

The evidence against compensability of the neck injury includes evidence that claimant has had significant prior neck problems. She was involved in an automobile accident in 1986 and sustained a whiplash injury. She also suffered neck and shoulder problems reflected on MRIs, bone scan, and EMG studies done with treatment for those injuries concluding in February 1991. Claimant settled a workers compensation claim for those injuries. Finally, the records show claimant went to her personal physician in February 1997, approximately three months before the injury alleged here, with complaints of pain in her neck and shoulder. Perhaps more importantly, the records of claimant's initial treatment on May 23, 1997, the records from Dr. Samir Desai at St. Francis Hospital, contain a history which refers to only right shoulder pain and gradual onset of approximate two or three months. This history is consistent with the records from Dr. Roy P. Hall, claimant's family physician, who had given cortisone shots for the shoulder problems in February and March 1997. Finally, Dr. Vosburgh reported that claimant did not complain to him of problems with her neck. Although he does apparently overlook the pain chart which claimant completed on her initial visit, his subsequent records contain no reference to neck complaints.

Claimant offers a report of Dr. John A. Pazell to support her claim that she is in need of treatment for her neck problems. He diagnosed cervical spondylosis and recommended evaluation of the cervical spine with an MRI scan. He does not, however, state an opinion that the condition is work related.

In context with the above-described conflicting evidence, the ALJ's evaluation of claimant's credibility is significant. He obviously did not believe claimant's testimony that she has an injury from her work. On balance, the Appeals Board agrees the claimant has not, at this point in the proceedings, met her burden of proving by a preponderance of the credible evidence that the neck problems she may now have are a result of a compensable work-related injury.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Bryce D. Benedict on July 22, 1998, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of September 1998.

BOARD MEMBER

c: James L. Wisler, Topeka, KS
Matthew S. Crowley, Topeka, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director