

Conversely, respondent requests the Appeals Board to affirm the Administrative Law Judge's decision that benefits should be denied because the dog bite was not related to claimant's employment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record, considering the briefs, and hearing the arguments of the parties, the Appeals Board makes the following findings and conclusions:

On December 15, 1997, the date respondent's dog bit the claimant, claimant was employed as a deputy sheriff working in the job as a canine handler. When claimant and the dog were not on duty performing law enforcement job responsibilities, claimant was required to care for the dog at his personal residence.

On the date of the accident, the police dog assigned to claimant escaped from his kennel. Claimant found the dog and brought the dog into his house to stay until he could repair the dog's kennel. At that time, one of the two dogs owned by the claimant came into the house. Claimant's dog immediately attacked the police dog and a fight broke out between the dogs. Claimant attempted to separate the dogs and, while making this attempt, the police dog bit claimant's left middle finger. The dog bite resulted in a puncture wound and a fracture to claimant's left middle finger that required medical treatment.

At the regular hearing, the parties stipulated that claimant suffered a 25 percent permanent partial impairment to his left middle finger as a result of the dog bite.

The Administrative Law Judge found claimant was not on duty when the dog bite occurred and the dog bite had no causal connection with his employment. The Appeals Board disagrees with this finding.

The Appeals Board acknowledges that both the police dog and claimant were at claimant's personal residence when the police dog bit the claimant. Neither the claimant nor the police dog were performing their law enforcement job duties at the time of the injury. But the Appeals Board finds claimant was "in the course of" his employment because one of claimant's job responsibilities was to care for the police dog. Therefore, the dog bite occurred while the employee was at work performing a service assigned by the employer. Likewise, the dog bite "arose out of" claimant's employment because the act of separating the police dog, during a fight with another dog, was an obligation or responsibility of the assigned job duty of caring for the police dog.¹

The Appeals Board concludes the Administrative Law Judge's finding that the dog-bite injury to claimant's left middle finger did not arise out of and in the course of his employment with respondent should be reversed. Claimant is, therefore, awarded a 25 percent permanent partial disability to the left middle finger for 7.5 weeks as stipulated by the parties. The respondent is also ordered to pay all authorized medical expenses, unauthorized medical

¹ See Brobst v. Brighton Place North, 24 Kan. App. 2d 766, Syl. ¶1, 955 P.2d 1315 (1997).

expenses up to the statutory maximum, and future medical treatment upon application and approval of the Director.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the February 9, 1999, Award entered by Administrative Law Judge Pamela J. Fuller that denied claimant's request for workers compensation benefits is reversed and an award of compensation is hereby entered as follows:

WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Dwayne E. Peoples, and against the respondent, Hamilton County Sheriff's Department, and its insurance carrier, Employers Mutual Insurance Company, for an accidental injury which occurred December 15, 1997, and based upon an average weekly wage of \$522.82.

Claimant is entitled to 7.5 weeks permanent partial disability compensation at the rate of \$348.56 per week for a total award of \$2,614.20 for a 25% permanent partial disability of the left middle finger, which is all due and owing and is ordered paid in one lump sum, less any amounts previously paid.

Respondent is ordered to pay all authorized medical expenses and unauthorized medical expenses up to the statutory maximum.

Future medical treatment shall be provided upon application and approval of the Director.

All other orders contained in the Award are adopted by the Appeals Board.

IT IS SO ORDERED.

Dated this ____ day of September 1999.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Robert A. Anderson, Ellinwood, KS
- James M. McVay, Great Bend, KS
- Pamela J. Fuller, Administrative Law Judge

DWAYNE E. PEOPLES

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DOCKET NO. 231,168

Philip S. Harness, Director