

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

<b>VICTOR JELLISON</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 219,964
<b>KIOWA COUNTY</b>	)	
Respondent	)	
AND	)	
	)	
<b>EMC INSURANCE COMPANY</b>	)	
Insurance Carrier	)	

**ORDER**

Respondent and its insurance carrier requested review of the Order for Compensation dated May 30, 1997, entered by Administrative Law Judge Kenneth S. Johnson.

**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 issue whether claimant's present complaints and present need for medical treatment are directly related to his May 17, 1996, work-related accident or, instead, the result of a distinct and subsequent accident. That is the only issue before the Appeals Board on this review.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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

The Order for Compensation should be affirmed.

The question now presented is whether claimant's present complaints of pain and present need for medical treatment are directly related to his May 17, 1996, work-related accident for which he underwent low back surgery in July 1996 at the L5-S1 intervertebral level. Respondent and its insurance carrier contend claimant's present symptoms are the result of a distinct and subsequent accident and, therefore, claimant is not entitled to receive additional workers compensation benefits for his increased back symptoms.

The Appeals Board agrees with the Administrative Law Judge's conclusion that claimant proved his present symptoms are directly related to the May 1996 work-related accident rather than a new and distinct accident. That conclusion is based upon the testimony of claimant's treating physician, board-certified orthopedic surgeon Guillermo Garcia, M.D., whom the parties deposed. Dr. Garcia firmly believes claimant's present symptoms are due to natural scarring which has formed around the July 1996 surgical site. In formulating his opinion, the doctor considered the results of an MRI which showed scarring around the nerve root, rather than herniated disc material, as the source of claimant's present complaints.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order for Compensation dated May 30, 1997, entered by Administrative Law Judge Kenneth S. Johnson should be, and hereby is, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July 1997.

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BOARD MEMBER

c: Robert A. Anderson, Ellinwood, KS  
James M. McVay, Great Bend, KS  
Kenneth S. Johnson, Administrative Law Judge  
Philip S. Harness, Director