

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

MANUEL ALICEA)	
Claimant)	
VS.)	
)	Docket No. 193,283
NUTRI-PET)	
Respondent)	
AND)	
)	
HANOVER INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Claimant filed an application for review asking the Appeals Board to review the Award entered by Administrative Law Judge Nelsonna Potts Barnes on June 24, 1996, that denied claimant's request for compensation benefits. The Appeals Board heard oral argument on December 17, 1996.

APPEARANCES

Claimant appeared by his attorney, Joseph Seiwert of Wichita, Kansas. Respondent and its insurance carrier appeared by their attorney, Kim R. Martens of Wichita, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

Claimant requested Appeals Board review of the following issues:

- (1) Whether claimant's need for medical treatment and his permanent partial disability arose out of the work-related injury of May 4, 1994.
- (2) Nature and extent of claimant's disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record, considering the briefs and hearing the arguments of the parties, the Appeals Board finds as follows:

(1) The parties agree that claimant injured his low back at work on May 4, 1994. The controversy that arises in this case is whether claimant's work-related accident of May 4, 1994, resulted in the need for medical treatment after June 30, 1994, and whether the accident caused permanent injury to the claimant. Following claimant's work-related injury, his low-back condition worsened after two separate incidents occurred away from work. On July 4, 1994, claimant awoke with increased pain and stiffness in his back following a day of swimming with his children. The other incident occurred on August 21, 1994, when claimant felt a sharp pain in his back as he quickly turned when his children broke a glass in the kitchen while he was moving a piece of furniture at home.

The parties stipulated that if claimant's claim for compensation benefits was determined to have arisen out of the May 4, 1994, accident at work, claimant had sustained a 6 percent permanent functional impairment to the body as a whole. Claimant was terminated by the respondent in December 1994 because he no longer could physically perform his job duties. Therefore, claimant is claiming that he is entitled to a work disability in excess of the stipulated functional impairment rating.

The Administrative Law Judge found the evidence in the record supported the conclusion that claimant suffered separate non-work-related injuries on July 3, 1994, and August 21, 1994, that aggravated a preexisting low-back condition resulting in claimant's need for medical treatment and causing claimant permanent injury. The Administrative Law Judge awarded claimant medical benefits from May 4, 1994, through June 30, 1994, but denied claimant's request for permanent partial general disability benefits and further medical treatment.

The Appeals Board finds and concludes that the Award of the Administrative Law Judge should be affirmed. Before the July 3, 1994, swimming incident, claimant had returned to regular work without permanent work restrictions. Following that incident, claimant testified he had increased symptoms and for the first time radicular pain in his legs. Also, following the July 3, 1994, incident, claimant's treating doctor, Daniel V. Lygrisse, referred claimant to John S. Toohey, M.D., an orthopedic surgeon for further

treatment. Dr. Toohey first saw claimant on July 8, 1994, and diagnosed claimant with a herniated and a bulging disc. Dr. Toohey treated claimant conservatively and released him for regular work with restrictions on August 29, 1994.

Dr. Lygrisse, in a letter dated December 1, 1994, opined that claimant's preexisting back injury was aggravated by activities undertaken by the claimant at home on July 4, 1994. During claimant's last visit on August 29, 1994, following his August 21, 1994, incident at home, Dr. Toohey noted that claimant had reinjured his back at home. Additionally, Lawrence Richard Blaty, M.D., who evaluated claimant at the request of claimant's attorney, agreed during his deposition, on cross-examination, after he was informed of the July and August non-work-related incidents, that claimant's need for medical treatment, lost time, permanent impairment, and permanent restrictions were more causally related to those incidents than the May 4, 1994, work-related accident. The Appeals Board concludes the record as a whole has established that claimant's permanent injuries are the result of new and separate accidents away from work. Therefore, the Appeals Board finds an employer is not responsible for injuries sustained by an employee from new and separate accidents away from work following a resolved work-related injury. See Stockman v. Goodyear Tire & Rubber Co., 211 Kan. 260, 505 P.2d 697 (1973).

(2) The Appeals Board finds that the issue as to the nature and extent of claimant's disability is rendered moot by the above finding.

The Appeals Board finds that the Administrative Law Judge's analysis of the evidence, findings, and conclusions are accurate and appropriate. Accordingly, the Appeals Board concludes there is no need to repeat those findings and conclusions in this order and adopts those findings as its own.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Nelsonna Potts Barnes dated June 24, 1996, should be, and is hereby, affirmed. Claimant is awarded medical benefits only for an accidental injury that occurred on May 4, 1994, through June 30, 1994. All other workers compensation benefits are denied.

The remaining orders of the Administrative Law Judge in her Award are adopted by the Appeals Board.

IT IS SO ORDERED.

Dated this ____ day of January 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Joseph Seiwert, Wichita, KS
Kim R. Martens, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director