

(1) Claimant alleged he suffered injuries to both his hands and wrists while performing repetitive work activities for the respondent commencing in 1992 and culminating in his voluntary retirement on June 30, 1995. Claimant, at the time of his retirement, had worked for the respondent as a senior buyer for 41 years. Claimant described his work activities as requiring him to perform repetitive movements with both of his hands in order to operate a computer, write out purchase orders and lift heavy reference books. Claimant's symptoms first began in his right thumb and then progressed to his left thumb. Claimant testified that the pain, discomfort and numbness gradually migrated into his hands and wrists. Because of those persistent symptoms, claimant finally went on his own for examination and treatment with Dr. J. Mark Melhorn of Wichita, Kansas, on June 20, 1995. Dr. Melhorn examined the claimant and diagnosed right and left carpal tunnel syndrome with right and left thumb CMC (carpometacarpal joint) osteoarthritis. Claimant was also examined by John W. Wessling, D.C., on September 27, 1995. Dr. Wessling's medical report was admitted into evidence at the preliminary hearing and attributed claimant's present symptoms to the work activities he was performing while working for the respondent.

The Appeals Board finds that claimant's testimony and the medical records introduced into evidence at the preliminary hearing have established that it is more probably true than not that claimant's carpal tunnel syndrome condition is the result of his repetitive work activities that he performed while employed by the respondent. Accordingly, the Appeals Board affirms the Special Administrative Law Judge on this issue.

(2) The Special Administrative Law Judge, in granting claimant's request for preliminary hearing benefits, had to find that claimant satisfied the notice requirement provisions of K.S.A. 44-520. Claimant testified that after he was told by Dr. Melhorn that he had carpal tunnel syndrome, he notified his supervisor, Bill Swingle, prior to his retirement of June 30, 1995, that he had been diagnosed with carpal tunnel syndrome and would have to have surgery on both wrists. However, the claimant also acknowledged that he did not notify his supervisor that the carpal tunnel syndrome condition was work related. Claimant argued that his supervisor was familiar with his job requirements of performing repetitive work activities and, therefore, should have known that his carpal tunnel syndrome was work related.

On the other hand, claimant argued that if it is found that claimant did not give the respondent notice of his accident within ten days, that just cause existed for him not giving the ten-day notice. Claimant contended that because he originally thought his symptoms in his hands and wrists were caused by arthritis and, therefore, not work connected, then just cause existed for him not giving notice within ten days.

The Appeals Board finds for preliminary hearing purposes that the claimant failed to give notice within ten days to the respondent that his work activities caused the carpal tunnel syndrome condition. The Appeals Board further finds that the preliminary hearing evidentiary record did not establish that claimant had just cause for not giving the respondent the required ten-day notice. Claimant knew on June 20, 1995, when Dr. Melhorn diagnosed carpal tunnel syndrome, that the condition was caused by his work activities. Claimant failed to notify the respondent of this fact until after he retired on June 30, 1995. Claimant's argument that he had just cause for not notifying the respondent fails because he knew the diagnosis prior to voluntarily retiring on June 30, 1995, his last day he was exposed to work activities which caused the carpal tunnel syndrome condition.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order and the Order Nunc Pro Tunc entered by Special Administrative Law Judge Michael Harris in this proceeding on May 21, 1996 and May 24, 1996, respectively, should be, and are hereby, reversed and the claimant is denied his request for preliminary compensation benefits.

IT IS SO ORDERED.

Dated this ____ day of July 1996.

BOARD MEMBER

c: Dale V. Slape, Wichita, KS
Eric K. Kuhn, Wichita, KS
Michael Harris, Special Administrative Law Judge
Philip S. Harness, Director