

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

LORI K. WALZ (formerly Deere))
Claimant)

VS.)

CASCO, INC.)

Respondent)

AND)

LIBERTY MUTUAL INSURANCE COMPANY)

Insurance Carrier)

Docket No. 222,827

ORDER

Respondent appeals from an August 18, 1998 Award entered by Administrative Law Judge Jon L. Frobish. The Appeals Board heard oral argument on March 12, 1999 in Wichita, Kansas.

APPEARANCES

Claimant appeared by her attorney, Stephen J. Jones of Wichita, Kansas. Respondent and its insurance carrier appeared by their attorney, Douglas D. Johnson of Wichita, Kansas.

RECORD AND STIPULATIONS

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

ISSUES

The ALJ granted claimant a work disability based, in part, upon a 100 percent wage loss component finding claimant's post-injury job search efforts following her termination from her employment with respondent did not require that a wage be imputed. Respondent contends this was error and the disability award should be limited to claimant's

percentage of functional impairment. The nature and extent of claimant's disability is the only issue before the Appeals Board.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire record and having considered the briefs and arguments of the parties, the Appeals Board finds that the Award entered by the ALJ should be affirmed.

The findings of fact and conclusions of law enumerated in the Award by the ALJ are found to be accurate and are adopted by the Appeals Board. Claimant sought to return to work for respondent but was terminated due to the restrictions that resulted from her work-related injury. The Appeals Board agrees with the analysis of the record by the ALJ regarding claimant's attempt to return to work and whether or not claimant made a good faith effort to find work within her restrictions. It is clear that some of the difficulty claimant had obtaining work was due to those restrictions that resulted from the work-related injury. Although the Appeals Board agrees with respondent that claimant could have done more in her job search efforts, the facts do not invoke the policy considerations of Fouk v. Colonial Terrace, 20 Kan. App. 2d 277, 887 P.2d 140 (1994), *rev. denied* 257 Kan. 1091 (1995). Claimant never refused an offer of work and was at all times willing to work. Accordingly, whether or not a wage should be imputed based upon her ability to earn wages that would reduce or deny her a work disability award depends upon the good faith test announced in Copeland v. Johnson Group, Inc., 24 Kan. App. 2d 306, 944 P.2d 179 (1997).

Claimant did not have the ability to continue doing her regular job and respondent could not or would not accommodate the permanent restrictions imposed by Dr. Tyrone D. Artz and Dr. Pedro A. Murati. Despite retaining a job placement specialist to criticize claimant's effort, respondent offered claimant no assistance with her job search. Given claimant's limited transferrable skills and her significant physical limitations, the Appeals Board finds that claimant made a good faith effort to find appropriate employment after her termination. Accordingly, her wage loss may be based upon her actual post-accident earnings.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Jon L. Frobish dated August 18, 1998, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of March 1999.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Stephen J. Jones, Wichita, KS
Douglas D. Johnson, Wichita, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director