

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

<b>ROBERT J. WILSON</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 220,207
<b>STATE OF KANSAS</b>	)	
Respondent	)	
AND	)	
	)	
<b>STATE SELF-INSURANCE FUND</b>	)	
Insurance Fund	)	
AND	)	
	)	
<b>WORKERS COMPENSATION FUND</b>	)	

**ORDER**

Respondent and its insurance fund appealed the December 6, 2000 Award entered by Administrative Law Judge Nelsonna Potts Barnes. The Board heard oral argument on May 11, 2001, in Wichita, Kansas.

**APPEARANCES**

James R. Roth of Wichita, Kansas, appeared for claimant. Jeffery R. Brewer of Wichita, Kansas, appeared for respondent and its insurance fund. The Workers Compensation Fund did not appear as it had previously settled the claim made against it.

**RECORD AND STIPULATIONS**

The record considered by the Board and the parties' stipulations are listed in the Award.

**ISSUES**

The parties stipulated that claimant met with personal injury by accident arising out of and in the course of employment each and every day commencing July 22, 1992, and

each and every day commencing April 29, 1993.<sup>1</sup> Claimant continued to work for respondent until April 15, 1996. Nonetheless, the parties also stipulated that this was an “old law” claim.<sup>2</sup> In the December 6, 2000 Award, Judge Barnes determined that claimant sustained both physical and psychological injuries as a result of the series of work-related accidents and awarded claimant a permanent total disability.

Respondent and its insurance fund contend Judge Barnes erred. They argue that the psychiatrist and psychologist who testified that claimant is presently unable to work are not credible as they have a financial interest in retaining claimant as a patient. Therefore, they argue that the Board should be a “voice of reason” and reverse the Award, based upon common sense accompanied by the testimony from respondent’s expert witness, Dr. Donald E. Schrag, who testified that claimant should be able to perform some type of substantial, gainful employment. In their brief to the Board, respondent and its insurance fund request claimant be awarded between a two and nine percent permanent partial general disability for the period from July 22, 1992, to April 15, 1996, followed by an 18 to 20.5 percent permanent partial general disability.

Conversely, claimant contends the Award should be affirmed in all respects.

The only issue before the Board on this appeal is the nature and extent of claimant’s injury and disability.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record, the Board finds and concludes:

1. The Award should be affirmed.
2. Claimant is a college graduate with a Bachelor of Science degree in Health Care Administration. Claimant began working for respondent’s Social and Rehabilitation Services agency in October 1983. From approximately May 1994 through approximately May 1995 claimant worked as a case manager for respondent. Claimant then became a case manager supervisor, the position that he held through approximately November 1995.

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<sup>1</sup> Regular Hearing, February 14, 2000; p. 5.

<sup>2</sup> Apparently the parties were agreeing that this claim would be decided by whichever version of K.S.A. 44-510c (permanent total disability) or K.S.A. 44-510e (permanent partial general disability) applied to accidents occurring before July 1, 1993. But if that was the parties’ intent, the stipulation that claimant sustained injury each and every workday is inconsistent as claimant continued to work for respondent until April 15, 1996, which would arguably make K.S.A. 44-510c (Furse 1993) and K.S.A. 1996 Supp. 44-510e the controlling statutes. Nonetheless, because of the parties’ stipulation, the Board will analyze claimant’s accident and disability as if the accident occurred before July 1, 1993.

3. Claimant injured his back on July 22, 1992, while moving a dolly and cinder blocks up some stairs. Claimant began receiving medical treatment and in February 1993 returned to work, working partial days. In April 1993, claimant returned to full-time work, working without restrictions until approximately April 28, 1993, when he re-injured himself at work while preventing a filing cabinet from falling. Because of that accident, claimant was then off work until sometime in either June or July 1993.

4. Claimant believes the April 28, 1993 accident was the most significant of all the incidents subsequent to his July 22, 1992 accident. Following the April 1993 incident, claimant became depressed in approximately June or July 1993 and saw a mental health professional for approximately eight weeks.

5. After recovering from the April 1993 accident, claimant again returned to work on a part-time basis until approximately August 1993, when he began working full-time.

6. Claimant continued to work for respondent until May 1994 when he experienced severe muscle spasms after working two hours continuously on a computer. Claimant left work and did not return until approximately October 1994. At that time, respondent accommodated claimant by permitting him to work only four hours per day, by providing him headphones and a special typewriter, and by not requiring him to leave the office.

7. Claimant continued to work for respondent until April 1996, when he again experienced a flare-up of symptoms at work. Following that incident, claimant did not return to work for respondent. In December 1996, claimant was laid off.

8. Judge Barnes appointed Dr. Jane Drazek, a specialist in physical medicine and rehabilitation, to examine and evaluate claimant. The doctor saw claimant in May 1997 and initially diagnosed chronic myofascial pain syndrome, lumbar and hip hypomobility, and a significant somatization disorder (an excessive focus on physical symptoms). The doctor recommended a psychological evaluation.

9. After Dr. Drazek's evaluation, Judge Barnes appointed Dr. Elsie Steelberg, a board-certified psychiatrist, to evaluate claimant. The doctor initially saw claimant in August 1997 and diagnosed major depression and anxiety disorder. The Judge then appointed Dr. Steelberg as a treating doctor. The doctor prescribed medications and referred claimant to a stress and pain reduction program. In January 1999, the doctor referred claimant to psychologist Dumont K. Schmidt for therapy.

10. The Board agrees with the Judge that claimant developed severe psychological problems as a direct result of his work-related injuries that now prevent him from engaging in any substantial, gainful employment. That conclusion is supported by the testimonies from Dr. Drazek, Dr. Steelberg, and Dr. Schmidt.

Dr. Steelberg, who saw claimant approximately six times in 1998 and another six times in 1999, testified that claimant's depression and anxiety disorders were directly

related to the injuries that claimant sustained at work. Dr. Schmidt, who began treating claimant in January 1999 and who had seen claimant approximately 20 times, agreed with both Dr. Steelberg’s diagnoses and opinion regarding claimant’s level of incapacity.

The Board is aware that respondent’s psychological expert witness, Dr. Donald E. Schrag, testified that he did not relate claimant’s psychological problems, which he diagnosed as a somatoform disorder, to his work-related injuries, nor did he believe claimant was totally disabled. But even Dr. Schrag admits the work-related injuries at least aggravated claimant’s psychological condition.

The Board finds the greater weight of the evidence establishes that claimant’s present psychological problems are directly caused by his work-related injuries and that he is now totally disabled from substantial, gainful employment. Therefore, claimant is entitled to receive permanent total disability benefits for his inability to work.

11. The Board adopts the findings and conclusions set forth in the December 6, 2000 Award that are not inconsistent with the above.

**AWARD**

**WHEREFORE**, the Board affirms the December 6, 2000 Award entered by Judge Barnes.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July 2001.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

- c: James R. Roth, Wichita, KS
- Jeffery R. Brewer, Wichita, KS
- Christopher J. McCurdy, Overland Park, KS
- Nelsonna Potts Barnes, Administrative Law Judge
- Philip S. Harness, Director