

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

<b>JAMES MORALES</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 230,761
<b>SYNERGY CONSTRUCTION COMPANY</b>	)	
Respondent	)	
AND	)	
	)	
<b>TRAVELERS PROPERTY CASUALTY</b>	)	
Insurance Carrier	)	

**ORDER**

Respondent appeals from a preliminary hearing Order rendered by Administrative Law Judge Robert H. Foerschler on April 30, 1998.

**ISSUES**

The two issues on appeal are as follows: (1) whether claimant suffered accidental injury arising out of and in the course of his employment; and (2) whether claimant gave timely notice as required by K.S.A. 44-520.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and considering the arguments, the Appeals Board concludes that the Order by the ALJ should be affirmed.

Claimant testified that he injured his back on January 6, 1998, while pulling up carpet from a rental home. Respondent disputes this testimony in part because there were no witnesses and in part because of a notation in the records of the chiropractor claimant saw the next day, January 7, 1998. The notes make a reference to "2 months" of "low back." Taken in context, this vague reference does not convincingly contradict claimant's testimony. First, the same notation also refers to "carpet" and "yesterday." Claimant acknowledges he may have mentioned some earlier problems but testifies that he had nothing like what he experienced after pulling the carpet. The Board finds the evidence does establish claimant sustained an injury arising out of and in the course of his

employment.

Claimant testifies that he notified his supervisor the day after the accident that he injured his back from pulling carpet at work. Respondent disputes this testimony on the basis of the supervisor's testimony that claimant mentioned back problems but did not mention the injury occurred at work. The ALJ obviously accepted the testimony of the claimant whom he observed. In addition, even the supervisor acknowledges that he was told later that same week that the claimant thought the back injury occurred while pulling carpet at work. The Board finds the evidence does establish claimant gave notice as required by K.S.A. 44-520.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Robert H. Foerschler on April 30, 1998, should be, and the same is hereby, affirmed.

**IT IS SO ORDERED.**

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

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BOARD MEMBER

c: Rian F. Ankerholz, Overland Park, KS  
Bryce Moore, Overland Park, KS  
Robert H. Foerschler, Administrative Law Judge  
Philip S. Harness, Director