

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

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|-----------------------|---|--------------------|
| BARBARA MYERS |) | |
| Claimant |) | |
| VS. |) | |
| |) | Docket No. 227,696 |
| HALLMARK CARDS |) | |
| Respondent |) | |
| Self-Insured |) | |

ORDER

Claimant appeals from the preliminary hearing Order of Administrative Law Judge Bryce D. Benedict dated December 2, 1997, wherein Judge Benedict denied claimant's request for benefits finding that claimant had not sustained her burden of proving accidental injury arising out of and in the course of her employment with respondent with regard to her neck, shoulders, and chest.

ISSUES

- (1) Claimant's entitlement to medical treatment and temporary total disability compensation.
- (2) Whether claimant sustained accidental injury arising out of and in the course of her employment with respondent to her neck, shoulders, and chest.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

The Appeals Board finds issue No. 1 is not one which grants jurisdiction to the Appeals Board from a preliminary hearing. See K.S.A. 1997 Supp. 44-534a and K.S.A. 1997 Supp. 44-551.

With regard to whether claimant suffered accidental injury arising out of and in the course of her employment, the Appeals Board finds claimant has failed to prove by a preponderance of the credible evidence that her condition is related to her work. Claimant suffered an automobile accident in 1992 resulting in a whiplash injury which kept claimant off work and undergoing medical treatment for one year. After claimant returned to work at Hallmark, she began suffering symptomatology to her right wrist. She received medical treatment through Dr. Sergio Delgado for this wrist complaint. As of March 7, 1997, Dr. Delgado felt claimant's lifting at work was causing her additional wrist complaints and placed her on light duty and limited her to no lifting over 15 pounds. At that time, claimant was placed in a clerical position with limited lifting. On March 10, 1997, claimant first raised complaints about her shoulders and chest. She was referred to several doctors including Dr. John R. Toth, her family and obstetrical doctor, who had been claimant's doctor since February 1992 when she suffered the motor vehicle accident. Dr. Toth's treatments continued through November 25, 1997, at which time he found claimant had significantly improved.

Claimant was referred to Dr. Deborah T. Mowery of Midwest Rehabilitation Associates on October 22, 1997. Dr. Mowery examined claimant and opined claimant's symptomatology stemmed from cervical chronic myofascial pain syndrome related to the 1992 motor vehicle accident with underlying degenerative disc disease at C5-6 related to the normal aging process. In discussing the complaints as they may relate to claimant's work, Dr. Mowery in her October 22, 1997, report stated:

"In regards to causation of both the degenerative cascade and the soft tissue pain, I believe it's related to the 1992 motor vehicle accident. I, however, do believe that at shoulder level and above activity that she has been sustaining since February or March of 1997 may have aggravated her soft tissue pain. It is highly unlikely that it has aggravated her degenerative disc disease since it was present on films two months after her alleged work aggravation."

The Administrative Law Judge denied claimant's request for medical treatment finding that Dr. Mowery's opinion that the work "may have aggravated" claimant's soft-tissue pain was not sufficient to be construed as more probable than not.

In workers compensation litigation it is claimant's burden to establish her right to an award of compensation by proving the various conditions upon which her right depends by a preponderance of the credible evidence. K.S.A. 1996 Supp. 44-501 and K.S.A. 1996 Supp. 44-508(g).

The Appeals Board finds it significant that the physical therapy notes of April 25, 1997, reported claimant continuing to complain of constant pain in her neck with tingling into her hands even though she was not working at that time.

In addition, after her examination with Dr. Delgado on March 7, 1997, claimant was returned to work light duty only and was delegated to a clerical job which included answering the telephone and opening mail and involved no lifting. Claimant's shoulder and chest complaints did not begin until March 10, 1997, several days later.

The Appeals Board finds, based upon the credible evidence, that claimant has not proven accidental injury arising out of and in the course of her employment with respondent as it relates to claimant's neck, shoulders, and chest. Therefore, the Order of the Administrative Law Judge denying claimant medical treatment and temporary total disability compensation should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Bryce D. Benedict dated December 2, 1997, should be, and is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of February 1998.

BOARD MEMBER

c: Michael J. Unrein, Topeka, KS
John David Jurcyk, Lenexa, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director