

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

VEREL TRACY WESTOVER)	
Claimant)	
VS.)	
)	Docket No. 205,057
FLEXEL, INC.)	
Respondent)	
AND)	
)	
AMERICAN HOME ASSURANCE)	
Insurance Carrier)	

ORDER

Respondent appeals a preliminary hearing Order of Administrative Law Judge Floyd V. Palmer dated March 19, 1997, wherein Judge Palmer granted claimant temporary total disability compensation and medical treatment with Dr. John Ebeling until further order. Judge Palmer found in his Order that the current need for surgery is a natural consequence of the injury of October 8, 1994.

ISSUES

- (1) Whether claimant's current symptomatology is a direct and natural consequence of the original injury of October 8, 1994.
- (2) Whether claimant suffered an intervening home accident which would render his current symptomatology noncompensable.
- (3) Whether the respondent's appeal should be dismissed for respondent's failure to file a brief in a timely fashion.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the evidence the Appeals Board, for preliminary hearing purposes makes the following findings of fact and conclusions of law:

Claimant requests respondent's appeal be dismissed for respondent's failure to timely file a brief. While the Appeals Board sets certain briefing schedules in the notice provided to the parties, the Appeals Board has not been provided authorization either legislatively or through administrative regulations to dismiss appeals due to a parties failure to file a brief in a timely fashion. As such, claimant's request for respondent's appeal to be dismissed is denied.

Respondent alleges claimant's current need for surgery stems from an incident at home when claimant was getting up off a chair and bent over to pick up a pencil, sneezed and felt a sudden onset of pain in his back. Claimant acknowledges he had suffered flu symptoms during this period of time and was coughing. The medical placed into evidence does not support respondent's contentions. The only medical opinion in the record is that of Dr. John D. Ebeling, claimant's authorized treating physician. Dr. Ebeling, after examining claimant and reviewing prior medical records, opined in his office note of February 3, 1997, that claimant's current episode of increased symptomatology is either an aggravation or a reoccurrence of his previous symptoms dating back to October 1994.

The Appeals Board is aware that respondent has denied that claimant's original injury in October 1994 was the result of an accidental injury arising out of and in the course of claimant's employment. However, that particular issue is not before the Appeals Board at this time. The issue before the Appeals Board is whether the aggravation suffered in January 1997 stems from the October 1994 accident. As the only medical from Dr. Ebeling verifies the connection between claimant's current symptoms and the 1994 accident, the Appeals Board finds, for preliminary hearing purposes, that the Order of Administrative Law Judge Floyd V. Palmer dated March 14, 1997, should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the March 14, 1997, Order of Administrative Law Judge Floyd V. Palmer should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of June 1997.

BOARD MEMBER

c: Eric Kjorlie, Topeka, KS
John B. Rathmel, Overland Park, KS
Floyd V. Palmer, Administrative Law Judge
Philip S. Harness, Director