

Claimant testified that the pain did not subside and, in fact, worsened to a point where he went to an emergency room at a local hospital for treatment on Saturday, July 29, 1995. Claimant was admitted to the hospital that particular day. He was examined by Guillermo E. Garcia, M.D., who diagnosed a septic right-knee joint and performed arthroscopic surgery to repair the injury on July 29, 1995. After claimant was released from the hospital on August 2, 1995, he then notified the respondent on August 14, 1995 that he had injured his knee at work. Claimant does not argue that he gave notice to the respondent within ten days that he injured his right knee at work, as required by K.S.A. 44-520. Claimant takes the position he presented evidence at the preliminary hearing that he had just cause for not giving the ten-day notice to the respondent. The thrust of claimant's argument on the "just cause" issue is that claimant thought that the pain would subside. Claimant also argued that he did not know the significance of the injury until four days later when he did go to the emergency room for treatment and was admitted to the hospital. Because of those factors, claimant contended he had just cause for not notifying respondent within ten days that he injured his knee at work.

Conversely, respondent argued that claimant had participated in an employee orientation program which included instruction from management safety personnel that when an employee received a work-related injury, he or she was to report such injury as soon as possible to his or her immediate supervisor. Respondent placed into evidence a written test that the claimant had completed during the orientation program which showed claimant had answered a question correctly relating to notifying the respondent after a work-related accident. Respondent also admitted into evidence at the preliminary hearing a receipt that claimant signed that he had received an employee's handbook. Claimant acknowledged that the employee handbook also contained an instruction on reporting a work-related accident. Claimant also admitted that during the orientation program he was instructed to report work-related injuries to his supervisor. Claimant did not give an explanation as to why he did not report his injury to the respondent after he found out the severity of the injury when he went to the hospital on July 29, 1995. At that time, claimant had an additional six days in which to report his injury to the respondent and satisfy the ten-day notice requirement.

The Appeals Board finds for preliminary hearing purposes that the preliminary hearing Order of the Administrative Law Judge that denied claimant benefits because he failed to establish just cause for not providing the respondent with the proper notice should be affirmed. The Appeals Board finds that the preliminary hearing record as a whole does not present persuasive evidence to establish just cause. On the contrary, the record indicates that claimant was informed by the respondent that he should promptly notify the respondent when he was injured at work and the claimant simply failed to do so.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge Jon L. Frobish dated May 22, 1996 should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of July 1996.

BOARD MEMBER

- c: Henry A. Goertz, Dodge City, KS
D. Shane Bangerter, Dodge City, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director