                       | ) |                    |
| AND  | ) |                    |
|  | ) |                    |
| <b>CONTINENTAL LOSS ADJUSTING SERVICES, INC.</b> | ) |                    |
| Insurance Carrier                                | ) |                    |
| AND  | ) |                    |
|  | ) |                    |
| <b>WORKERS COMPENSATION FUND</b>                 | ) |                    |

**ORDER**

The Workers Compensation Fund requested review of both the Award dated May 3, 1996, entered by Administrative Law Judge Shannon S. Krysl and the Order Nunc Pro Tunc dated May 16, 1996, entered by Administrative Law Judge John D. Clark. The Appeals Board heard oral argument on September 12, 1996.

**APPEARANCES**

Randy S. Stalcup of Wichita, Kansas, appeared for claimant. Christopher J. McCurdy of Wichita, Kansas, appeared for respondent and its insurance carrier. Andrew E. Busch of Wichita, Kansas, appeared for the Workers Compensation Fund.

**RECORD AND STIPULATIONS**

The record considered by the Appeals Board and the parties' stipulations are listed in the Award.

**ISSUES**

The Administrative Law Judge found that claimant was entitled to receive permanent partial general disability benefits for a 12 percent whole body functional impairment. The Administrative Law Judge also found that the Workers Compensation Fund was responsible for 33 percent of the benefits associated with the claim. The only issue before the Appeals Board on this review is the liability of the Workers Compensation Fund.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Award and Order Nunc Pro Tunc should be reversed to the extent liability was assessed against the Workers Compensation Fund.

Claimant's arms became symptomatic in spring 1993, the right worse than the left. At that time claimant was performing office duties for respondent. In August 1993, claimant's job duties changed when she began visiting clients' homes as a home visitor and claims processor.

Unknown to respondent, in October 1993 claimant sought medical treatment from the Hunter Clinic for her arm symptoms. At that point in time claimant's right arm remained more symptomatic than her left. Despite her symptoms, claimant continued to work for the respondent. By December 1993, claimant's left arm had become more symptomatic. Claimant testified she believes her left arm symptoms increased as a result of protecting the right arm.

The parties stipulated claimant sustained personal injury by accident arising out of and in the course of employment with respondent from October 1993 and each work day thereafter through May 27, 1994, the last day claimant worked for respondent.

Respondent first learned of claimant's arm problems and symptoms on February 11, 1994. That finding is based upon the testimony of respondent's executive director, Mindy Augustine. By that time, claimant was unquestionably experiencing symptoms in both arms and had already been given medical restrictions by the Hunter Clinic which she was to observe.

Upon learning of claimant's condition, respondent referred claimant to hand specialist J. Mark Melhorn, M.D., whom claimant first saw on March 10, 1994. After a period of conservative treatment, Dr. Melhorn performed right carpal tunnel and right ulnar nerve releases at the wrist on August 10, 1994, and the same surgical procedures on the left arm on August 24, 1994. Believing the right arm was symptomatic before the left, Dr. Melhorn testified the right arm impairment contributed 33 percent to the left arm impairment.

The parties do not contest the Administrative Law Judge's finding that claimant sustained a 12 percent whole body functional impairment as a result of her bilateral upper extremity injuries. Therefore, the Appeals Board adopts that finding as its own.

Because claimant continued her regular work duties through her last day of work on May 27, 1994, the Appeals Board finds that the last day of work should be designated the date

of accident for the period of injury in question. The Appeals Board also finds the injuries to claimant's upper extremities should be viewed as constituting one accident which culminated on that date. The Appeals Board finds claimant continued to perform her regular work duties and activities through the date of her termination on May 27, 1994, and it is, therefore, reasonable to infer she continued to simultaneously sustain repetitive microtraumas to both her arms through the date of termination.

Under K.S.A. 44-567, Fund liability is predicated upon a preexisting impairment resulting in or contributing to a second injury or disability. Because claimant did not have an impairment to her arms before she began working for respondent in October 1992 or even before the stipulated period of accident, which began in October 1993, and, further, because the evidence establishes claimant's injuries should be treated as one accident, the Appeals Board finds there can be no Fund liability in this proceeding. Without a preexisting impairment, there is no Fund liability.

Because of the above finding, the Appeals Board need not address the issue whether respondent had knowledge of a preexisting impairment anytime before claimant had developed bilateral arm injuries.

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award dated May 3, 1996, entered by Administrative Law Judge Shannon S. Krysl and the Order Nunc Pro Tunc dated May 16, 1996, entered by Administrative Law Judge John D. Clark should be reversed to the extent liability was assessed against the Workers Compensation Fund; that the Workers Compensation Fund bears no liability in this proceeding except for its own expenses and attorney fees; and that respondent and its insurance carrier are wholly responsible for the benefits and costs associated with this Award.

The Appeals Board hereby adopts as its own all other orders set forth in the Award and Order Nunc Pro Tunc to the extent they are not inconsistent with the above.

**IT IS SO ORDERED.**

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

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BOARD MEMBER

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BOARD MEMBER

\_\_\_\_\_  
BOARD MEMBER

c: Randy S. Stalcup, Wichita, KS  
Christopher J. McCurdy, Wichita, KS  
Andrew E. Busch, Wichita, KS  
Philip S. Harness, Director