

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

JERI M. MITCHELL)	
Claimant)	
VS.)	
)	Docket No. 231,576
STATE FARM INSURANCE COMPANY)	
Respondent)	
AND)	
)	
CNA RISK MANAGEMENT)	
Insurance Carrier)	

ORDER

Respondent appeals from a preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes on June 29, 1998.

ISSUES

Respondent contends that claimant has failed to establish that she suffered accidental injury arising out of and in the course of her employment and has failed to establish that notice was timely given. Respondent contends that claimant was therefore not entitled to either authorized or unauthorized medical benefits.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes that the ALJ's Order for medical treatment and for reimbursement of unauthorized medical expense should be affirmed.

Claimant worked as a mail/file clerk or senior mail/file clerk since December 1994. She alleges a series of injuries including injuries in September 1996, October 1997, February 1998, and March 1998. The alleged injuries are to her upper extremities, shoulder, neck, and back. She attributes the symptoms primarily to filing activities which included overhead lifting and sometimes large files.

After reviewing the file, the Board concludes claimant's testimony, if believed, establishes both compensable injury and notice. Treating physicians have recommended

restrictions and, more recently, have recommended referral for orthopedic evaluation. Although it is unclear on some occasions whether claimant gave notice simply of the symptoms or also specifically attributed them to her work, it appears in general that claimant, according to her testimony, related the symptoms to her work. Certainly she testified that she did so on the most recent occasion in March 1998. Respondent has not at this point produced evidence to the contrary.

Respondent has produced evidence indicating claimant has, on numerous occasions, suffered similar symptoms prior to her employment for respondent. Claimant testified that the symptoms had essentially resolved and she was not suffering symptoms at the time she went to work for respondent. Respondent also introduced evidence tending to challenge claimant's credibility. The ALJ, who observed claimant testify, accepted her testimony and awarded benefits. The Appeals Board generally defers to that judgement of credibility and on that basis affirms the decision.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order entered by Administrative Law Judge Nelsonna Potts Barnes on June 29, 1998, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of August 1998.

BOARD MEMBER

c: Roger A. Riedmiller, Wichita, KS
D. Steven Marsh, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director