

FINDINGS OF FACT AND CONCLUSIONS OF LAW**Findings of Fact**

After reviewing the record compiled to date, the Appeals Board finds the Preliminary Decision should be affirmed.

(1) The claimant, Robert D. Cozadd, testified that he felt a pinch in his low back on April 3, 1998, while working on a gearbox for Berkel & Co. Contractors, Inc. After the incident, Mr. Cozadd continued to work for approximately one hour until the end of his shift. Shortly after the incident, he felt his back muscles tightening. When he arrived home, he spent the evening lying down.

(2) The next day, which was a Saturday, Mr. Cozadd's symptoms worsened. That evening he sought medical treatment at a hospital emergency room.

(3) On April 7, 1998, Mr. Cozadd presented Berkel & Company with a written claim for workers compensation benefits. The claim form was signed by Danielle Berkel, who is the company's safety officer and the person in charge of handling work-related injuries.

(4) Because he had previously undergone two laminectomies by Dr. Kenneth L. Wertzberger, Mr. Cozadd returned to the doctor on April 7, 1998, seeking treatment for his back. In July 1998, Dr. Wertzberger recommended that Mr. Cozadd see Dr. Mark Bernhardt to determine if he should have a spinal fusion with instrumentation, a procedure that Dr. Wertzberger does not perform.

(5) On April 14, 1998, Dr. Wertzberger wrote St. Paul Insurance Company. That letter indicates Mr. Cozadd was experiencing a new symptom that he did not have in the past, pain down the interior left thigh. Also, the doctor wrote that the pain began while Mr. Cozadd was working.

(6) Mr. Cozadd's present need for medical treatment is directly related to the April 3, 1998, incident at work.

Conclusions of Law

(1) An accidental injury is compensable under the Workers Compensation Act even where the accident only serves to aggravate a preexisting condition.¹ The test is not

¹Odell v. Unified School District, 206 Kan. 752, 481 P.2d 974 (1971).

whether the accident causes the condition, but whether the accident aggravates or accelerates the condition.²

(2) After observing Mr. Cozadd testify, Judge Foerschler found his testimony credible and found that Mr. Cozadd's work activities, at the very least, aggravated his back condition. Considering both Mr. Cozadd's testimony and Dr. Wertzberger's medical records, the Appeals Board agrees. Therefore, the Appeals Board affirms the finding that Mr. Cozadd sustained personal injury by accident arising out of and in the course of his employment.

(3) Because Mr. Cozadd provided written claim to Berkel & Company on April 7, 1998, Berkel had notice of the accidental injury within 10 days of its occurrence as required by K.S.A. 44-520.

(4) As provided by the Act, preliminary hearing findings are not binding but subject to modification upon a full hearing on the claim.³

WHEREFORE, the Appeals Board affirms the Preliminary Decision dated September 24, 1998, entered by Administrative Law Judge Robert H. Foerschler.

IT IS SO ORDERED.

Dated this ____ day of November 1998.

BOARD MEMBER

c: Shon Qualseth, Lawrence, KS
Kristine A. Purvis, Overland Park, KS
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director

²Woodward v. Beech Aircraft Corp., 24 Kan. App. 2d 510, 949 P.2d 1149 (1997).

³K.S.A. 1997 Supp 44-534a(a)(2).