BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

HAZEL MILLS	)	
Claimant	)	
VS.	)	
	)	Docket No. 193,921
BRIGHTON PLACE WEST, INC.	)	
Respondent	)	
AND	)	
	)	
HARTFORD ACCIDENT & INDEMNITY	)	
Insurance Carrier	)	

ORDER

Respondent appeals from a Preliminary Hearing Order entered by Administrative Law Judge James R. Ward on February 1, 1995, that granted claimant's request for medical treatment but denied her request for temporary total disability compensation benefits.

ISSUES

The Application for Review of the respondent raises the following issues:

(1) Whether claimant suffered a personal injury by accident arising out of and in the course of her employment with the respondent.

(2) Whether claimant gave timely notice of her alleged accidental injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record and considering the briefs of the parties, the Appeals Board finds, for preliminary hearing purposes, as follows:

Both of the issues raised by the respondent are issues enumerated in K.S.A. 44-534a(a)(2) as jurisdictional and subject to review by the Appeals Board.

Claimant alleges she has bilateral carpal tunnel syndrome caused by repetitive work activities from April 1, 1994 to September 21, 1994, while employed by the respondent. Medical and temporary total compensation benefits were requested by the claimant. The Administrative Law Judge ordered medical treatment from October 25, 1994 with Sharon McKinney, D.O. of Topeka, Kansas. Claimant's request for temporary total disability compensation benefits was denied.

Respondent argues that claimant has failed to prove that she suffered an accidental injury while employed by the respondent. Respondent further contends that even if it is found that the claimant did suffer a work related injury, then her request for compensation benefits is barred by claimant's failure to notify the respondent of an accident within ten (10) days as required by K.S.A. 44-520.

Claimant commenced working for the respondent in August of 1992, as a Dietary Manager and continued in this capacity until she resigned on September 19, 1994. Her duties as a Dietary Manager were to supervise the dietary employees and order supplies while adhering to federal and state guidelines. At given times, she was required to perform the duties of the dietary employees because of absenteeism. However, commencing in July of 1994, the claimant had to do more of the actual kitchen work because of a reduction by the respondent in overtime work of other employees. As a result of claimant performing repetitive activities as required in the kitchen work, the claimant's hands started swelling, hurting, feeling numb and tingling in August 1994. Claimant testified that she notified the Director of Nursing, Connie Randel, on August 1, 1994 that her hands were swollen and hurting. She testified that Ms. Randel stated the respondent would not pay for it. Finally, claimant found other employment because of the increased symptomatology in her hands. However, the other employment did not materialize at the last minute because of some adverse information received by the prospective employer.

Claimant claims she also notified her direct supervisor, Mary Ann Perry, the Administrator for the respondent, of her swollen hands on September 19, 1994, the day she resigned. Both the Director of Nursing and the Administrator deny that the claimant told them she had injured her hands while working for the respondent.

Claimant first sought medical treatment with Dr. Sharon McKinney, on September 16, 1994. At this same time, Dr. McKinney had been treating the claimant for injuries she received in an automobile accident on June 29, 1993. These injuries, however, were to the claimant's neck, shoulder and back and not her hands. In a letter dated September 27, 1994, Dr. McKinney was of the opinion that claimant's hand problem was directly related to her repetitive work activities while she was cooking.

This Preliminary Hearing record consists of the testimony of the claimant, six (6) other witnesses, four (4) affidavits and some fifteen (15) exhibits. This case turns primarily on the credibility and believability of these witnesses. The Administrative Law Judge had an opportunity to observe the witnesses which included the claimant and awarded medical benefits. In light of that fact, and based upon the Appeals Board's review of the whole record, the Appeals Board affirms the Administrative Law Judge's Order and finds that the claimant's bilateral carpal tunnel syndrome is work related. The Appeals Board also finds that timely notice was given by the claimant to both the Director of Nursing and the Administrator, supervisors of claimant and agents and employees of the respondent.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge James R. Ward, dated February 1, 1995, is hereby affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of April, 1995.

_____
BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Roger D. Fincher, Topeka, KS
Ronald J. Laskowski, Topeka, KS
James R. Ward, Administrative Law Judge
George Gomez, Director