

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

MICHAEL JENSEN II
Claimant

VS.

DOVER ELEVATOR COMPANY
Respondent

AND

LIBERTY MUTUAL INSURANCE COMPANY
Insurance Carrier



Docket No. 205,635

ORDER

Respondent and its insurance carrier request review of a preliminary hearing Order by Administrative Law Judge Alvin E. Witwer entered on November 27, 1995.

ISSUES

The Administrative Law Judge ordered the respondent and its insurance carrier to pay temporary total disability compensation, medical expenses and to provide medical treatment for a January 18, 1995 work-related injury. Respondent and insurance carrier request review of that Order and raise the following issues:

- (1) Whether claimant gave timely notice of a back injury; and
- (2) Whether the alleged back injury was causally related to the work injury of January 18, 1995.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the transcript of the preliminary hearing held on November 22, 1995, together with the exhibits admitted into evidence at that hearing and the briefs of the parties, the Appeals Board finds, for preliminary hearing purposes:

For the reasons stated below the Order of the Administrative Law Judge is affirmed.

On January 18, 1995, claimant was working on an elevator controller when he came into contact with a 480 volt electric current. He was knocked back across the room landing in the corner in a seated position. He experienced a severe burning sensation in his left second finger, radiating up the left arm and across the anterior chest wall into the right arm. He was taken to the emergency room at Lawrence Memorial Hospital and then transferred to Overland Park Regional Medical Center where he was admitted for observation because

of possibility of cardiac irregularity and rhabdomyolysis. He was discharged from the hospital the following day. Shortly thereafter he returned to work and continued to perform his regular job duties until September 30, 1995.

About March or April, claimant started experiencing pain in his low back, left hip and leg which got progressively worse until May of 1995 when he sought chiropractic treatment. He did not report these back symptoms to his employer until June or July even though he considered them to be work related. Claimant testified that he continued to work with pain and did not report it to his employer because he thought it would go away. Claimant's job requires considerable heavy lifting. It was not unusual for him to experience aches and pains from his work but always before he had been able to work through it. He testified he had never experienced pain and symptoms like this before where the pain would shoot down his left leg into his foot.

Claimant alleges that his back injury is related to the accident of January 18, 1995 when he received an electric shock. It was, thereafter, aggravated by his work, including the heavy lifting his job required. Claimant's E-1 Application for Hearing filed October 5, 1995, alleges a date of accident of January 19, 1995 and ongoing. Claimant's Application for Preliminary Hearing filed October 16, 1995, alleges an accident date of January 1995 and ongoing.

Respondent does not deny claimant received an electrical shock on January 18, 1995. However, it disputes that the claimant received a back injury in that accident and further argues that they did not receive timely notice of the "ongoing" back injury pursuant to K.S.A. 44-520. Claimant points out that K.S.A. 44-520 requires notice of accident and not notice of injury. It is clear that the respondent had notice of the January 18, 1995 electrocution accident. The Administrative Law Judge found claimant's current back complaints to be related to his January 18, 1995 accident and, accordingly, the respondent had timely notice thereof. Furthermore, the Appeals Board finds from the testimony of the claimant that his back condition was aggravated by his work and that it got progressively worse. Claimant was still working in June and July when he specifically reported the back injury. The fact that he cannot point to a specific incident which brought on his back complaints does not necessarily mean that an injury by accident did not occur.

In proceedings under the Workers Compensation Act, the claimant has the burden to prove by a preponderance of the credible evidence the various conditions upon which claimant's right depend. K.S.A. 44-501(a). See also *Chandler v. Central Oil Corp.*, 253 Kan. 50, 853 P.2d 649 (1993). The provisions of the Workers Compensation Act shall be applied impartially to both employers and employees. K.S.A. 44-501(g). In determining whether the claimant has satisfied his burden of proof, the trier of fact shall consider the whole record.

Neither party introduced expert medical testimony expressing an opinion concerning the relationship between the January 18, 1995 accident, claimant's subsequent work and his resulting back injury. We have only the claimant's testimony in this regard which, 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 ordinarily regarded as conclusive. Anderson v. Kinsley Sand & Gravel, Inc., 221 Kan. 191, 558 P.2d 146 (1976).

The Appeals Board finds from the uncontradicted testimony of the claimant that his current back complaints are the result of his January 18, 1995 accident together with a series of aggravations thereafter. Accordingly, we find that his injury arose out of and in the course of his employment and that timely notice of accident was given.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Alvin E. Witwer dated November 27, 1995 shall be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of February 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Kathleen J. Cossairt, Kansas City, Kansas
- Stephanie Warmund, Overland Park, Kansas
- Alvin E. Witwer, Administrative Law Judge
- Philip S. Harness, Director