

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

JIMMY A. ALDRICH)	
Claimant)	
VS.)	
)	Docket No. 208,396
McDONALDS)	
Respondent)	
AND)	
)	
WAUSAU INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Claimant appealed the Award entered by Administrative Law Judge Jon L. Frobish on August 12, 1997.

APPEARANCES

Claimant appeared by his attorney, James B. Zongker of Wichita, Kansas. Respondent and its insurance carrier appeared by their attorney, Douglas C. Hobbs of Wichita, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The Appeals Board reviewed the record listed in the Award and adopted the stipulations listed in the Award.

ISSUES

Nature and extent of claimant's disability is the sole issue before the Appeals Board for review.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the briefs of the parties, the Appeals Board finds as follows:

Claimant fell from a ladder at work on April 27, 1995, and severely fractured his left heel. The respondent furnished claimant with medical treatment for the injury and claimant returned to accommodated work for the respondent at a comparable wage.

The dispute that arises, in this case, is limited to whether claimant is entitled to permanent partial disability benefits based on the scheduled injury or permanent partial general disability benefits based on a whole body injury. See K.S.A. 44-510d and K.S.A. 44-510e.

The Administrative Law Judge limited claimant to an award of permanent disability benefits based on a 15 percent permanent impairment of function of claimant's left lower leg pursuant to the schedule contained in K.S.A. 44-510d(a)(15) that provides a maximum benefit of 190 weeks. The claimant asserts the Administrative Law Judge erred because claimant presented evidence that proves not only did claimant suffer an injury to his left lower leg but also suffered a low back injury as well. Claimant claims his left broken heel caused him to alter his gait which permanently aggravated a preexisting low back condition causing claimant permanent pain and discomfort. Thus, claimant argues when the heel injury is coupled with the low back injury then claimant is entitled to permanent general disability benefits as provided for in K.S.A. 44-510e that provides a maximum benefit of 415 weeks.

The Appeals Board finds, after reviewing the record and considering the arguments of the parties contained in their briefs, that the Award of the Administrative Law Judge should be affirmed. The Appeals Board finds it is significant in this case that the claimant testified in person before the Administrative Law Judge. Thus, the Administrative Law Judge had the opportunity to assess claimant's credibility. Claimant testified, while he was being treated for his injured left heel, he made complaints to both of his treating physicians; orthopedic surgeons, Robert L. Eyster, M.D., and Steven J. Howell, M.D., of pain and discomfort in his lower back. However, both of those physicians also testified in this case and both unequivocally denied that claimant made low back complaints to either one of them while they were treating claimant's injured heel.

Therefore, giving some deference to the conclusions of the Administrative Law Judge, the Appeals Board finds that the Administrative Law Judge's Award should be

affirmed. The Appeals Board concludes that the Administrative Law Judge's findings and conclusions set out in his Award are accurate. It is not necessary to repeat those findings and conclusions in this order and they are adopted by the Appeals Board as its own.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Jon L. Frobish dated August 12, 1997, should be, and is hereby, affirmed.

The Appeals Board also approves and adopts all other orders in the Administrative Law Judge's Award.

IT IS SO ORDERED.

Dated this ____ day of December 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: James B. Zongker, Wichita, KS
- Douglas C. Hobbs, Wichita, KS
- Jon L. Frobish, Administrative Law Judge
- Philip S. Harness, Director