

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

SHARON K. SCHEID)	
Claimant)	
VS.)	
)	Docket No. 205,926
ST. FRANCIS REGIONAL MEDICAL CENTER)	
Respondent)	
Self-Insured)	

ORDER

Claimant appeals from a preliminary hearing Order of November 12, 1996, wherein Administrative Law Judge John D. Clark denied claimant benefits for an alleged injury to claimant's low back.

ISSUES

Claimant has raised the following issues on Appeal:

- "1. The specific issue of whether Claimant's injury arose out of and in the course of her employment remains.

- "2. The second issue is whether Judge Clark exceeded or failed to retain jurisdiction in his Order by finding that he was bound by the decision of the Appeals Board in denying all benefits, despite the Appeals Board decision in Knoblauch v. Prestige Graphics, et al., Docket No. 187,826, wherein the Board found that Judge Clark was not specifically bound by the Appeals Board Order on an Appeal from a Preliminary Hearing."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds that the Order of the Administrative Law Judge dated November 12, 1996, should be, and is hereby, affirmed.

This matter is before the Appeals Board for the third time on this issue. The Appeals Board, in its Order of February 26, 1996, reversed Judge Clark's finding that claimant had failed to prove by a preponderance of the credible evidence that her back injuries stemmed from the August 19, 1995, accident. The Appeals Board based its decision in part upon medical records created on or about August 19, 1995, wherein claimant specifically mentioned problems associated with her neck and shoulders but omitted any comment regarding back pain. Claimant also helped create an Employee's Report of Injury on or about August 19, 1995, indicating injury to the right side of claimant's neck and right shoulder. There was no mention of claimant's low back in this report. An Unusual Occurrence Report was also filled out on that same date indicating claimant suffered a burning pain in her right shoulder, again with no mention of claimant's low back. The first mention of claimant's back occurs on August 25, 1995, when she was admitted to the Harper County Emergency Room suffering from severe back pain with an onset indicated on that date. The admission records from St. Francis Regional Medical Center of August 28, 1995, also indicated claimant's onset of low back pain began on August 25, 1995, while she was sitting on a cooler changing a door handle at home.

Medical records of Dr. Gene Evans dated September 13, 1995, indicated that claimant denied her low back injury was related to the work-related injury of August 19, 1995.

The claimant appealed from the February 26, 1996, decision claiming support for her alleged work-related injury existed in the deposition testimony of Holly Anna White, claimant's supervisor. The deposition taken on May 17, 1996, allegedly provided additional support for claimant's position that her low back injury arose out of and in the course of her employment from the injury of August 19, 1995. While Ms. White acknowledged that claimant advised her of an injury, she denied having any conversation with claimant regarding any injury to her low back. The Appeals Board, in reviewing the Order of the Administrative Law Judge dated June 11, 1996, found that Judge Clark's denial of benefits to claimant at that time was justified.

The allegation that the Administrative Law Judge failed or in some way exceeded his jurisdiction by finding he was bound to the earlier decision of the Appeals Board was not supported by the evidence. In the Administrative Law Judge's discussion with the attorneys at the June 11, 1996, hearing, he acknowledged that the parties have the right to unlimited preliminary hearings when new evidence is presented. This was also acknowledged by the Appeals Board in its Order of August 14, 1996, at which time claimant's request for benefits were again denied.

Claimant now appears before the Appeals Board for the third time on this issue. Claimant argues that the added evidence of Dr. Terrance C. Tisdale justifies the granting of benefits for claimant's low back from the injury of August 19, 1995. A review of the history provided to Dr. Tisdale by claimant indicates Dr. Tisdale was told that all of her symptoms began on or about August 19, 1995. Claimant indicated to the doctor that both her back and her shoulder were aggravated on that date. There is no mention in Dr. Tisdale's history regarding the fact that claimant specifically denied any work-related back involvement at that time. There is also no indication Dr. Tisdale was made aware of

either the Employee's Report of Injury or the Unusual Occurrence Report filled out by claimant at the time of the August 19, 1995, incident.

The history provided to Dr. Tisdale alleges an immediate onset of pain in claimant's back at the same time as the onset began in her neck and shoulders. The history provided to Dr. Tisdale is contradicted by the above employer reports, the Harper County Emergency Room records of August 25, 1995, and the September 13, 1995, medical reports of Dr. Evans, all of which deny any low back involvement from August 19, 1995.

In workers compensation matters it is claimant's burden to prove by a preponderance of the credible evidence her entitlement to benefits. See K.S.A. 44-501 and K.S.A. 44-508(g). In order for Dr. Tisdale to provide a competent and accurate opinion regarding the cause of claimant's current symptoms he must have an accurate history of claimant's injury. This history must include information regarding the time and date of claimant's onset of pain symptoms to both her upper body and low back. The history should also contain any documentation created contemporaneously with claimant's August 1995 injury. Absent an accurate history it would be impossible for a doctor to provide an accurate opinion regarding the cause of a claimant's symptoms and a relationship of those symptoms to any work-related injury.

After reviewing the evidence the Appeals Board finds that the modified history provided by claimant to Dr. Tisdale was inaccurate and contradicted by documentation created by claimant at approximately the time of injury and further by statements made by claimant to health care providers on or about the date of injury and shortly thereafter.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark dated November 12, 1996, should be, and is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of February 1997.

BOARD MEMBER

c: Roger A. Riedmiller, Wichita, KS
Edward D. Heath, Jr., Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director