

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

<b>DEBRA L. ANTON</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 195,009
<b>ROLM COMPANY</b>	)	
Respondent	)	
AND	)	
	)	
<b>TRAVELERS INSURANCE COMPANY</b>	)	
Insurance Carrier	)	

**ORDER**

On October 10, 1997, the application of claimant for review by the Workers Compensation Appeals Board of the Award entered by Administrative Law Judge John D. Clark dated April 10, 1997, came on for oral argument in Wichita, Kansas.

**APPEARANCES**

Claimant appeared by and through her attorney, Steven L. Foulston of Wichita, Kansas. Respondent and its insurance carrier appeared by and through their attorney, William L. Townsley III of Wichita, Kansas. There were no other appearances.

**RECORD AND STIPULATIONS**

The record and stipulations as specifically set forth in the Award of the Administrative Law Judge are herein adopted by the Appeals Board.

**ISSUES**

- (1) The nature and extent of claimant's injury and/or disability.

- (2) Is respondent responsible for the payment of medical treatment provided by Mary A. Lynch, M.D?
- (3) Is claimant entitled to temporary total disability compensation for the period of March 24, 1994, through July 2, 1996?
- (4) Does claimant's failure to use a seat belt constitute a safety violation pursuant to K.S.A. 44-501 which would deny claimant benefits in this circumstance?

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record, considering the briefs, and hearing the arguments of the parties, the Appeals Board makes the following findings of fact and conclusions of law:

The Appeals Board finds that the Award of Administrative Law Judge sets out findings of fact and conclusions of law in some detail, and it is not necessary to repeat those herein. The findings and conclusions enumerated in the Award of the Administrative Law Judge are accurate and appropriate, and the Appeals Board adopts the same as its own findings and conclusions as specifically set forth herein as to the issues raised.

K.S.A. 44-501(d)(1) disallows compensation with respect to an injury which resulted from an employee's willful failure to use a guard or protection against accident required pursuant to any statute and provided for the employee, or a reasonable and proper guard or protection voluntarily furnished for the employee by the employer. K.S.A. 44-555c, as amended, allows reviews by the Appeals Board upon questions of law and fact as presented and shown by a transcript of evidence and the proceedings, as presented and introduced before the Administrative Law Judge. Issues raised for the first time on appeal to the Appeals Board will not be considered by the Appeals Board. As the Administrative Law Judge was not asked to consider the issue regarding claimant's use of or failure to use the seat belt, it will not be considered by the Appeals Board at this time.

Claimant's requests for authorization of the medical treatment of Dr. Mary A. Lynch and for additional temporary total disability compensation are not supported by the record. Claimant was evaluated and rated by Philip R. Mills, M.D., Ely Bartal, M.D., and Anthony Pollock, M.D., between June and November, 1994. All found claimant to be at maximum available for improvement. The issue of claimant's entitlement to temporary total disability compensation is also tied to whether the treatment provided by Dr. Mary Lynch was authorized, reasonable, and necessary. A review of Dr. Lynch's deposition exhibits uncovers several documents beginning as early as June 28, 1994, showing that Dr. Lynch was unauthorized and had only \$350 maximum available for her medical bills. Invoices provided to Travelers Insurance beginning as early as June 28, 1994, were refused by Travelers as unauthorized. Claimant alleges Dr. Lynch was, in some way, authorized even though the referral to Dr. Lynch came from Carl Christman, M.D., claimant's OB-GYN, and not from any representative of the respondent. There is no evidence in the record to show that

respondent ever authorized Dr. Lynch during this period and, in fact, claimant was being referred to Dr. Mills and Dr. Pollock by respondent during this same time period.

The medical evidence further defeats claimant's request to authorize Dr. Lynch's treatment as the medical report of Ernest R. Schlachter, M.D., clearly states the prolonged treatment provided by Dr. Lynch was not only unreasonable and unnecessary but actually created more disability, making an individual such as the claimant more seriously disabled and impaired.

The Appeals Board, therefore, finds that the denial by the Administrative Law Judge of the payment of the medical treatment by Dr. Mary Lynch is appropriate and claimant is entitled to up to \$350 unauthorized medical for the treatment by Dr. Lynch. Additional temporary total disability is also denied.

With regard to the nature and extent of claimant's injury and/or disability, the finding by the Administrative Law Judge that claimant had a 6 percent impairment, 3 percent of which was due to a preexisting degenerative disc disease is supported by the credible evidence, and claimant is awarded a 3 percent permanent partial disability to the body as a whole as a result of the injuries suffered on May 3, 1994. The Administrative Law Judge found claimant was not entitled to a work disability due to claimant's voluntary termination of employment from respondent even though accommodated work had been offered. The Administrative Law Judge stated that an injured worker has the duty to make a legitimate effort to work in an accommodated position, if that position is offered by the respondent. The Administrative Law Judge, in citing Foulk v. Colonial Terrace, 20 Kan. App. 2d 277, 887 P.2d 140, *rev. denied* 257 Kan. 1091 (1995), provided support for denying claimant a work disability in this matter as claimant was still capable of earning a comparable wage and should not be encouraged to merely sit at home, refuse to work, and take advantage of the workers compensation system. The Court of Appeals, in Foulk, felt it inappropriate for a claimant in this circumstance to be rewarded for the refusal to accept a position within his/her capabilities at a comparable wage.

As such, the Appeals Board finds the Award of the Administrative Law Judge John D. Clark, dated April 10, 1997, should be affirmed.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge John D. Clark, dated April 10, 1997, should be, and is hereby affirmed and an award is granted to the claimant, Debra L. Anton, and against the respondent, Rolm Company, and its insurance carrier, Travelers Insurance Company, for an accidental injury occurring on May 3, 1994, for a 3 percent permanent partial disability to the body as a whole.

Claimant is entitled to 0.86 weeks temporary total disability compensation at the rate of \$319 per week in the amount of \$274.34, followed by 12.45 weeks of permanent partial disability compensation at the rate of \$319 per week in the amount of \$3,971.55, making a

total award of \$4,245.89, all of which is due and owing at the time of this award and ordered paid in one lump sum minus amounts previously paid.

This award reflects the stipulation by the parties that the maximum benefit applicable to this case is \$319. In that regard, the Award of the Administrative Law Judge has been adjusted but in all other regards the Award should be and is hereby affirmed.

The fees necessary to defray the expense of the administration of the Workers Compensation Act are hereby assessed against the respondent to be paid as follows:

Ireland Court Reporting	
Transcript of Regular Hearing	\$327.40
Kelley, York & Associates, Ltd.	
Deposition of Debra L. Anton	\$285.80
Deposition of Karen Crist Terrill	\$170.70
Deposition of Robert A. Rawcliffe, Jr., M.D.	\$154.90
Deposition of Neal Harrington	\$187.05
Deposition Services	
Deposition of Mary Lynch, M.D. Volume I	\$303.80
Deposition of Mary Lynch, M.D. Volume II	\$502.15
Deposition of Debra L. Anton	\$288.10

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of November 1997.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

- c: Steven L. Foulston, Wichita, KS
- William L. Townsley III, Wichita, KS
- John D. Clark, Administrative Law Judge
- Philip S. Harness, Director