

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

LISA SMALLING)	
Claimant)	
VS.)	
)	Docket No. 216,461
HUTCHINSON HOSPITAL CORPORATION)	
Respondent)	
Self-Insured)	
AND)	
)	
KANSAS WORKERS COMPENSATION FUND)	

ORDER

Respondent appeals from a preliminary hearing Order entered by Administrative Law Judge Bruce E. Moore on March 4, 1998.

ISSUES

Claimant alleges accidental injury arising out of and in the course of employment on June 23, 1992, and again on February 26, 1993. Respondent contends that the current claim for injury on June 23, 1992, is barred because claimant did not file an application within the time limits prescribed by K.S.A. 44-534(b). Respondent also contends that claimant's current symptoms are not related to either the June 23, 1992, or the February 26, 1993, accidents. Instead, the symptoms result from subsequent intervening accidents.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

Timeliness of Application for Hearing

Claimant filed her Application for Hearing on September 10, 1996, alleging accidental injury on June 23, 1992, and on February 26, 1993. Respondent contends the Application is, as to the June 23, 1992 accident, beyond the time lines specified in K.S.A. 44-534(b) (Ensley). That statute provides in pertinent part as follows:

No proceeding for compensation shall be maintained under the workmen's compensation act unless an application for a hearing is on file in the office of the director within three (3) years of the date of the accident or within two (2) years of the date of the last payment of compensation, whichever is later.

As respondent points out, the Application was more than three years after June 23, 1992. Respondent contends it was also filed more than two years after the last compensation paid for the June 23, 1992 accident. It is clear that respondent paid compensation for one or both of these accidents less than two years before the Application for Hearing. Respondent contends that this compensation was for the February 26, 1993 accident. Respondent bases this argument on evidence that claimant suffered additional permanent injury in February 1993. It follows, according to respondent, that subsequent compensation was only for the February 26, 1993 injury, not the June 1992 injury. Respondent does not speak to timeliness of the Application for Hearing as it relates to the injury on February 26, 1993.

From the Board's review of the circumstances, it appears that this argument is not relevant to the issue at the preliminary hearing, namely whether respondent should pay for additional medical treatment. Respondent's argument excludes the only possible scenario that would make it relevant. Specifically, the contention would be relevant if the current need for medical treatment were related only to the June 1992 accident. Claimant might then be time barred from seeking medical treatment. If, however, the medical treatment relates to the February 1993 accident, the Application is not time barred because respondent provided compensation less than two years before the Application was filed. Similarly, if the February 1993 incident is only a temporary aggravation of the 1992 injury, the subsequent medical treatment would relate to the 1992 injury and again the Application was less than two years after that compensation.

The issue, therefore, is not relevant to the decision on this preliminary hearing Order. The Board is not aware of any change in insurance coverage.

Intervening Accidents

Respondent contends that there have been five occurrences since claimant left its employment which constitute intervening accidents and act to cut off claimant's right to medical treatment at respondent's expense. These include the fact claimant experienced pain while bowling, while working as a waitress for Prime Thyme Restaurant, while lifting a telephone book at home, while lifting files at Titan Employment Services, and while feeding her cat at home. Respondent points out that claimant has provided no medical

testimony which relates the current need for medical treatment to the original injuries in the course of employment for respondent. The record does, however, contain claimant's testimony which supports the current claim for medical treatment. Claimant's testimony indicates that claimant had no back problems prior to the injuries in June 1992 and February 1993. Since those instances, she has had ongoing problems including the specific instances which respondent contends amount to intervening accidents. The Board concludes that evidence does not establish that any of these occurrences constitute an intervening accident as opposed to a temporary flare up of symptoms. The Appeals Board therefore concludes that the Order by the ALJ should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order entered by Administrative Law Judge Bruce E. Moore on March 4, 1998, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of May 1998.

BOARD MEMBER

c: David R. McClure, Wichita, KS
E. Thomas Pyle, III, Hutchinson, KS
Randall C. Henry, Hutchinson, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director