

Claimant began working for respondent on August 14, 1995. He continued working until August 24, 1995, at which time he first reported an injury having occurred on August 18, 1995. Claimant testified that he believes that he injured himself on August 18, 1995 while performing his regular work activities which included the use of an electric jackhammer which weighed between sixty to seventy (60-70) pounds. However, he did not notice his symptoms until the next day when he woke up with numbness in both hands and a stiff neck. Claimant worked the full day of his accident and the next day. He was off Sunday and reported back to work on Monday, August 21, 1995 and worked at his regular duties, without reporting any sort of injury to his employer, until August 24, 1995.

Claimant was examined by James T. Brady, D.C., on August 25, 1995. It appears from the records of Dr. Brady that he was of the opinion that claimant's injuries and symptoms were of immediate onset. As the history given Dr. Brady was potentially inaccurate, his opinion relating the impact of the constant vibrating of the jackhammer as the cause of claimant's condition is somewhat suspect. Nevertheless, there was no expert medical testimony expressing an opinion that claimant's condition was not work related. To this extent the claimant's testimony in the current state of the record, is uncontroverted. Uncontradicted evidence which is not improbable or unreasonable cannot be disregarded unless shown to be untrustworthy and is otherwise regarded as conclusive. Anderson v. Kinsley Sand & Gravel, Inc., 221 Kan. 191, 558 P.2d 146 (1976).

The Administrative Law Judge apparently found claimant to be a credible witness because he awarded benefits based upon claimant's testimony, finding that he suffered injury by accident on the date alleged which arose out of and in the course of his employment. The Administrative Law Judge, in this case, had the opportunity to see the in-person testimony of the claimant. He, therefore, had an opportunity to judge the claimant's demeanor and credibility while he was testifying. Accordingly, the Appeals Board takes into consideration the Administrative Law Judge's findings with regard to the credibility of the claimant as a witness and will give some deference to his conclusions in that regard.

Based upon the Appeals Board review of the record as a whole, we find that the Order by the Administrative Law Judge should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the November 14, 1995 Order of Administrative Law Judge Floyd V. Palmer should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of February 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Judy A. Pope, Topeka, Kansas
Gregory D. Worth, Lenexa, Kansas
Floyd V. Palmer, Administrative Law Judge
Philip S. Harness, Director