BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

TERESA B. GALVAN	)	
Claimant	)	
VS.	)	
	)	Docket Nos. 225,554; 227,838;
	)	& 233,171
HEARTHSTONE RETIREMENT COMMUNITY	)	
Respondent	)	
AND	)	
	)	
INSURANCE COMPANY STATE	)	
OF PENNSYLVANIA and SENTRY	)	
INSURANCE COMPANY	)	
Insurance Carriers	)	
AND	)	
	)	
WORKERS COMPENSATION FUND	)	

ORDER

In an unpublished opinion filed February 7, 2003, the Kansas Court of Appeals reversed and remanded this proceeding to the Board for further proceedings. The Board placed this proceeding on its summary calendar, foregoing oral argument. Gary M. Peterson of Topeka, Kansas, was appointed Board Member Pro Tem to determine this matter.

APPEARANCES

Mark W. Works of Topeka, Kansas, appeared for claimant. Matthew S. Crowley of Topeka, Kansas, appeared for respondent and Insurance Company State of Pennsylvania (State).

ISSUES

In its April 25, 2002 Order, the Board denied claimant's request for permanent partial general disability benefits in Docket No. 225,554 because claimant had failed to timely file an application for hearing with the Division of Workers Compensation. The Board, however, awarded claimant the temporary total disability benefits and medical

benefits that respondent and State had previously paid and provided for the January 18, 1994 accident after noting that those benefits were paid on or before July 1, 1994. Accordingly, the temporary total disability benefits and medical benefits that were awarded were provided before the time period expired for claimant to file an application for hearing.

Respondent and State appealed the Board's April 25, 2002 Order. On appeal, the Kansas Court of Appeals remanded this claim "for further proceedings consistent with this opinion," noting:

> In this case, once the Board found Galvan had failed to comply with the time limits set forth in K.S.A. 44-534(b), it was without jurisdiction to award her the total temporary disability and medical benefits previously paid.[1]

The only issue now before the Board is how the Board's April 25, 2002 Order should be modified to comply with the Kansas Court of Appeals' remand.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record and the parties' arguments, the Board finds and concludes:

Unless otherwise noted, all findings and conclusions set forth in its April 25, 2002 Order are adopted for purposes of this Order. Accordingly, as noted in the Court of Appeals' opinion, the Board finds that claimant failed to timely file an application for hearing with the Division of Workers Compensation for the accident claimed in Docket No. 225,554.

K.S.A. 44-534 (Furse 1993) provides:

> (b) No proceeding for compensation shall be maintained under the workers compensation act unless an application for a hearing is on file in the office of the director within three years of the date of the accident or within two years of the date of the last payment of compensation, whichever is later.

Consequently, the Division of Workers Compensation is without jurisdiction to award compensation in Docket No. 225,554. The Board makes no findings or conclusions regarding the propriety of the temporary total disability benefits and medical benefits previously provided. Moreover, the Board makes no findings or conclusions regarding whether respondent and State are entitled to recover from the Workers Compensation

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[1] *Galvan v. Hearthstone Retirement Community*, No. 88,968 (Kansas Court of Appeals Feb. 7, 2003).

Fund the temporary total disability benefits and medical benefits that were paid before the time period expired for claimant to file an application for hearing while this remained a viable claim. The Board does not reach the merits of this claim as it is time barred and, therefore, the Board is without jurisdiction. This claim should be dismissed.

The Board has included Docket Nos. 227,838 and 233,171 as those claims were consolidated for litigation and award purposes. This Order, however, does not affect the holdings in those docket numbers.

AWARD

WHEREFORE, in Docket No. 225,554 the Board denies claimant's request for additional benefits and dismisses this claim.

IT IS SO ORDERED.

Dated this ____ day of May 2003.

_____
BOARD MEMBER

_____
BOARD MEMBER

_____
BOARD MEMBER

c: Mark W. Works, Attorney for Claimant
Matthew S. Crowley, Attorney for Respondent and State
Kurt W. Ratzlaff, Attorney for Respondent and Sentry
Jerry R. Shelor, Attorney for Fund
Bryce D. Benedict, Administrative Law Judge
Director, Division of Workers Compensation