

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

FRANKIE EVANS)	
Claimant)	
VS.)	
)	Docket No. 231,762
EDWARDSVILLE MANOR)	
Respondent)	
AND)	
)	
INSURANCE COMPANY STATE OF PENNSYLVANIA)	
Insurance Carrier)	

ORDER

Respondent appeals from the preliminary hearing Order of June 16, 1998, wherein Administrative Law Judge Julie A. N. Sample granted claimant temporary total disability compensation and medical treatment under the authorized care of Dr. Gregory E. Walker, or his referrals, until further order of the court.

ISSUES

- (1) As claimant failed to provide notice to respondent of an accidental injury within 10 days as is required by K.S.A. 44-520, was there just cause for claimant's failure to provide said notice?
- (2) Did claimant suffer a subsequent and intervening accident on or about June 1, 1998, and if so, is this subsequent injury the cause for claimant's ongoing symptomatology and need for medical care?
- (3) Did the Administrative Law Judge err in granting claimant medical treatment and temporary total disability compensation in this matter?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

Claimant suffered an injury while working for respondent on January 28, 1998, while she and a coworker, Daryl Rice, were lifting a resident. When the resident fell, claimant attempted to catch him, experiencing a pulling in her left arm, neck, and upper back. Claimant complained to Mr. Rice about her back and shoulder at that time.

Claimant anticipated that the condition would improve. However, the next day claimant's arm started hurting. Within three or four days, she began experiencing electric shocks running down her arm.

Claimant did not seek medical treatment immediately but waited several days anticipating that the condition would improve. When the condition did not improve, claimant scheduled an appointment with her personal physician, Dr. Vinaya Koduri, on February 3, 1998. Claimant acknowledged by February 3, 1998, she knew she was in need of medical treatment. She saw Dr. Koduri again on February 6, 1998, and a third time on February 12, 1998. At that time, claimant realized she was having a significant problem and ultimately reported the condition to her employer on February 17, 1998. It was acknowledged that this is beyond the 10 day time limit set by K.S.A. 44-520 for providing notice to respondent of an accident.

K.S.A. 44-520 mandates notice to respondent of an accidental injury within 10 days of the date of accident. If the claimant fails to provide said notice, then claimant must provide just cause as to why she failed to provide notice within the 10 day time limit. If just cause is shown, it will extend the notice time to 75 days from the date of accident.

In discussing her failure to notify the respondent in a timely fashion, the claimant provided several explanations. First, claimant testified that she thought the condition would improve on its own. When this failed to occur, claimant said she was reluctant to provide notice to respondent because she was afraid she would be terminated from her employment. While the Appeals Board has rejected these types of allegations in the past, there is some justification in this record for claimant's concern. Claimant suffered a work-related, accidental injury in 1990. After advising her then employer, not her current employer, of her workers compensation claim, claimant was terminated within two to three days of providing notice. This past experience understandably caused her to pause when contemplating whether notice should be given regarding the current accidental injury.

In addition, claimant was told by Kim (last name unknown) that she would be fired if she filed a workers compensation claim. This Kim was a charge nurse working for respondent but is no longer employed with respondent. Kim apparently provided this

information to claimant some time shortly before the February 17, 1998, contact claimant had with Betty Brown, respondent's representative in the business office,.

While claimant's testimony regarding Kim's comments is somewhat ambiguous, it is, nevertheless, uncontradicted.

When just cause is at issue, several factors must be considered in determining what is and is not justified action on a claimant's part.

Although this is not an exhaustive list, some factors which should be considered are:

- (1) The nature of the accident, including whether the accident occurred as a single, traumatic event or developed gradually.
- (2) Whether the employee is aware they have sustained either an accident or an injury on the job.
- (3) The nature and history of claimant's symptoms.
- (4) Whether the employee is aware or should be aware of the requirements of reporting a work-related accident, and whether the respondent has posted notice as required by K.A.R. 51-13-1. See Russell v. MCI Business Services, Docket No. 201,706 (October 1995).

The Kansas legislature, when it inserted "just cause" into the statute, intended that an employee establish a reasonable and appropriate explanation for failing to give notice of an accident within 10 days. If proven, then the employee would not be barred from obtaining workers compensation benefits.

In this instance, claimant knew she had suffered a traumatic event on the date of accident, but she had hoped that the condition would resolve itself. However, by February 3, 1998, when she began going to Dr. Koduri, claimant was aware that she had a physical problem associated with this injury. Claimant's reluctance to notify respondent of her injury was justified by her past termination and also by her conversations with Kim, the charge nurse.

After considering the evidence in this matter, the Appeals Board finds, in this instance, that claimant has shown just cause for failing to notify respondent within 10 days of her accidental injury. Therefore, claimant's failure to notify respondent within 10 days will not defeat her claim for workers compensation benefits.

Respondent also contends claimant suffered a subsequent and intervening accident on June 1, 1998, while claimant was again lifting a patient. While there is evidence that this incident occurred, there is no medical evidence to support respondent's position as no medical care was authorized as a result of the June 1, 1998, incident. Therefore, the Appeals Board has no information upon which to base a decision regarding the severity

of claimant's injury on June 1, 1998, and how it may or may not have effected claimant's original injury from January 28, 1998. Therefore, respondent's attempts to deny claimant benefits for the January incident as a result of an intervening accident must fail.

Respondent further contends that the Administrative Law Judge erred in ordering both medical treatment and temporary total disability compensation. These are nonjurisdictional issues under K.S.A. 1997 Supp. 44-551, as the Administrative Law Judge has authority under K.S.A. 1997 Supp. 44-534a to provide both medical care and temporary total disability compensation. The Appeals Board will not accept jurisdiction of these issues at this time.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Julie A. N. Sample dated June 16, 1998, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of August 1998.

BOARD MEMBER

c: Joseph R. Ebbert, Kansas City, KS
Stephen P. Doherty, Kansas City, KS
Julie A. N. Sample, Administrative Law Judge
Philip S. Harness, Director