

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

HEWITT JASON THOMAS)	
Claimant)	
VS.)	
)	Docket Nos. 193,112; 211,610;
)	& 225,121
WAL-MART, INC.)	
Respondent,)	
Self-Insured)	

ORDER

Claimant appealed the February 23, 2001 Award entered by Administrative Law Judge Julie A. N. Sample.

APPEARANCES

Claimant appeared pro se. Michael H. Stang of Overland Park, Kansas, appeared for respondent.

RECORD AND STIPULATIONS

The record considered by the Board and the respondent's stipulations are listed in the Award.

ISSUES

Claimant has filed three claims for workers compensation benefits. In Docket #193,112, claimant alleges an accidental injury on April 28, 1994, and each day thereafter. In Docket #225,121, claimant alleges a November 26, 1994 accident. And in the third claim, Docket #211,610, claimant alleges a September 22, 1995 accident.

In the February 23, 2001 Award, Judge Sample denied claimant's requests for benefits in all three claims after finding that claimant failed to prove the alleged accidents arose out of and in the course of employment with respondent.

Claimant contends Judge Sample erred. In claimant's letter filed with the Board on May 25, 2001, claimant contends that he was denied a regular hearing on December 7,

2000, and the opportunity to present evidence. Therefore, claimant requests the Award be set aside and that he be given an opportunity to further litigate his claims.

The only issue before the Board on this appeal is whether claimant was denied an opportunity to present evidence in his claims.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Board finds and concludes:

The February 23, 2001 Award should be affirmed. The Board adopts the findings and conclusions set forth in the Award. As indicated by Judge Sample, claimant refused to appear and participate in the December 7, 2000 regular hearing as he walked out of the Division of Workers Compensation facilities. Claimant was given a terminal date and an extension for submitting evidence in the three claims and failed to comply with those dates. When the Judge held a hearing on January 18, 2001, to address a second extension of claimant's deadline for presenting evidence in order to take Dr. Nye's deposition, claimant failed to appear. Claimant now bemoans that he has been denied his "day in court" and due process.

The Workers Compensation Act provides deadlines for presenting evidence and procedures to extend those deadlines.¹ Claimant failed to avail himself of those procedures and, therefore, failed to present evidence to support his claims.

The record indicates that claimant received appropriate notice of the terminal date for presenting his evidence and the dates scheduled for hearings. Nonetheless, claimant failed to appear at the regular hearing or appear at the hearing to address the request to extend his terminal date. Claimant has neither been denied an opportunity to present evidence in these claims nor denied due process. The Board affirms the conclusion made by Judge Sample that claimant has failed to present the necessary evidence to establish his right to receive benefits.

AWARD

WHEREFORE, the Board affirms the February 23, 2001 Award entered by Judge Sample.

IT IS SO ORDERED.

¹ See K.S.A. 44-523.

Dated this ____ day of July 2001.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Hewitt Jason Thomas, 2011 N. 1st St., P.O. Box 2644, Kansas City, KS 66110-0644
Michael H. Stang, Overland Park, KS
Daniel L. Smith, Overland Park, KS
Timothy E. Power, Overland Park, KS
Julie A. N. Sample, Administrative Law Judge
Philip S. Harness, Director