

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

ANNETTE HARTLEY)	
Claimant)	
VS.)	
RECREATIONAL VEHICLE PRODUCTS)	Docket No. 217,596
Respondent)	
AND)	
FIREMANS FUND INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier requested review of the Order dated April 29, 1997, entered by Administrative Law Judge John D. Clark.

ISSUES

The Administrative Law Judge granted claimant's request for temporary total disability and medical benefits. Respondent and its insurance carrier requested the Appeals Board to review the following issue:

Did claimant injure or aggravate her neck and right upper extremity as the result of an accident that arose out of and in the course of her employment with the respondent?

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 should be affirmed.

Claimant worked for the respondent and its predecessor as a product assembler for approximately 15 years. Claimant worked in a glue booth and repetitively lifted and handled parts which weighed between five and ten pounds. In August 1996, claimant began to experience difficulty bending her left thumb. Claimant reported the thumb problem to respondent who referred her for medical treatment.

Claimant's treating physician restricted her from using her left hand while working. Despite the restriction, claimant continued to perform her regular job duties using her right arm only for approximately two months and in October 1996 developed a burning sensation in her neck and right arm. The respondent referred claimant to the company doctor for treatment and took claimant off work when it could not accommodate the medical restrictions the doctor then placed upon her. Claimant last worked for respondent on November 5, 1996.

Respondent and its insurance carrier admit the left thumb injury is work related but deny the relationship between the work and the neck and right upper extremity problems. Respondent and its insurance carrier rely upon the opinion of orthopedic surgeon George L. Lucas, M.D., who has indicated claimant's neck and shoulder problems are not related to work.

On the other hand, claimant contends the neck and right upper extremity problems were caused by the repetitive activity she performed at work for the two-month period she used her right arm only. Claimant relies upon the opinions of Gregory Ricke, M.D., whom she saw for a medical evaluation; of her family physician, Steven K. Couch, D.O.; and of orthopedic surgeon James L. Gluck, M.D. Claimant testified those three doctors believed the neck and right upper extremity complaints were work related. Claimant's testimony is generally supported by the various medical records presented at both the February 27 and April 29, 1997, preliminary hearings.

At this stage of the proceeding, the Appeals Board agrees with the Administrative Law Judge's conclusion that claimant is entitled to workers compensation benefits for the neck and right upper extremity complaints. Based upon the entire evidentiary record compiled to date, the Appeals Board finds claimant has established that she has injured her neck and right upper extremity as the result of an accident which arose out of and in the course of her employment with respondent.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order dated April 29, 1997, entered by Administrative Law Judge John D. Clark should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of July 1997.

BOARD MEMBER

c: Joni J. Franklin, Wichita, KS
Scott J. Mann, Hutchinson, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director