

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

JACQUELINE ANDERSON)	
Claimant)	
VS.)	
)	Docket No. 217,348
PIONEER BALLOON COMPANY)	
Respondent)	
AND)	
)	
LEGION INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier requested review of the preliminary hearing Order dated September 19, 1997, entered by Administrative Law Judge Nelsonna Potts Barnes.

ISSUES

The Administrative Law Judge granted claimant's request for medical treatment for bilateral carpal tunnel syndrome. Respondent and its insurance carrier requested the Appeals Board to review that order. The issues before the Appeals Board on this review are:

- (1) Did claimant injure her left arm as the result of an accident which arose out of and in the course of employment with respondent?
- (2) Did Administrative Law Judge Barnes exceed her authority by entering a preliminary hearing Order which modified an earlier preliminary hearing Order entered by Administrative Law Judge Jon L. Frobish?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

The preliminary hearing Order dated September 19, 1997, should be affirmed.

Claimant began working for respondent on August 19, 1996, as a hand packager which required the repetitive use of her hands. After working approximately one week for respondent, claimant began to experience numbness and soreness in her right hand. Claimant sought medical treatment for her right hand at a hospital's emergency room and was diagnosed with a pinched ulnar nerve. Claimant was taken off work, given a sling for her right arm, and referred to the company doctor.

Claimant testified at both preliminary hearings that she began to experience significant symptoms in her left hand and wrist after she had left respondent's employment and while her right arm was in a sling. At the second preliminary hearing, claimant testified her left hand symptoms actually began while working for respondent but those symptoms remained insignificant until the right arm was immobilized.

Administrative Law Judge Barnes had the opportunity to personally observe claimant testify and assess her demeanor and credibility. The Appeals Board gives some deference to the Judge's determination of claimant's credibility and also finds that claimant has established for preliminary hearing purposes that she developed bilateral carpal tunnel syndrome as a result of the repetitive work she performed for the respondent.

The Appeals Board also finds that Administrative Law Judge Barnes did not exceed her jurisdiction and authority by modifying the preliminary hearing Order previously entered by Administrative Law Judge Frobish in March 1997. The preliminary hearing statute, K.S.A. 44-534a, as amended, does not limit the number of preliminary hearings which can be held in a proceeding. By its very nature, the preliminary hearing process is a continuous one which permits additional hearings as the need may arise and the facts develop. Without allowing additional hearings, parties would be precluded until time of final award from introducing newly discovered evidence which could be determinative of the preliminary hearing issues. At the second hearing before Judge Barnes, new evidence was presented which was not available at the first hearing.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order dated September 19, 1997, entered by Administrative Law Judge Nelsonna Potts Barnes should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of November 1997.

BOARD MEMBER

c: Paul V. Dugan, Jr., Wichita, KS
Vincent A. Burnett, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director