

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

SHARON K. SCHEID)	
Claimant)	
VS.)	
)	Docket Nos. 205,926
ST. FRANCIS REGIONAL MEDICAL CENTER)	233,361
Respondent)	233,362
Self-Insured)	233,363

ORDER

Claimant appeals from a December 15, 1998, preliminary hearing Order entered by Administrative Law Judge John D. Clark.

ISSUES

The ALJ ruled that he could not grant the requested benefits because the Appeals Board had previously denied the claim. Claimant contends the ALJ did have authority because this preliminary hearing involved new evidence on additional docketed claims for three different dates of accident.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes the Order should be affirmed.

Claimant seeks benefits for a low back injury which she alleges arose out of and in the course of her employment with respondent. This appeal involves the fourth preliminary hearing in which claimant has sought those benefits. The first three preliminary hearings involved a claim for low back injury on August 19, 1995, under Docket No. 205,926. In that claim, respondent admitted injury to claimant's shoulder and neck but denied the claim for a low back injury. From the first preliminary hearing, a hearing held December 21, 1995, the ALJ granted benefits for a low back injury, but the Board reversed. The Board relied on documents prepared shortly after the accident which did not mention the low back and a medical record which relates the onset of symptoms to changing a door handle at home on August 25, 1995.

In the next two hearings, June 11, 1996, and November 12, 1996, the claimant presented additional evidence. At the hearing of June 11, 1996, claimant presented deposition testimony of Holly White taken May 17, 1996. Ms. White was claimant's supervisor at the time of the alleged accident. She testified claimant notified her of the accident but she did not recall claimant specifically mentioning the back. From this second hearing, the ALJ denied benefits, stating that he was bound by the Board's previous ruling. On appeal, the Board noted that the ALJ was not bound by the Board's previous ruling if new evidence proved claimant's claim, but the Board affirmed the denial of benefits, concluding that the new evidence still did not establish a compensable claim for the low back.

At the hearing of November 12, 1996, the third hearing, claimant presented new evidence in the form of a medical opinion on causation. Dr. Tisdale opined that, if the history claimant gave him was accurate, claimant suffered an aggravation of a preexisting low back condition from the accident of August 19, 1995. The ALJ again denied benefits, again stating that the Board had previously ruled on this claim. Claimant appealed and the Board again concluded the evidence did not present any new information that would convince the Board to change its initial ruling. The medical opinion relied on the claimant's statement which the Board had found was not accurate. For that reason, the Board again affirmed the denial of benefits.

Claimant now appeals for the fourth time. Before the fourth preliminary hearing, claimant filed three new claims for three new dates of accident. She now alleges accidents on April 20, 1993; December 29, 1993; and, March 13, 1994. At the fourth preliminary hearing, claimant also presented a revised opinion from Dr. Tisdale given after he reviewed all of the medical records. He now concludes claimant herniated a lumbar disc on December 29, 1993, and aggravated that injury on March 13, 1994. Dr. Tisdale's report also indicates he believes claimant aggravated her back injury in August 1995, worsening the condition. He describes the aggravating events after the 1993 injury as recurrent lumbar strains. He considered them to be a natural consequence of the 1993 injury but said he was not sure they were foreseeable. Dr. Tisdale's opinions are supported by medical records introduced. In December 1993, a herniated disc was diagnosed.

At the first hearing, claimant acknowledged a history of prior back problems. The prior problems included two specific incidents, one in December 1993 and a second in May 1994. These were both work-related accidents and claimant received treatment on both occasions. She testified, however, that the 1995 incident made her back worse.

After again reviewing the evidence, the Board concludes the record establishes a new and superseding accidental injury in 1995, an accidental injury which the Board has found is not compensable. The new evidence presented in this case does not address the compensability of that new injury.

Dr. Tisdale states there has been aggravation and worsening by events in 1995. Claimant states the events of 1995 made her back worse. Dr. Tisdale's report comes very close to establishing that the 1995 injury was a natural and direct consequence of the 1993 accident, an accident which was itself compensable. But Dr. Tisdale's report also contains the following explanation which suggests otherwise:

If I am correct and if she herniated the nucleus pulposus in December of 1993, the consequences of that event are not easily predictable. There are those individuals who suffer a herniated disc and the disc subsequently scars down and heals and they become asymptomatic. There are individuals where the herniated disc becomes larger, produces more pressure and consequently more symptoms. I do not think there would be any definite foreseeable consequences of this event.

Since the evidence indicates there was a new injury in 1995, again an injury the Board found was not shown to be compensable, the 1995 injury would supersede the earlier injury. Nothing in the new evidence gives any reason why the initial decision by the Board as to the 1995 injury was incorrect. The decision to deny benefits should, therefore, be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order entered by Administrative Law Judge John D. Clark on December 15, 1998, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of February 1999.

BOARD MEMBER

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