



injury arising out of and in the course of employment or has not established requisite notice are considered jurisdictional allegations which raise issues subject to review in appeals from preliminary orders. K.S.A. 44-534a.

(2) The Appeals Board finds that claimant has established an injury arising out of and in the course of employment and has established the requisite notice.

Claimant testified that she began having problems with swollen hands, tingling in the fingertips and a burning sensation in her hands in the second week of October 1994. She was working at the time as a packer. The job required that she pull boxes down, take chips off the line, place them in the box, fold the box, and push the box further on down the assembly line. Her work history included a substantial amount of work in secretarial positions.

Respondent argues that claimant's evidence fails to establish injury arising out of and in the course of employment because of the report of Dr. Storm indicating that claimant's work did not cause her condition. Claimant, on the other hand, offered the report of Dr. Delgado, expressing his opinions that claimant's symptoms are probably related to her work at Frito-Lay. The Appeals Board has considered the opinion of Dr. Delgado which was offered by fax the same day as the Preliminary Hearing.

Neither of the physicians appear to have had a complete history of claimant's pre-injury work. Dr. Storm assumes a shorter period of work at Frito-Lay than the evidence otherwise indicates. Dr. Delgado, on the other hand, does not have the history of the secretarial work. Dr. Storm's report suffers from one other significant omission. Dr. Storm's report does not directly address the possibility that the work activities with the respondent aggravated a pre-existing condition. He indicates she has some left-side carpal tunnel syndrome and a possible mild case on the right. He concludes it was not caused by the work for respondent but does consider the possibility that the work aggravated an underlying condition. Based upon the history and the medical report of Dr. Delgado, the Appeals Board finds it more probable than not that the work did aggravate an underlying condition, causing that condition to become symptomatic.

The Appeals Board also finds notice was given prior to the time claimant ceased work for the respondent. In accordance with Berry v. Boeing Military Airplanes, 20 Kan. App. 2d 220 (1994), the last date worked is to be considered the date of accident. Notice was, therefore, clearly given prior to the ten (10) days after the date of accident.

(3) The Appeals Board finds that respondent's argument relating to the offered accommodated position does not raise a jurisdictional issue. Respondent's contention, in effect, amounts to an argument that claimant has work available which she could perform within limits of her physical injury. For compensable injuries, the question of whether claimant is temporarily totally disabled is not one subject to review on appeal from preliminary orders.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Floyd V. Palmer, dated February 16, 1995, should be, and the same is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of May, 1995.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: George Pearson, Topeka, KS  
Steven J. Quinn, Kansas City, MO  
Floyd V. Palmer, Administrative Law Judge  
George Gomez, Director