

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

EFFIE GOLDING BANKS

Claimant

VS.

JOHNSON COUNTY NUTRITION CENTER

Respondent

Self-Insured

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Docket No. 201,478

ORDER

Claimant's appeal is from a May 16, 1997, Award entered by Administrative Law Judge Robert H. Foerschler. Although claimant's application requested review by the Director, it has been treated as an application for review by the Appeals Board pursuant to K.S.A. 44-551(b)(1). The Appeals Board heard oral argument on November 26, 1997.

APPEARANCES

Claimant appeared by her attorney, Kathleen M. Lynch of Kansas City, Kansas. Respondent appeared by its attorney, Karen D. Pendland of Kansas City, Missouri.

RECORD AND STIPULATIONS

The Appeals Board considered the record and adopted the stipulations listed in the Award. In addition, at oral argument the parties stipulated that should temporary total disability compensation be awarded pursuant to the off-work recommendation of Dr. Jeffrey T. MacMillan, then the Award should be corrected to award 14.86 weeks for the period of October 2, 1995 through January 12, 1996.

ISSUES

- (1) Nature and extent of disability.
- (2) Temporary total disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire record and having considered the briefs and arguments of the parties, the Appeals Board finds that the Award entered by the Administrative Law Judge should be affirmed.

The Administrative Law Judge awarded claimant a 10 percent permanent partial general disability and 14 weeks of temporary total disability compensation. Claimant seeks a permanent partial disability award based upon the higher functional impairment rating given claimant by Dr. Gerald B. Lee. Respondent argues for a lower permanent partial disability and argues against any temporary total disability compensation award. On balance, the Appeals Board finds that the greater weight of the credible evidence supports the 10 percent permanent partial disability award given by the Administrative Law Judge and further supports an award for temporary total disability compensation, as corrected.

The findings and conclusions as enumerated in the Award by the Administrative Law Judge are found to be accurate and are hereby adopted by the Appeals Board. The Appeals Board agrees that the claimant has sustained her burden of proving that her right shoulder and low back conditions were the result of the work-related accident. The Appeals Board further adopts the analysis of the evidence by the Administrative Law Judge regarding claimant's functional impairment percentage and her entitlement to temporary total disability compensation.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Robert H. Foerschler dated May 16, 1997, should be, and is hereby, modified to award 14.86 weeks of temporary total disability compensation but is otherwise affirmed in all respects and the orders contained in said Award are hereby adopted by the Appeals Board as its own.

WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Effie Golding Banks, and against the respondent, Johnson County Nutrition Center, a qualified self-insured, for an accidental injury which occurred December 28, 1994, and based upon an average weekly wage of \$107.31 for 14.86 weeks of temporary total disability compensation at the rate of \$71.4 per week or \$1,063.08, followed by 41.5 weeks of

permanent partial disability compensation at the rate of \$71.54 per week or \$2,968.91, for a 10% permanent partial general body disability, making a total award of \$4,031.99.

IT IS SO ORDERED.

Dated this ____ day of December 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Kathleen M. Lynch, Kansas City, KS
- Karen D. Pendland, Kansas City, MO
- Robert H. Foerschler, Administrative Law Judge
- Philip S. Harness, Director