

(1) Claimant is employed by the respondent as an early childhood special education teacher. Claimant testified that her work required her to carry bags and briefcases; lift children; drive from one location to another; complete a number of reports and maintain files which require a lot of writing. Claimant first noticed that she had a problem with her right wrist on May 25, 1995 when she pushed down to adjust a lounge chair while she was at home. Claimant testified that she is right-hand dominant and that she was required to do a large amount of writing in May in order to complete individualized education plans. Claimant established that while performing her regular work activities in June, her right wrist symptoms worsened and she commenced having similar symptoms in her left wrist. Claimant notified the respondent of her wrist problems but the employer did not provide her with medical treatment.

Claimant went on her own to her family physician, Edward Cusick, D.O., for her bilateral wrist problems. Dr. Cusick treated claimant with anti-inflammatory medication, wrist splints and sent her to physical therapy. Dr. Cusick also limited her lifting activities to ten pounds. Finally, because of her continuing symptoms, Dr. Cusick referred claimant to an orthopedic surgeon, James Gluck, M.D., on February 14, 1996. Dr. Gluck recommended that she continue the conservative treatment with some additional laboratory studies to rule out any systemic inflammatory process. Dr. Gluck further recommended that in order to determine whether claimant's problem was work related she would have to discontinue her work activities for approximately two weeks. Dr. Cusick, on the other hand, opined in a letter to the respondent's insurance carrier on November 7, 1995, that his tendinitis diagnosis of the claimant's wrist "is often caused when you work with your hands repeating the same motions."

The respondent argued that the claimant failed to present evidence at the preliminary hearing to meet her burden that it was more probably true than not that her bilateral wrist and hand problems are related to her work activities. Respondent specifically argued that her activities away from work had caused her wrist and hand problems. The Appeals Board disagrees and after reviewing the preliminary hearing record finds that claimant's testimony and the medical records admitted at the preliminary hearing contain persuasive evidence that claimant's bilateral wrist and hand problems were the result of her repetitive work activities that either caused the condition or aggravated a preexisting condition.

(2) Respondent also raised the issue that the preliminary hearing record did not support the finding that claimant's previous medical treatment should be paid as authorized medical and also the record did not support a need for future medical treatment with an authorized physician. The Appeals Board is only authorized to review issues that are specifically set forth in K.S.A. 44-534a, as amended by S.B. 649 (1996), or when a party alleges that an administrative law judge exceeded his or her jurisdiction pursuant to K.S.A. 44-551, as amended by S.B. 649 (1996). Whether claimant is entitled to medical treatment is an issue that the administrative law judge is given the specific authority to decide, pending a full trial of the matter. See K.S.A. 44-534a(a)(2), as amended by S.B. 649 (1996). Additionally, whether claimant is in need of medical treatment is not an issue listed in K.S.A. 44-534, as amended by S.B. 649 (1996), as jurisdictional. Accordingly, the Appeals Board does not have jurisdiction to review this issue.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge Nelsonna Potts Barnes, dated April 10, 1996, should be, and is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of May 1996.

BOARD MEMBER

c: Brian Pistotnik, Wichita, KS
Richard A. Boeckman, Great Bend, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director