

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

SUSIE R. WILEY)	
Claimant)	
VS.)	
)	Docket No. 223,284
ALLIED SIGNAL)	
Respondent)	
AND)	
)	
TRAVELERS PROPERTY CASUALTY)	
Insurance Carrier)	

ORDER

Respondent appealed the Preliminary Decision entered by Administrative Law Judge Robert H. Foerschler dated October 21, 1997.

ISSUES

Respondent requested review of the following issues:

- (1) Whether claimant suffered an accidental injury that arose out of and in the course of her employment with respondent.
- (2) Whether claimant gave respondent timely notice of accident as required by K.S.A. 44-520.
- (3) Whether claimant served respondent with a timely written claim for compensation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing order and considering the briefs of the parties, the Appeals Board finds as follows:

All issues raised by the respondent are issues that subject a preliminary hearing order to review by the Appeals Board. See K.S.A. 44-534a, as amended.

(1) Claimant alleges she injured her right knee and low back while performing her regular work activities from July 1996 through her last day worked of October 26, 1996. Claimant testified she had a history of back problems and on May 20, 1996, had restrictions placed on her by her family physician, Charles M. Sullivan, M.D. Those restrictions limited her to standing five hours per day and sitting the remaining three hours. Furthermore, claimant testified she injured her right knee in July 1996 when she fell on the knee while lifting a heavy box of parts in the storeroom of the respondent.

After the July 1996 accident, claimant testified she continued to work at her regular job in the storeroom which required her to lift and be on her feet and her symptoms worsened in her right knee and back. Finally, claimant could not tolerate the pain and discomfort and left work on October 26, 1996.

Claimant sought medical treatment on her own through her family physician, Charles M. Sullivan, M.D. She was seen on October 29, 1996, by Larry M. Lux, a physician assistant with Dr. Sullivan. Mr. Lux took claimant off work and sent a note to the respondent notifying respondent that claimant needed to be evaluated by a workers compensation doctor.

At the time of the preliminary hearing, claimant had been referred to Johnson County Orthopedics for treatment of her right knee and back pain. William T. Grant, M.D., performed arthroscopy surgery on claimant's right knee on March 31, 1997. He repaired a torn medial meniscus and performed a patellar debridement of claimant's right knee. Claimant testified at the preliminary hearing that she remained off work and she was in need of further medical treatment for continuing symptoms in both her right knee and her low back.

Respondent asserts there is a lack of evidence in the preliminary hearing record to find that claimant suffered a fall at work in October of 1996 that injured claimant's right knee and further aggravated her preexisting back problem as found by the Administrative Law Judge. The Appeals Board agrees with the Administrative Law Judge and finds claimant's testimony coupled with the medical treatment records admitted into evidence at the preliminary hearing prove that it is more probably true than not that claimant had a preexisting low-back problem that was aggravated both by the fall in July 1996 and her continuing work activities. The fall in July of 1996 also caused injury to her right knee.

Thereafter, both the low back and right knee injuries worsened as she performed her work activities through her last day worked of October 26, 1996.

(2) The notice issue in this case is somewhat complicated because the claimant is deaf and can only communicate effectively through an interpreter using sign language. Respondent argues claimant did not notify the respondent of a work-related injury until claimant filed an application for hearing on May 23, 1997. Robin Thompson, a registered nurse employed by the respondent, testified she completed an employer report of accident on May 30, 1997. At the time of the preliminary hearing, the respondent had Scott Steelman, D.O., the respondent's company physician, testify. Dr. Steelman admitted he received on October 31, 1996, the October 29, 1996, note from physician assistant Larry Lux indicating claimant needed an evaluation by a workers compensation doctor. However, Dr. Steelman testified he did not refer claimant to another doctor because claimant did not notify him personally that she had suffered work-related injuries.

The Appeals Board concludes the note from the physician assistant was sufficient to satisfy the notice requirement contained in K.S.A. 44-520.

(3) Respondent also raised the issue of timely written claim but did not argue this issue in its brief. As previously noted, respondent's registered nurse, Robin Thompson, testified that upon receiving a copy of claimant's application for hearing she filed an employer's report of accident on May 30, 1997. The Appeals Board concludes since it previously found claimant had given notice of accident on October 31, 1996, and the respondent failed at that time to file an employer's report of accident within the time allowed, then claimant had one year from the date of accident, October 26, 1996, to file a claim for compensation. See K.S.A. 44-557(c). Therefore, claimant's application for hearing filed on May 23, 1997, was a claim for compensation and was timely.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Decision of Administrative Law Judge Robert H. Foerschler dated October 21, 1997, that ordered respondent to provide medical treatment for claimant, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of December 1997.

BOARD MEMBER

c: Michael R. Wallace, Shawnee Mission, KS

Bryce Moore, Overland Park, KS
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director