



Whether claimant suffered an occupational disease is an issue that grants the Appeals Board jurisdiction to review a preliminary hearing order. See K.S.A. 1997 Supp. 44-534a.

Claimant was employed as a building engineer for the respondent from January 1, 1995, through October 17, 1997. Claimant was in charge of maintenance of an office building managed by the respondent. Richard Beauchamp, respondent's president and claimant's supervisor, testified claimant was terminated on October 17, 1997, for reasons not associated with claimant's alleged health problems.

During claimant's direct testimony, he indicated he had spent 85 percent of his time while employed by the respondent working in dusty conditions above the ceiling tile of the office building. However, after Mr. Beauchamp testified that claimant did not spend 85 percent of his time working above the ceiling tiles, claimant changed his testimony and indicated he had to spend the majority of his time working in the dusty working conditions.

Claimant testified he had numerous health problems which included and were not limited to chronic sinus infections, nose bleeds, sore throat, lack of sleep, and anxiety attacks. Claimant attributed those health problems to the dusty environment at work. Medical treatment records were introduced and admitted into evidence at the preliminary hearing that indicated claimant had been treated for those or similar health problems going back to 1979.

The medical records also indicated that claimant had been treated since 1994 by his family physician, Lyle W. Brooks, M.D., for chronic sinusitis, chronic bronchitis, hypertension, anxiety disorder, dizziness, congestion, and breathing dysfunction. In 1997, claimant saw Dr. Brooks some 5 times for complaints of various health problems including the problems he claims are related to the work environment while employed by the respondent. However, Dr. Brooks's medical records do not indicate that claimant attributed any of those problems to his work until January 7, 1998. This was after claimant was terminated by the respondent.

The medical records also indicate that one of claimant's health problems was diagnosed as caused by cigarette smoking. Dr. Brooks diagnosed tobacco use disorder on October 6, 1997. Claimant testified, at the preliminary hearing, he still was smoking a pack and one-half of cigarettes per day.

The Appeals Board finds the Administrative Law Judge's preliminary hearing Order that denied claimant medical and temporary total disability compensation should be affirmed. The Appeals Board concludes the preliminary hearing record as a whole proves claimant suffered and was treated for the same health conditions before he was employed by respondent as he is seeking treatment for now. The Appeals Board also finds claimant's testimony questionable in regard to the amount of dust claimant was exposed to while he was employed by the respondent. Mr. Beauchamp, respondent's president and

claimant's immediate supervisor, contradicted claimant's testimony that he had to spend 85 percent of his working time in dusty conditions. Mr. Beauchamp testified he had an office in the same building where claimant worked and that the condition of the building was not dusty.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Jon L. Frobish's May 12, 1998, preliminary hearing Order should be, and is hereby, affirmed in all respects.

**IT IS SO ORDERED.**

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

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BOARD MEMBER

c: Darla J. Lilley, Wichita, KS  
Kendall R. Cunningham, Wichita, KS  
Jon L. Frobish, Administrative Law Judge  
Philip S. Harness, Director