

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

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| DONNA MASSOTH |) | |
| Claimant |) | |
| VS. |) | |
| |) | Docket No. 213,006 |
| RAYTHEON AIRCRAFT COMPANY |) | |
| Respondent |) | |
| Self-Insured |) | |

ORDER

On September 12, 1997, the application of respondent for review by the Workers Compensation Appeals Board of an Award entered by Administrative Law Judge John D. Clark on April 11, 1997, came on for oral argument in Wichita, Kansas.

APPEARANCES

Claimant appeared by and through her attorney, Kelly W. Johnston of Wichita, Kansas. Respondent, a qualified self-insured, appeared by and through its attorney, Terry J. Torline of Wichita, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The record and stipulations as specifically set forth in the Award of the Administrative Law Judge are herein adopted by the Appeals Board.

ISSUES

What is the nature and extent of claimant's injury and disability?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Claimant is a 41-year-old high school graduate who began working for the respondent in 1974. Her job was in the electric assembly division and required hand intensive, repetitive work tasks. Before March 1, 1996, claimant began having problems with carpal tunnel syndrome in both hands and began missing work for medical treatment. Her condition eventually required surgery. Dr. J. Mark Melhorn performed left carpal tunnel surgery on March 4, 1996, and right carpal tunnel surgery on March 25, 1996. Dr. Melhorn assessed

claimant an 8 percent whole body functional impairment as a result of her bilateral carpal tunnel syndrome.

Claimant was referred to Dr. Jane K. Drazek at the Via Christi Rehabilitation Center for an independent medical examination by the Administrative Law Judge. Dr. Drazek felt claimant had a 14 percent permanent partial impairment to the body as a whole as a result of her upper extremity symptomatology and further opined that 2 percent of this preexisted claimant's March 1, 1996, date of accident.

Claimant had been examined and treated by Dr. Paul Stein in 1988 for right upper extremity carpal tunnel syndrome. At that time, claimant had been assessed a 10 percent impairment to the right upper extremity which converted to a 6 percent whole body impairment. Claimant settled that workers compensation claim based upon Dr. Stein's functional impairment rating. Claimant had no symptoms in her left upper extremity at that time.

Currently, as claimant has returned to work for respondent at a comparable wage, the only issue to be considered is claimant's entitlement to a functional impairment under K.S.A. 44-510e. The Administrative Law Judge considered the medical reports of the examining and treating physicians and assessed claimant a 14 percent whole body impairment based upon Dr. Drazek's medical opinion. He further reduced claimant's award under K.S.A. 44-501(c) by the 2 percent whole body impairment Dr. Drazek opined was preexisting.

Respondent argues the opinion of Dr. Stein is more credible as Dr. Stein had the opportunity to examine and treat claimant in 1988. Claimant, on the other hand, argues Dr. Stein's opinion should be disregarded as the American Medical Association Guides to the Evaluation of Permanent Impairment were not used as is required by statute. However, in 1988 the use of the Guides was not mandatory, although it was a common practice among some physicians in workers compensation litigation.

K.S.A. 44-501(c) reads:

The employee shall not be entitled to recover for the aggravation of a preexisting condition, except to the extent that the work-related injury causes increased disability. Any award of compensation shall be reduced by the amount of functional impairment determined to be preexisting.

The parties acknowledge claimant's date of accident to be March 1, 1996. However, their opinions regarding how this date should be treated with reference to K.S.A. 44-501(c) are diametrical.

Claimant contends that her injuries were the result of a long series of microtraumas culminating in one injury on March 1, 1996, and, therefore, no preexisting functional impairment should be deducted. Respondent, on the other hand, contends that each day leading up to March 1, 1996, was a separate microtrauma. Dr. Drazek opined that on February 29, 1996, claimant's functional impairment was 14 percent to the body as a whole,

a rating identical to that assessed claimant by Dr. Drazek on the date of accident. Respondent, therefore, contends that the entire functional impairment was preexisting and should be deducted pursuant to K.S.A. 44-501(c).

Both parties argue that Berry v. Boeing Military Airplanes, 20 Kan. App. 2d 220, 885 P.2d 1261 (1994) and K.S.A. 44-501(c) support their positions. Claimant's position cannot be accepted because claimant clearly had a preexisting impairment at the time of her settlement of the 1988 injury. This is the type of functional impairment contemplated by the legislature when K.S.A. 44-501(c) was created. On the other hand, respondent's argument is not acceptable because, while microtrauma injuries do constitute a long series of traumas, no single event can be pinpointed as the cause of the ultimate functional impairment. Therefore, the Appeals Board rejects claimant's argument that no portion of this preexisting functional impairment should be deducted and rejects respondent's position that 100 percent of the functional impairment should be deducted as preexisting.

In considering the medical reports in the record, the Appeals Board finds the opinion of Dr. Drazek to be the most credible regarding what, if any, functional impairment claimant had preexisting the 1996 accident. Therefore, the Appeals Board finds claimant had a preexisting 4 percent functional impairment to the right upper extremity which converts to a 2 percent whole body functional impairment.

The Appeals Board finds the opinion of the Administrative Law Judge, in adopting Dr. Drazek's functional impairment, to be appropriate. Dr. Drazek, as an independent medical examiner, has no allegiance to either party in this matter. It further appears Dr. Drazek did a credible job in assessing claimant's functional impairment to both the left and right upper extremities, after having had the opportunity to examine claimant and review the medical records and medical history pertinent to these injuries. The Appeals Board, therefore, finds that claimant has a 14 percent whole body functional impairment as a result of the injuries suffered through March 1, 1996, of which 2 percent preexisted. Therefore, the Appeals Board finds claimant is entitled to a 12 percent whole body functional impairment as a result of the injuries to her upper extremities through March 1, 1996.

While the Appeals Board has had the opportunity to review the medical records and deposition testimony of Dr. Edward J. Prostic, Dr. John McMaster, Dr. J. Mark Melhorn, and Dr. Paul Stein, it finds Dr. Drazek's opinion to be the most credible.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge John D. Clark dated April 11, 1997, should be, and is hereby, affirmed. Claimant, Donna Massoth, is granted an award against the respondent, Raytheon Aircraft Company, a self-insured, for an injury occurring through March 1, 1996, for a 12% whole body functional impairment based upon an average weekly wage of \$850.73 per week. Claimant is entitled to 7 weeks temporary total disability compensation at the rate of \$326 per week, totaling \$2,282.00, followed thereafter by 49.8 weeks permanent partial disability compensation at the rate of \$326 per week in the amount

of \$16,234.80, for a total award of \$18,516.80, all of which is due and owing at the time of this award and ordered paid in one lump sum minus amounts previously paid.

The fees necessary to defray the expense of the administration of the Workers Compensation Act are hereby assessed against the respondent to be paid as follows:

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| Barber & Associates | |
| Transcript of regular hearing | \$161.10 |
| Deposition of John McMaster, M.D. | Unknown |
| Deposition of Paul Stein, M.D. | \$106.20 |
| Deposition of J. Mark Melhorn, M.D. | \$234.60 |
| Alexander Reporting Co. | |
| Deposition of Jane K. Drazek, M.D. | \$129.95 |
| Jay E. Suddreth & Associates, Inc. | |
| Deposition of Edward J. Prostic, M.D. | Unknown |

IT IS SO ORDERED.

Dated this ____ day of April 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Kelly W. Johnston, Wichita, KS
- Terry J. Torline, Wichita, KS
- John D. Clark, Administrative Law Judge
- Philip S. Harness, Director