

upper extremity. In January 1994, claimant took a second job with U.S.D. No. 257 also as a dishwasher. She worked these two part-time jobs until her last day of work at Arolyn Heights on May 22, 1994. Claimant testified that during the period of time she worked for both employers the symptoms in her left upper extremity worsened. In October 1994 claimant began working for the Greenery Restaurant as a dishwasher. While working for the Greenery she continued to perform her job at U.S.D. No. 257. While working at both the Greenery and U.S.D. No. 257 she developed problems in her right upper extremity. She has now been diagnosed as having bilateral carpal tunnel syndrome and surgery has been recommended. Claimant's testimony and the history in the medical records attribute the onset of symptoms to the repetitive activities of dishwashing. This appears to be the most likely cause from the evidence presented. The evidence does not include evidence of other activities which might have been the cause. The Appeals Board, therefore, finds that it is more probably true than not claimant's bilateral carpal symptoms, at least in part, arose out of and in the course of her employment with U.S.D. No. 257.

(2) The Appeals Board does not have jurisdiction to consider respondent's contention that the liability should be apportioned among the three employers.

Claimant filed separate claims against each of the three employers. The three were consolidated for purposes of preliminary hearing. Respondent, U.S.D. No. 257 and respondent, Arolyn Heights, were both represented by counsel at the hearing. Although a representative of the insurance carrier of the Greenery appeared at the benefit review conference, no representative for the Greenery appeared at the preliminary hearing.

Respondent argues that the liability for benefits ordered in this case should be apportioned among three employers in accordance with K.S.A. 44-503a. The cited statute provides for apportionment of an injury arising out of and in the course of multiple part-time employments of a similar type. In her brief, claimant agrees that the liability should be apportioned among the three employers.

Without intending any expression of approval for the decision not to apportion benefits, the Appeals Board finds it does not have jurisdiction to consider this issue on appeal from a preliminary order. On appeals from a preliminary order, our jurisdiction is limited to appeals where it is alleged that the Administrative Law Judge exceeded his or her jurisdiction, including the jurisdictional issues listed in K.S.A. 44-534a. The issue relating to apportionment is not one of the jurisdictional issues identified in K.S.A. 44-534a and does not otherwise amount to an allegation that the Administrative Law Judge exceeded his jurisdiction.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the findings by the Administrative Law Judge that claimant suffered accidental injury arising out of and in the course of her employment with respondent, U.S.D. No. 257 should be, and the same is hereby, affirmed. The decision to assess all of the liability for preliminary benefits against U.S.D. No. 257 rather than apportioning same among the three respondents remains in force as originally entered.

IT IS SO ORDERED.

Dated this ____ day of October, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Dale V. Slape, Wichita, Kansas
Anton C. Anderson, Kansas City, Kansas
James R. Ward, Administrative Law Judge
Philip S. Harness, Director