

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

RANDY JOBE

Claimant

VS.

GROSDIDIER CONSTRUCTION COMPANY

Respondent

AND

U.S.F. & G.

Insurance Carrier

Docket No. 193,700

ORDER

Claimant appeals from a Preliminary Hearing Order of July 7, 1995, wherein Administrative Law Judge Nelsonna Potts Barnes denied claimant benefits, finding claimant had failed to prove by a preponderance of the credible evidence that his present condition was aggravated as a result of work performed for this employer.

ISSUES

- (1) Whether claimant's current condition arose out of and in the course of his employment with respondent on the dates alleged; and
- (2) Whether the Appeals Board has jurisdiction to decide this matter.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

Respondent contends the Appeals Board does not have jurisdiction to consider the above matter, alleging that it is a nature and extent issue rather than the issue of whether claimant's accidental injury arose out of and in the course of his employment with the respondent. In this case, claimant developed bilateral carpal tunnel syndrome while working for the respondent. EMG's in January, 1994, confirmed bilateral carpal tunnel syndrome. On April 12, 1994, claimant underwent a right carpal tunnel release performed by Dr. Kevin Mosier. Subsequent to the surgery, claimant was released by Dr. Mosier on July 11, 1994, with a fourteen percent (14%) permanent impairment to his right upper extremity as a result of the carpal tunnel syndrome in his right hand and wrist. Dr. Mosier felt claimant had reached maximum medical improvement at that time.

Dr. Mosier also treated claimant's left upper extremity although surgery was not necessitated. On March 16, 1994, claimant underwent injections into his left wrist with Depo-Medrol and 1cc 1% plain Lidocaine. Subsequent to this injection, claimant's left wrist became asymptomatic and claimant was provided no impairment rating and no restrictions to the left wrist. Claimant's employment with respondent was terminated on March 7, 1994.

During the Summer of 1994, claimant went into business for himself in construction. By September 1994, the symptoms in claimant's left wrist had reoccurred. Claimant underwent additional EMG's to the left wrist on September 22, 1994 while under the treatment of Dr. Bernard Abrams. Dr. Abrams, again, diagnosed carpal tunnel syndrome.

By March 1995, claimant had been referred back to Dr. Kevin Mosier. When Dr. Mosier examined claimant, he also diagnosed carpal tunnel syndrome in the left hand. Dr. Mosier, in his letter of March 1, 1995, opined that claimant had aggravated a pre-existing condition which may ultimately require carpal tunnel surgery on the left hand.

In proceedings under the Workers Compensation Act, the burden of proof is on the claimant to establish the claimant's right to an award of compensation by proving the various conditions in which the claimant's right depends by a preponderance of the credible evidence. K.S.A. 44-501, K.S.A. 44-508(g); Box v. Cessna Aircraft Co., 236 Kan. 237, 689 P.2d 871 (1984).

Whether an accident arises out of and in the course of the worker's employment depends upon the facts peculiar to the particular case. Messenger v. Sage Drilling Co., 9 Kan. App. 2d 435, 680 P.2d 556 (1984).

The issue before the Appeals Board is whether claimant's aggravated left carpal tunnel syndrome, constitutes a new and intervening injury subsequent to his termination of employment with the respondent or whether a plausible connection exists between claimant's left carpal tunnel syndrome from March 1994, through the subsequent aggravation in September 1994, with the latter being a direct and natural result of the primary injury.

The medical evidence provided by Dr. Mosier shows claimant suffered an aggravation of the pre-existing condition. This language indicates to the Appeals Board that claimant suffered a new and intervening injury during the Summer of 1994.

K.S.A. 44-501(a) states in part:

"If in any employment to which the workers compensation act applies, personal injury by accident arising out of and in the course of employment is caused to an employee, the employer shall be liable to pay compensation to the employee in accordance with the provisions of the workers compensation act."

In this matter, the Appeals Board finds that claimant suffered personal injury as a result of a new and intervening series of injuries during the Summer of 1994 culminating with the examination by Dr. Abrams in September 1994. As such, the respondent, Grosdidier Construction, would not be responsible for this new and intervening injury. The Appeals Board finds the Order of Administrative Law Judge Nelsonna Potts Barnes of July 7, 1995, appropriately concludes that claimant has failed to prove by a preponderance of the credible evidence that his present condition was aggravated as a result of work performed for this employer.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Nelsonna Potts Barnes dated July 7, 1995, shall be, and hereby is, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of September, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Carlton Kennard, Pittsburg, Kansas
M. Doug Bell, Coffeyville, Kansas
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director