BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

LINDA K. WILLIAMS Claimant VS. **GENERAL ELECTRIC COMPANY** Respondent AND **ELECTRIC MUTUAL LIABILITY INSURANCE CO.,** Insurance Carrier	))))))))))	Docket No. 199,860

ORDER

Respondent appeals from a Preliminary Hearing Order of June 1, 1995, wherein Administrative Law Judge John D. Clark granted claimant benefits, finding claimant had carried her burden of proof regarding personal injury by accident on the last day worked and further finding claimant had provided notice and written claim per the statutory requirements.

ISSUES

(1) Whether claimant suffered accidental injury on the first day claimant missed work or on the last day claimant missed work per Berry v. Boeing;
(2) Whether the claimant provided notice pursuant to K.S.A. 44-520; and
(3) Whether the claimant provided written claim pursuant to K.S.A. 44-520a.

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:

The respondent argues that this matter should be governed by Berry v. Boeing Military Airplanes, 20 Kan. App. 2d 220, 885 P.2d 1261 (1994). The Appeals Board agrees

that Berry does apply. The respondent argues that Berry would suggest initially an accident date in 1990 or January of 1992. The Appeals Board disagrees. Claimant, after missing work for gallbladder surgery returned to work on April 21, 1994. She continued to work until February 14, 1995, during which time her condition continued to worsen. Claimant complained to her supervisors about the work causing these ongoing problems. An accident investigation report was created February 21, 1995, indicating claimant had suffered right shoulder problems from overextension. This report was signed by claimant's supervisor. The Appeals Board finds the appropriate injury date would be February 14, 1995, and that appropriate notice and written claim was provided to respondent, for an injury occurring on that date.

The respondent goes on to argue that Berry stands for the proposition that if the date of accident is the date claimant leaves work because of her injury, and if there is evidence claimant may be able to return to work, then the date of injury may never occur. Respondent appears to argue that if Berry stands for the proposition the date of injury is the last day worked, and claimant can return to work, then claimant has never reached the last day worked, thus no injury. Such an argument is ludicrous and totally without merit.

The Court in Berry found that the date of accident for carpal tunnel syndrome to be her last day worked. A portion of claimant's problem in this matter, per the medical report of Dr. Tyrone Artz, is right carpal tunnel syndrome and overuse to the right upper extremity, an injury applicable to the Berry ruling. The Appeals Board cannot comprehend that, while applying the logic of Berry, the Court of Appeals would allow a respondent to avoid liability simply by alleging claimant may someday be able to return to her employment, thus never actually arriving at the “last day worked.”

With an injury date of February 14, 1995, and an accident report created February 21, 1995, the notice provisions of K.S.A. 44-520, have been met. Likewise, with an injury date of February 14, 1995, and an E1 filed April 4, 1995, the written claim provisions of K.S.A. 44-520a, have been met.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark granting claimant benefits beginning February 15, 1995 shall be, and is herein affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of September, 1995.

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BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Steven L. Foulston, Wichita, Kansas
John David Jurcyk, Lenexa, Kansas
John D. Clark, Administrative Law Judge
Philip S. Harness, Director