



(2) The Order of the Administrative Law Judge should be reversed. The history of injury provided by claimant at the preliminary hearing is significantly inconsistent with the history of injury contained in the emergency room notes dated October 20, 1995, and the claimant has offered no explanation. On pages 9 and 10 of the preliminary hearing transcript, claimant described the accident as follows:

“Q. What occurred on either the 19th or the 20th?”

“A. The 19th, I was closing the back of the kitchen, when I was in the walk-in moving the racks and pulled something in my lower back. I told Chris Wilson about that. I was on my break and he wanted me to stay and close for somebody else the front of the kitchen. I told him no, my back hurt, I was going home.”

“Q. You are using terms that some of us may be familiar with, but I am not. What is the rack that you were trying to move?”

“A. Like six foot long steel shelves to put the food on and you had to walk behind them.”

“Q. About how much does it weigh?”

“A. I am not sure. Probably 100 pounds.”

“Q. But it is on rollers, is that correct?”

“A. No.”

“Q. It is not on rollers?”

“A. It is not on rollers, but it is a tile floor, it slides real easy.”

“Q. While you were moving this rack, that is when you felt problems in your back?”

“A. Yes, sir.”

On the other hand, the Wesley Medical Center Emergency Room records indicate in one section that claimant hurt his back at work while mopping and in another section of the notes indicate claimant's back went out when he tripped at work. Although at the preliminary hearing neither counsel asked claimant about these inconsistencies, the histories provided by the medical records do not appear to even come close to matching claimant's testimony concerning the incident. Therefore, the Appeals Board finds that claimant has failed to prove by a preponderance of the credible evidence that he sustained personal injury by accident arising out of and in the course of his employment with the respondent.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes dated February 13, 1996, should be, and hereby is, reversed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of April 1996.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Lawrence M. Gurney, Wichita, KS  
Jeffery R. Brewer, Wichita, KS  
Nelsonna Potts Barnes, Administrative Law Judge  
Philip S. Harness, Director