

Claimant started working for the respondent on May 2, 1988 and began having numbness and pain in his hands as early as June of 1988. He claimed these symptoms were the result of his work activities which required him to work on a computer terminal up to forty (40) hours per week learning the computer software business. Claimant notified his supervisors of his hand problems while employed by the respondent. Claimant also notified Herb A. Strain, M.D., of his bilateral upper extremity problems during an examination for an unrelated problem on April 12, 1989. During a physical examination on September 9, 1991, claimant also mentioned his hand symptoms to Paul Diederich, M.D.

Claimant's employment with the respondent was terminated on February 22, 1994 for reasons unrelated to his bilateral hand problems. He was subsequently employed by Platinum Technology as a computer software salesman on April 1, 1994. He was working for Platinum Technology at the time of the preliminary hearing on April 21, 1995. A demand was made for medical treatment by claimant's attorney on August 31, 1995 but no treatment was provided. After a diagnosis of bilateral carpal tunnel, Dr. Strain performed a right carpal tunnel and elbow release on January 5, 1995 and a left carpal tunnel release in March of 1995. Claimant's private insurance paid for the medical treatment.

The Administrative Law Judge in his Preliminary Hearing Order dated April 5, 1995 granted claimant's request for medical treatment with Dr. Strain, finding that the claimant had met his burden of proof on the issue of accidental injury and timely notice.

Respondent first argued that carpal tunnel syndrome is an occupational disease and not an accidental injury, so the provisions of K.S.A. 44-5a01 et seq. apply. Respondent's argument stems from a recent Court of Appeals case, Berry v. Boeing Military Airplanes, 20 Kan. App. 2d 220, 885 P.2d 1261 (1994), which discussed the difficulties in distinguishing between accidents and occupational diseases. However, Kansas appellate courts have on several occasions determined that carpal tunnel syndrome is compensable as an accidental injury. See Murphy v. IBP, Inc., 240 Kan. 141, 727 P.2d 468 (1986); Demars v. Rickle Manufacturing Corporation, 223 Kan. 374, 573 P.2d 1036 (1978); Downes v. IBP, Inc., 10 Kan. App. 2d 39, 691 P.2d 42, (1984), rev. denied 236 Kan. 875 (1985); and Bahr v. Iowa Beef Processors, Inc., 8 Kan. App. 2d 627, 663 P.2d 1144, rev. denied 233 Kan. 1091 (1983).

Respondent further argues that the date of accident in this case should be controlled by the Berry decision. The Court held in Berry, a case involving carpal tunnel syndrome, the date of accident was the last day the claimant was required to stop working as a direct result of claimant's pain and disability. Berry, 20 Kan. App. 2d 220, Syl. ¶ 3. The respondent contends that applying Berry to the facts of this case, the date of accident would be January 5, 1995, the last day claimant worked for Platinum Technology prior to his right carpal tunnel surgery. However, the Appeals Board finds that the facts of this case are different than Berry and thus Berry does not apply. The claimant testified he first noticed symptoms in both of his hands shortly after he was employed by the respondent in 1988. Claimant contends that he had no prior hand problems and the symptoms started when he was required to work some forty (40) hours per week for the respondent on a computer terminal. Claimant worked for the respondent from May 2, 1988 until February 22, 1994 when he was terminated for reasons not related to his hand problem. Claimant started working for his present employer, Platinum Technology, on April 1, 1994. He testified that his work at Platinum Technology does not require him to spend a substantial amount of his time on a computer terminal. In fact, he only averages about one (1) hour

per day doing the computer work. The claimant went on to testify that his symptoms in his hands did not get worse after he started working for Platinum Technology and, in fact, made minimal improvement.

Dr. Herb A. Strain, the plastic surgeon who operated on claimant's upper extremities, in a letter to claimant's attorney, reported that the claimant had first presented bilateral upper extremity symptoms to him on April 12, 1989. Dr. Strain opined the history that claimant related to him at that time was significant for work-related conditions which would cause bilateral upper extremity neuropathies. It was Dr. Strain's further opinion that claimant's severe bilateral upper extremity problems resulted from his employment with the respondent during the period of May 1988 through February 1994. Dr. Strain related claimant's condition was in place prior to his employment with Platinum Technology and was not aggravated by his work activities with this employer.

Based upon the testimony of the claimant and the opinions expressed by Herb A. Strain, M.D., the claimant's treating physician, the Appeals Board finds that claimant's bilateral upper extremity injuries arose out of and in the course of his employment with respondent. The Appeals Board concludes that claimant's work activities at his current employer, Platinum Technology, did not permanently aggravate his pre-existing upper extremity condition. In this case, the date of accident cannot be determined as the last day claimant was required to quit work as a result of his pain and disability. Even though claimant continued to work while employed by Platinum Technology the evidence in the preliminary hearing record established that the claimant's hand problems were caused by his work activities with the respondent and not his current employer, Platinum Technology. Accordingly, the Appeals Board finds that the date of accident in this case is February 22, 1994, the last day claimant worked for the respondent.

Respondent also argues that even if it is found that claimant's injuries occurred while working for the respondent, his claim fails as he did not give timely notice within ten (10) days or show just cause as to why notice was not given in ten (10) days. See K.S.A. 44-520. The Appeals Board finds that the testimony of the claimant established that he notified his supervisors of his continuing hand problems while employed by the respondent prior to his termination of February 22, 1994. His testimony was uncontradicted and the Appeals Board finds that it was not unreasonable or untrustworthy. See Anderson v. Kinsley Sand & Gravel, Inc., 221 Kan. 191, 558 P.2d 146 (1976).

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge Alvin E. Witwer dated April 25, 1995, should be, and is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of August 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Steven R. Jarrett, Overland Park, KS
Thomas Clinkenbeard, Kansas City, MO
Alvin E. Witwer, Administrative Law Judge
David Shufelt, Acting Director