

In the Preliminary Hearing Order now before us, the Administrative Law Judge states only that:

“The Claimant's request for benefits is denied.

“IT IS SO ORDERED.”

The Appeals Board recognizes the Workers Compensation Act does not specifically require the administrative law judges provide a statement of the basis for their denial of benefits. However, when benefits are denied and the denial may have been based upon a finding not subject to review, the Appeals Board cannot perform its obligations under the Act without an indication by the judges as to the basis for their decision. Generally, in the absence of such indication, the Appeals Board has no alternative but to remand the proceeding to the administrative law judge to add to the order a brief sentence or statement of the basis for denial of benefits. However, in this case respondent agrees that the Order denying benefits was based upon a finding that the claim was not compensable; either due to a lack of timely notice, written claim or that the claimant did not meet her burden of proving a work-related accident. Respondent does not argue nor contend that the Appeals Board lacks jurisdiction to review the Administrative Law Judge's Order.

This appeal is further complicated by the fact that both claimant and respondent assert in their respective briefs that this appeal arises from two (2) separate accidents docketed as two (2) separate claims. Both claimant's brief and respondent's brief to the Appeals Board bear both Docket Numbers 195,804 and 201,444. Docket Number 195,804 pertains to an alleged cervical spine, shoulders and arm injury in October and November of 1994, “. . . with repeated trauma from normal work duties each and every working day thereafter.” Form E-1 Application for Hearing filed November 14, 1994. Docket Number 201,444 pertains to an alleged low back injury in December of 1994, “. . . with repeated trauma from normal work duties each and every working day thereafter.” Form E-1 Application for Hearing filed May 3, 1995. However, the transcript of the September 26, 1995 Preliminary Hearing, the Administrative Law Judge's Order, and the claimant's Application for Review of Preliminary Hearing Order by the Appeals Board all bear only Docket Number 201,444. There appears on page three (3) of the September 26, 1995 Preliminary Hearing Transcript the following:

“THE COURT: This is docket 201,444 Sharon Andrew is the claimant. This is a motion filed on behalf of the claimant for what?

“MR. HOWARD: Motion to reconsider based upon additional evidence provided to the court by Dr. Stein and I will try to explain that. I actually - - there are two docket numbers that are kind of interrelated here and I think the other one is 195,804. And, actually, this may relate more to that than it does to the 201,444. It's my understanding the cervical, what we are here on today, is the 195 docket number. I don't know whether these cases have been consolidated or not. But the court's ruling --

“THE COURT: They will be for purposes of taking evidence.”

Court and counsel go on to discuss the status of both claims and the testimony and medical evidence received at the preliminary hearing clearly pertain to both alleged injuries. Since both parties appear to be in agreement that the September 26, 1995 Preliminary Hearing pertained to both docketed claims and that the Administrative Law Judge's Order should, likewise, be read to apply to both docket numbers, the Appeals Board will proceed with its review on that basis.

The Preliminary Hearing of September 26, 1995 was a continuation of an earlier preliminary hearing. In fact, there have been three (3) prior hearings; held on December 20, 1994, February 28, 1995 and June 29, 1995. The thrust of the evidence introduced at the September 26, 1995 hearing pertained primarily to the question of whether the claimant may have aggravated her pre-existing neck and shoulder condition by other than work-related activities. Claimant indicated that she did not. This testimony was presented in conjunction with a series of reports from Dr. Paul S. Stein, to whom claimant had been referred for an independent medical examination.

Dr. Stein wrote in his report of August 5, 1995 that “. . . it is more probable than not that her work activities as described aggravated her neck and low back.” He attempted to clarify his opinion regarding causation in a letter dated September 1, 1995, wherein he stated that although he considered the work to be the cause of an aggravation of a pre-existing neck and back condition, he did not have an opinion concerning the origin of those conditions. In other words, he had “. . . no evidence at this point that the work specifically caused these symptoms initially.” He then wrote another letter on September 15, 1995 stating: “. . . I do not have any way of knowing whether Mrs. Sharon Andrew's current symptomatology is significantly or in any way worse than it was in 1993” Respondent argues that claimant did not give notice of her 1993 injury, that she is out of time for filing written claim for that injury and that she has not met her burden of proving an aggravation in October and November of 1994 to the neck in Docket Number 195,804. We agree that Dr. Stein's original opinion in his report of August 5, 1995 has been watered down and equivocated to the point that it is of little probative value. Clarification is needed as to whether or not the claimant sustained a new accident and injury as a result of the increased symptomatology she relates as having occurred in October and November of 1994. The finding of the Administrative Law Judge should, therefore, be affirmed in Docket Number 195,804.

With regard to Docket Number 201,444, which is the injury to the claimant's back, alleged in the Form E-3 Application for Preliminary Hearing filed May 26, 1995 to have occurred “. . . [o]n or about 12/94 with repeated trauma from normal work duties each and every working day thereafter”, the Appeals Board would make the same finding. That is, that claimant has not sustained her burden of proving a work-related injury or injuries on the dates alleged. Dr. Stein describes the back injury as an aggravation of a pre-existing condition. It is not clear from his testimony whether he considers there to have been a work-related back injury in December of 1994, nor whether the claimant, thereafter, aggravated her back condition at work such that a subsequent accident date could apply. Likewise, the records and reports from The Center for Sports Medicine & Rehabilitation do not shed any additional light on these issues of causation and dates of accident. The Appeals Board affirms the decision of the Administrative Law Judge in Docket Number 201,444.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the September 26, 1995 Order by Administrative Law Judge John D. Clark should be, and hereby is, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of November 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Garry Howard, Wichita, Kansas
- Jeff Spahn, Jr., Wichita, Kansas
- John D. Clark, Administrative Law Judge
- Philip S. Harness, Director