

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

<b>ALEHANDRO LEIJA</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 228,450
<b>COMMERCIAL GARDENER</b>	)	
Respondent	)	
AND	)	
	)	
<b>UNKNOWN</b>	)	
Insurance Carrier	)	
AND	)	
	)	
<b>KANSAS WORKERS COMPENSATION FUND</b>	)	

**ORDER**

The Workers Compensation Fund (Fund) appeals from the preliminary hearing Order of Administrative Law Judge Jon L. Frobish, dated December 16, 1997, where the Administrative Law Judge granted claimant benefits in the form of temporary total disability compensation and medical treatment.

**ISSUES**

Whether the Kansas Workers Compensation Act applies to the employment in question, and more particularly, whether the employer is exempted from coverage by K.S.A. 44-505(a)(2).

**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 that the Administrative Law Judge's Order of December 16, 1997, should be affirmed.

The Workers Compensation Fund argues the appropriate statute to be K.S.A. 44-505(2). The Appeals Board, after reviewing the statute, finds the appropriate applicable cite would be K.S.A. 44-505(a)(2) which limits the application of the Kansas Workers Compensation Act to:

“any employment, other than those employments in which the employer is the state, or any department, agency or authority of the state, wherein the employer had a total gross annual payroll for the preceding calendar year of not more than \$20,000 for all employees and wherein the employer reasonably estimates that such employer will not have a total gross annual payroll for the current calendar year of more than \$20,000 for all employees, except that no wages paid to an employee who is a member of the employer’s family by marriage or consanguinity shall be included as part of the total gross annual payroll of such employer for purposes of this subsection . . . .”

The evidence is somewhat contradictory regarding the payroll of respondent during the year 1997, which is the year of the accident. Claimant testified to earning \$6.25 per hour, 40 hours per week, with approximately 10 hours overtime per week at \$1.00 per hour extra. This would equate to a gross average weekly wage of \$322.50 per week. Claimant testified that he began working on approximately March 1, 1997, and continued through October 11, 1997, the date of accident. At least three other employees worked essentially the same hours and were paid between \$5.50 and \$6.00 per hour for the first 40 hours with an additional \$1.00 per hour bonus for the next 10 hours. The Appeals Board finds that the evidence is sufficient to show respondent had a total gross annual payroll before October 11, 1997, of more than \$20,000 which brings the respondent within the provisions of the Kansas Workers Compensation Act. Fetzer v. Boling, 19 Kan. App. 2d 264, 867 P.2d 1067 (1994).

**WHEREFORE**, it is the finding, decision and order of the Appeals Board that the Order of Administrative Law Judge Jon L. Frobish, dated December 16, 1997, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February 1998.

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BOARD MEMBER

c: Joni J. Franklin, Wichita, KS  
E. L. Lee Kinch, Wichita, KS  
Commercial Gardener, Respondent  
Jon L. Frobish, Administrative Law Judge  
Philip S. Harness, Director