

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

**CHARLES NIBLETT**  
Claimant

VS.

**ASSOCIATED MILK PRODUCERS, INC.**  
Respondent

AND

**AMERICAN MOTORISTS INSURANCE COMPANY  
ARGONAUT INSURANCE COMPANY**  
Insurance Carriers

Docket No. 208,635

**ORDER**

Claimant appeals from a preliminary hearing Order by Administrative Law Judge Shannon S. Krysl dated April 10, 1996. The Order denied claimant's request for temporary total disability and medical benefits.

**ISSUES**

The Administrative Law Judge found that claimant failed to establish that he gave timely notice as required by K.S.A. 44-520. Claimant asks for review of that finding.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and considering the briefs submitted by the parties, the Appeals Board concludes that the decision by the Administrative Law Judge should be affirmed.

Claimant alleges that he injured his back in specific accidents in December 1994 and June 1995 and then repetitively each day worked thereafter. The Appeals Board finds that the claim based on separate accidents and the claim for repetitive trauma fail for separate reasons. The evidence does not establish either of the two separate accidents were the cause of claimant's back injury and the evidence does not establish claimant gave notice of a repetitive trauma injury.

In December 1994 claimant fell from a ladder and notified his supervisor of the fall. Claimant testifies that he fell onto his back. He does not, however, testify that he injured his back, or suffered back pain from this accident. Claimant did not seek medical treatment at that time. The second accident, the one in June 1995, occurred when a drum of chemicals fell off a dolly and struck claimant's leg. Although leading questions imply that claimant may have injured his back at this time, claimant's own testimony does not establish a back injury. Again, he did not seek medical treatment. The record contains no

expert medical testimony connecting either of the two accidents to a current need for medical care or temporary total benefits. The Appeals Board, therefore, finds claimant has not, on the evidence presented at the preliminary hearing, established a connection between the two accidents and a current need for benefits.

The evidence does not establish claimant gave timely notice of a repetitive trauma injury occurring each day worked after the separate accidents. Claimant testified that he worked until shortly before his back surgery on November 28, 1995. The only evidence of notice was claimant's testimony that he called a representative of respondent in Oklahoma City and told him that his back injury was work related. He could not recall, however, whether he called him before or after the surgery. He does not give any date or even a specific range of dates when this call might have occurred. Even if the claim were treated as a repetitive trauma injury with repetitive trauma through the last day worked, the record does not establish that claimant gave notice within the ten days required or that he had just cause for failing to do so. The Appeals Board, therefore, finds that claimant has not met his burden to establish required notice of a repetitive trauma injury. The preliminary hearing Order by the Administrative Law Judge should be affirmed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Shannon S. Krysl dated April 10, 1996, should be, and the same is, hereby affirmed.

**IT IS SO ORDERED.**

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

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BOARD MEMBER

c: Joseph Seiwert, Wichita, KS  
P. Kelly Donley, Wichita, KS  
David Druten, Lenexa, KS  
Shannon S. Krysl, Administrative Law Judge  
Philip S. Harness, Director