

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

GARY M. THOMAS)	
Claimant)	
VS.)	
)	Docket Nos. 204,971 & 204,972
THE BOEING COMPANY)	
Respondent)	
AND)	
)	
KEMPER INSURANCE COMPANIES)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier requested review of the Award dated February 5, 1999 entered by Administrative Law Judge Jon L. Frobish. The Appeals Board heard oral argument on August 13, 1999.

APPEARANCES

Joseph Seiwert of Wichita, Kansas, appeared for the claimant. Vaughn Burkholder of Wichita, Kansas, appeared for the respondent and its insurance carrier.

RECORD AND STIPULATIONS

The record considered by the Appeals Board and the parties' stipulations are set forth in the Award.

ISSUES

Respondent seeks review of the Administrative Law Judge's award for benefits, other than medical compensation, on the basis of K.S.A. 44-501(c), contending claimant failed to prove he was disabled for a period of at least one week from earning full wages at his employment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record, considering the briefs, and hearing the arguments of the parties, the Appeals Board finds that the Award entered by the Administrative Law Judge should be affirmed. The Appeals Board agrees with the analysis of the evidence and law as set forth in the Award and adopts the ALJ's findings and conclusions as its own.

The ALJ found claimant was entitled to permanent partial disability benefits for the work-related injury he received to his upper extremities by a series of accidents. September 17, 1995 was selected by the ALJ as the date of accident for computation purposes. The parties do not seek review of this finding and September 17, 1995 is, therefore, accepted by the Board as the accident date.

Claimant continued to work for respondent after the accidents and, despite having surgery to both wrists and elbows, he did not miss one consecutive week from work. Claimant did receive restrictions that required that he modify his work duties and the record shows respondent accommodated claimant's injury and restrictions by giving him modified work as a result of the September 17, 1995 accident.

Furthermore, claimant received ongoing medical care and was required to participate in physical therapy. Claimant missed well in excess of 40 hours of work due to his injury for medical treatment. In addition, the parties stipulated that claimant was not paid for 36.5 of the hours that he missed.

At the time of claimant's injury, K.S.A. 44-501(c) provided in pertinent part:

Except for liability for medical compensation, as provided for in K.S.A. 44-510 and amendments thereto, the employer shall not be liable under the workers compensation act in respect of any injury which does not disable the employee for a period of at least one week from earning full wages at the work at which the employee is employed.

The Appeals Board concludes claimant has met the requirements of K.S.A. 44-501(c) to receive permanent partial disability benefits. The "period of at least one week" referred to in K.S.A. 44-501(c) can be an aggregate and need not be consecutive full days.

In Boucher v. Peerless Products, Inc., 21 Kan. 977, 911 P.2d 198, *rev. denied* 260 Kan. 991 (1996), the court found K.S.A. 44-501(c) to be plain and unambiguous that compensation to an injured employee is limited to medical expenses if the employee is not disabled for at least one week from earning full wages at the work for which he or she is employed.

Subsequent to claimant's injuries, K.S.A. 44-501(c) was amended to delete the above-quoted section.¹ This amendment provided that it was to be applied to injuries that occurred prior to April 4, 1996, the effective date of the amendment, unless the claim had been fully adjudicated. K.S.A. 1996 Supp. 44-501a.

In Osborn v. Electric Corp. of Kansas City, 23 Kan. App. 2d 868, 936 P.2d 297, *rev. denied* 262 Kan. 297 (1997), a case involving the retroactive application of the amended

¹ K.S.A. 1996 Supp. 44-501(c).

section of K.S.A. 44-501(c), the Court of Appeals held, *inter alia*: "In workers compensation cases, the law in effect at the time of the injury governs the rights and obligations of the parties."² Thus, the 1996 amendment to K.S.A. 44-501(c) had prospective application only and did not apply to this claimant's claim for compensation.

Respondent argues that because K.S.A. 44-501(c) applies to this claim, claimant is only entitled to his medical expenses. The Appeals Board disagrees. The Appeals Board concludes that claimant is entitled to the aggregate of the time he was off work due to his injury. In doing so, claimant clearly missed in excess of one week of work. Missing work for medical treatment related to the accident is equivalent to being disabled from earning wages. Even though claimant was paid for some of this time, that is not the same as earning wages.³ Furthermore, claimant was required to use his vacation leave for some of the time he missed work to obtain authorized medical treatment. Finally, changing jobs due to an injury is the equivalent of being disabled from earning full wages at the work claimant was doing when injured.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Jon L. Frobish dated February 5, 1999, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of August 1999.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Joseph Seiwert, Wichita, KS
Vaughn Burkholder, Wichita, KS

² 23 Kan. App. 2d 868, Syl. ¶ 8.

³ See Bohanan v. U.S.D. No. 260, 24 Kan. App. 2d 362, 947 P.2d 440 (1997).

GARY M. THOMAS

4

DOCKET NOS. 204,971 & 204,972

Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director