

ISSUES

The principal issues in dispute are whether claimant suffered accidental injury arising out of and in the course of his employment on the dates alleged, whether claimant gave timely notice, and the nature and extent of claimant's disability, if any. Respondent also disputes the Award of future medical, unauthorized medical, and reimbursement for the medical expenses incurred on the grounds that the injury did not arise out of and in the course of employment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board finds the Award issued by the Special Administrative Law Judge should be reversed on the grounds that claimant has failed to meet his burden of proving he suffered accidental injury arising out of and in the course of his employment.

Claimant alleges he suffered bilateral carpal tunnel syndrome as a result of his work activities in the course of his employment with respondent. Claimant worked for respondent from October 1989 through June 9, 1995, when he left to take a position with another employer. Throughout his employment, claimant has held a position in which he generally operated a fork lift but also operated a hogger machine, loaded freight, and did miscellaneous other tasks.

Claimant first reported symptoms, later diagnosed as mild carpal tunnel syndrome, in June 1994. He did not initially attribute the symptoms to his work and told the initial medical providers the problems were from playing baseball and softball.

The Special Administrative Law Judge found that claimant had established that his injuries arose out of and in the course of his employment and did so principally on the basis of the opinions expressed by Lynn D. Ketchum, M.D. After reviewing the transcript of the testimony of Dr. Ketchum, the Appeals Board concludes that Dr. Ketchum's testimony does not satisfy claimant's burden. Dr. Ketchum states that the carpal tunnel was consistent with the work. Dr. Ketchum's testimony falls short of stating that in his opinion to a reasonable degree of medical certainty that the carpal tunnel syndrome was caused by claimant's work activities. Michael J. Poppa, D.O., on the other hand, testified that the work activities did not cause any permanent impairment. He acknowledges that they may have resulted in some temporary symptoms.

The Appeals Board also notes certain inconsistencies in the claimant's attribution of the symptoms to his work activities. While he testifies that the operation of fork lifts caused pain, he told Dr. Ketchum the operation of the fork lift did not cause pain.

For the above reasons, the Appeals Board concludes claimant has failed to sustain the burden of proving by a preponderance of credible evidence that his bilateral carpal tunnel syndrome arose out of and in the course of his employment.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Special Administrative Law Judge Douglas F. Martin dated May 21, 1996, should be, and is hereby, reversed.

IT IS SO ORDERED.

Dated this ____ day of March 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Chris Miller, Lawrence, KS
Gary R. Terrill, Overland Park, KS
Douglas F. Martin, Special Administrative Law Judge
Floyd V. Palmer, Administrative Law Judge
Philip S. Harness, Director