

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

<b>ROBERT SMITH</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 213,603
<b>TOTAL TEMPORARY SERVICES and HAYES COMPANY</b>	)	
Respondents	)	
AND	)	
	)	
<b>COMMERCIAL UNION INSURANCE COMPANY and CIGNA INSURANCE</b>	)	
Insurance Carriers	)	

**ORDER**

Respondent, Total Temporary Services, and its insurance carrier, Commercial Union Insurance Company, requested review of the preliminary hearing Order dated September 19, 1996, entered by Administrative Law Judge John D. Clark.

**ISSUES**

The Administrative Law Judge awarded claimant temporary total and medical benefits. Total Temporary Services and its insurance carrier, Commercial Union Insurance Company, requested review of the following issues:

- (1) Whether claimant sustained personal injury by accident arising out of and in the course of employment with the respondent.
- (2) Whether claimant provided respondent timely notice of accident.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record, for purposes of preliminary hearing the Appeals Board finds as follows:

The preliminary hearing Order entered by the Administrative Law Judge should be affirmed.

Claimant alleged he injured his back on January 16, 1996, while working for Total Temporary Services as a temporary employee. Claimant also alleged that he gave notice to both respondent and the company for whom he was working at that time shortly after the low back symptoms began. Apparently, the Administrative Law Judge found claimant a credible witness despite the questions raised by Total Temporary Services in its defense.

At the preliminary hearing the Administrative Law Judge had the opportunity to personally observe claimant and two of respondent's witnesses, Dianna K. Norden and William T. Dotts, Jr. Because this claim hinges on claimant's credibility and the Administrative Law Judge had the opportunity to assess his demeanor while under examination, the Appeals Board, in this instance and at this time, will defer to the Administrative Law Judge's implicit finding that claimant was truthful.

Respondent has raised valid questions regarding the compensability of this claim. However, the Appeals Board finds that claimant by the narrowest of margins has for purposes of preliminary hearing established that he injured his back while working for the respondent on or about January 16, 1996, and that he timely notified the respondent of the accidental injury. In addition to claimant's describing the work he was doing when he began experiencing low back and left leg pain, he also testified that he notified Total Temporary's personnel assignment director about the back injury the next morning.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order dated September 19, 1996, entered by Administrative Law Judge John D. Clark should be, and hereby is, affirmed.

**IT IS SO ORDERED.**

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

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BOARD MEMBER

c: Brian Pistotnik, Wichita, KS  
Kendall R. Cunningham, Wichita, KS  
Vincent A. Burnett, Wichita, KS  
John D. Clark, Administrative Law Judge  
Philip S. Harness, Director