

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

H. ALLAN SPIKER)	
Claimant)	
VS.)	
)	Docket No. 213,763
PRATT & LAMBERT)	
Respondent)	
AND)	
)	
WAUSAU INSURANCE)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier appealed the April 25, 2002 Review and Modification of an Award entered by Administrative Law Judge Nelsonna Potts Barnes. The Board heard oral argument on November 6, 2002.

APPEARANCES

Dale V. Slape of Wichita, Kansas, appeared for claimant. Larry D. Shoaf of Wichita, Kansas, appeared for respondent and its insurance carrier.

RECORD AND STIPULATIONS

The record considered by the Board and the parties' stipulations are listed in the Review and Modification of an Award.

ISSUES

This is a claim for an April 24, 1996 accident. The parties litigated the claim and on August 27, 1998, this Board awarded claimant a seven percent permanent partial general disability, which was based upon claimant's functional impairment rating.

Claimant initiated this review and modification contending he is entitled to receive a work disability (a permanent partial general disability greater than the functional impairment rating) as he alleges he was harassed and assigned demeaning work and ultimately forced to terminate his employment with respondent. Claimant requests the

Board to affirm Judge Barnes' finding that he is now entitled to receive an increased award based upon a 75 percent work disability.

Conversely, respondent and its insurance carrier contend claimant was not harassed but, instead, respondent gave him certain light duty work because it was accommodating his work restrictions. They argue there was no plan or strategy to give claimant demeaning work to force him to quit his employment. Accordingly, they request the Board to reverse Judge Barnes and deny claimant's request for review and modification.

The only issues before the Board on this appeal are:

1. Did claimant act reasonably and in good faith in terminating his employment with respondent?
2. Should claimant's award for a seven percent permanent partial general disability be modified?

FINDINGS OF FACT

After reviewing the entire record, the Board finds:

1. Claimant injured his back and neck while working for respondent on April 24, 1996, when he jumped to the floor from a platform, which was approximately 39 inches high.
2. After receiving several weeks of medical treatment, claimant returned to work without any medical restrictions. Upon returning to work, claimant was eased into his work routine as he was given lighter work and also allowed to leave work early as his back dictated.
3. In September 1996, claimant began working 40 hours per week, plus any overtime that was offered. Because the plant was sold to another company, the overtime claimant worked for several months before the April 1996 accident was more than the overtime available when he returned to work following the accident.
4. From September 1996 through March 1997, claimant worked overtime. But commencing in April 1997, claimant discontinued working overtime after he brought a medical slip into work that indicated he should work only eight hours per day. Although claimant worked six days per week before the accident, following April 26, 1997, claimant only worked eight hours per day, five days per week.

5. Following the accident, claimant remained in the maintenance department where he tested tote tanks, rebuilt pumps, rebuilt filling heads, made gaskets and made scrapers. But two or three times per week, claimant also did such chores as cleaning duck droppings from a sidewalk, pulling weeds, gathering trash, mowing, washing windows, or painting ceiling tiles. Claimant believed he was the only one of nine employees in the maintenance department to perform those work assignments, after which he would be reprimanded for falling behind in performing other duties.

6. Claimant believed many of his work assignments were degrading as he felt he was hired to repair breakdowns in the plant rather than to do maintenance on the building or grounds. Claimant contends work became so intolerable that he began drinking a 12-pack of beer on a daily basis.

7. In October 2000, claimant won the state lottery.

8. On approximately February 13, 2001, after working for respondent for approximately five and one-half years, claimant quit after being assigned to wash the windows. Claimant described his final minutes at work, as follows:

Q. (Mr. Slape) Did you wash the windows?

A. (Claimant) No, I didn't. I went out to the boiler and I checked my boiler, went up and cleaned the duck poop off of the sidewalk, come back and that was working on me. I thought, well, why are they having me do this [washing windows] in the middle of winter. So I went in and I told Willie, "I quit. I am not putting up with this. You guys have humiliated me, belittled me. I just feel like nothing." And he says, "That's what Bill wants you to do and you'll do it." I said, "No, I just quit." So I quit. (Witness crying.)¹

9. On March 12, 2001, claimant filed an application for review and modification with the Division of Workers Compensation.

10. In April 2001, claimant began searching for a new job. At the August 8, 2001 Review and Modification Hearing, claimant introduced an exhibit in which he listed 33 contacts he had made with potential employers between April 4, 2001, and August 2, 2001. But at the time of that hearing, claimant remained unemployed.

11. Administrative Law Judge Jon L. Frobish initially decided this claim in an Award dated January 13, 1998. The Judge awarded claimant a seven percent permanent partial general disability after finding that Dr. Pedro Murati's medical opinions regarding

¹ R.M.H. Trans. (Aug. 8, 2001) at 12.

restrictions and ratings were entitled to very little weight as “Dr. Murati’s testimony and opinion lacks the completeness necessary to be a competent report to be considered by the Court.” All three parties appealed to this Board.

12. In its August 27, 1998 Order, this Board determined that as a result of the April 1996 accident claimant sustained a seven percent whole body functional impairment. Moreover, the Board concluded claimant had failed to prove that he needed any work restrictions due to the accident. Paragraph seven of the Board’s findings from the August 27, 1998 Order reads:

The Appeals Board is not persuaded that the injury has caused Mr. Spiker to have any permanent work restrictions or limitations. The Appeals Board agrees with Judge Frobish’s analysis that Dr. Murati’s opinions should be given little weight. **Likewise, the Appeals Board finds that Mr. Spiker has failed to prove he has any work restrictions or limitations as a result of the April 1996 accident.** (Emphasis added.)

Accordingly, the Board affirmed the January 13, 1998 Award and the conclusion that claimant should receive permanent partial general disability benefits based upon his seven percent whole body functional impairment.

13. In this proceeding to review and modify the Board’s August 27, 1998 Order, no new medical evidence has been presented to address whether claimant’s physical condition has changed or whether claimant now requires work restrictions or limitations as a result of the April 1996 accident.

CONCLUSIONS OF LAW

For the reasons below, the April 25, 2002 Review and Modification of an Award should be reversed to deny claimant’s request to increase the seven percent permanent partial general disability that was initially awarded.

The Board concludes that claimant has failed to prove that he was given demeaning or humiliating work. Applying an objective standard, the job assignments of which claimant complained were neither demeaning nor humiliating, although some might be considered distasteful. In short, the work duties that claimant felt were demeaning were legitimate work assignments that were required to be performed to properly maintain respondent’s premises.

Claimant has also failed to prove that respondent schemed to force him to quit working. Other workers also performed some of the same work assignments that claimant found distasteful or beneath him. Other workers also testified that they considered many

of the duties that claimant felt demeaning should be considered as part of the routine or regular maintenance of the plant and grounds. Moreover, the evidence is persuasive that respondent did not target claimant to humiliate him.

The Board concludes that claimant has failed to establish that his resignation was reasonable or done in good faith. Accordingly, claimant has failed to establish a change in circumstances that would warrant modifying the seven percent permanent partial general disability that was originally awarded.

AWARD

WHEREFORE, the Board reverses the April 25, 2002 Review and Modification of an Award. The Board denies claimant's request to increase the seven percent permanent partial general disability previously awarded.

IT IS SO ORDERED.

Dated this ____ day of December 2002.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Dale V. Slape, Attorney for Claimant
- Larry D. Shoaf, Attorney for Respondent and its Insurance Carrier
- Nelsonna Potts Barnes, Administrative Law Judge
- Director, Division of Workers Compensation