

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

ANN RIGOL)	
Claimant)	
VS.)	
)	Docket No. 217,948
USD NO. 229)	
Respondent)	
AND)	
)	
KANSAS ASSOC. OF SCHOOL BOARDS)	
WORKERS COMPENSATION FUND)	
Insurance Carrier)	

ORDER

Respondent appeals from an Award entered by Administrative Law Judge Robert H. Foerschler on February 24, 1999. The Appeals Board heard oral argument August 17, 1999.

APPEARANCES

Michael R. Wallace of Shawnee Mission, Kansas, appeared on behalf of claimant. Anton C. Andersen of Kansas City, Kansas, appeared on behalf of respondent and its insurance carrier.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

The Award grants compensation for a 9 percent general body disability based on functional impairment for injury to claimant's right knee and low back. On appeal, respondent argues the award should be for the knee injury only.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes the Award should be affirmed. The Board adopts as its own the findings and conclusions made by the Administrative Law Judge with one proviso. The Award states that when a preexisting condition is aggravated, the claimant is entitled to compensation for the entire disability without apportionment, citing *Woodward v. Beech Aircraft Corp.*, 24 Kan. App. 2d 510, 949 P.2d 1149 (1997). But the *Woodward* decision involved a 1991 accident. The current case involves an accident in 1996. In 1993 the legislature amended K.S.A. 44-501 to require that preexisting impairment be deducted from the disability in cases involving aggravation of a preexisting condition. In this case, the evidence shows that the back injury was an aggravation of a preexisting disc disease but does not indicate that claimant had a preexisting functional impairment or disability. As a result, the outcome is the same, claimant is entitled to the full amount of the disability as it appears the disability was caused by this accident.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Robert H. Foerschler on February 24, 1999, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of August 1999.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Michael R. Wallace, Shawnee Mission, KS
- Anton C. Andersen, Kansas City, KS
- Robert H. Foerschler, Administrative Law Judge
- Philip S. Harness, Director