

medical report and a letter opinion of William C. Koller, M.D., Ph.D., of The University of Kansas Medical Center. Dr. Koller examined claimant on February 19, 1996, and concluded as follows:

"Mr. Cole is a 45-year-old gentleman with a diagnosis of Spasmodic Torticollis. I examined him on 02/19/96. His head turns to the right with spasms, neck pain, and no benefit from a variety of medications he tried. It is my opinion that conditions of his work have aggravated and contributed to his Torticollis. If I can provide any further information, please let me know."

Claimant injured his right shoulder while moving furniture at home either in September or November 1994. Claimant was treated for this shoulder injury at the Wichita Clinic and the medical records indicated the shoulder injury occurred on November 15, 1994. As early as December 24, 1994, the Wichita Clinic medical records show a diagnosis of torticollis, a condition where cervical muscles are contracted causing claimant's head to uncontrollably turn to the right. Claimant argued that the work activities he performed for the respondent either caused or aggravated that condition, making the condition worse. The Appeals Board previously found the evidence at the first preliminary hearing failed to establish that claimant's work activities aggravated his preexisting torticollis condition to the extent it had caused either additional disability or impairment or a need for additional medical treatment over and above that required to treat the original preexisting condition.

The previous preliminary hearing transcript contained the following opinions of three of claimant's treating physicians:

"Mr. Cole suffers from torticollis which certainly could be aggravated by his computer activities." (From the letter of Burtram J. Odenheimer, M.D., dated March 11, 1996.)

"It is my opinion that Rene's current medical situation is directly related to his work. Because of the positioning in which he has to have his head and the long periods of time he sits in this particular position, I believe that this is aggravating his current problem. The help that he might get from his job, understanding his current situation, would be greatly appreciated." (From the letter of Glen R. Patton, D.O., dated March 4, 1996.)

"Mr. Cole has spasmodic torticollis with uncontrollable head turning to the right. This has resulted in some neck pain. His condition and the neck pain can be aggravated when the patient is trying to maintain his head in a certain posture, specifically, while trying to look straight forward." (From the letter of Paul V. Babikian, M.D., dated March 4, 1996.)

Claimant further argued that this medical evidence proved that the claimant's work activities, which consist of working at a computer keyboard requiring him to position his head to look straight or forward, either caused or aggravated the underlying torticollis condition.

The Appeals Board finds that even with the additional opinion of Dr. Koller, claimant has failed to prove that his need for medical treatment is the result of his work activities aggravating his preexisting torticollis condition. Claimant testified he had been treated since 1994 for the torticollis condition. Medical records indicate, as early as December 24, 1994, the Wichita Clinic diagnosed claimant with torticollis. Accordingly, the Appeals Board finds that the torticollis condition was not caused by claimant's work activities. The Appeals Board also finds that the evidence as a whole does not prove claimant's work activities aggravated claimant's underlying torticollis condition. The Appeals Board finds

that the positioning of claimant's head during his working hours, as described by the claimant, would not be an activity different from unrelated daily living activities which then could aggravate his torticollis condition. See Boeckmann v. Goodyear Tire & Rubber Co., 210 Kan. 733, 504 P.2d 625 (1972). Additionally, when asked if his symptomatology had worsened since 1994, claimant responded that he did not notice any improvement. Since the torticollis condition has not worsened, the need for medical treatment cannot be related to claimant's work. Accordingly, we affirm the Administrative Law Judge's preliminary hearing Order that again denied claimant's request for preliminary hearing compensation benefits.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge John D. Clark dated June 18, 1996, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of August 1996.

BOARD MEMBER

c: David H. Farris, Wichita, KS
Edward D. Heath, Jr., Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director