

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

LAWRENCE GAINES)	
Claimant)	
VS.)	
)	Docket No. 210,855
SEDGWICK COUNTY)	
Respondent)	
Self-Insured)	

ORDER

Claimant appeals from an Award entered by Administrative Law Judge Nelsonna Potts Barnes on January 21, 1998.

APPEARANCES

Joseph Seiwert of Wichita, Kansas, appeared on behalf of claimant. E.L. Lee Kinch of Wichita, Kansas, appeared on behalf of the respondent, a self-insured.

RECORD AND STIPULATIONS

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

ISSUES

The sole issue on appeal is the date of claimant's accident. Claimant originally alleged that his accident occurred on February 12, 1996. At the regular hearing in this case, the Administrative Law Judge permitted claimant to amend his claim to allege an accident continuing each and every working day through February 20, 1997. The date of accident is critical in this case because claimant did not miss any work as a result of the accident. If the accident occurred before April 4, 1996, claimant is limited to medical benefits based upon K.S.A. 44-501(c). That statute was amended April 4, 1996, and for accidents after that date the claimant need not miss work in order to be eligible for permanent disability benefits.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes that the Award should be affirmed.

As above indicated, claimant originally alleged accidental injury arising out of and in the course of his employment on the single date of February 12, 1996. Claimant testified that on that date he injured his back and shoulders while moving a metal door. Claimant now contends that he aggravated that injury by working after that date.

The Board finds the evidence does not support claimant's contention. Several physicians testified, but none testified that claimant's condition was permanently aggravated or worsened by his work after the initial injury. Claimant testified to occasional flare-ups and further testified that the pain increased for a period after he had moved some heavy objects. Dr. Larry Wilkinson's records also mention this occurrence. But, in context with the other evidence, this appears to be an incident when the symptoms temporarily worsened. Taken as a whole, the record does not establish claimant suffered additional permanent injury on any date or dates after February 12, 1996.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award by Administrative Law Judge Nelsonna Potts Barnes, dated January 21, 1998, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of April 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Joseph Seiwert, Wichita, KS
- E.L. Lee Kinch, Wichita, KS
- Nelsonna Potts Barnes, Administrative Law Judge
- Philip S. Harness, Director