

Claimant indicated that several of the boxes struck him about the head, shoulders and arms. It is unclear whether claimant was knocked to the floor, but he did recall being dizzy and disoriented. Approximately five to ten minutes later, three supervisors entered the trailer and decided that claimant needed additional training in how to properly load the tractor-trailer. Claimant was then sent to a different trailer, under the supervision of Roderic Mitchell, respondent's trainer, whom he worked with for approximately 45 minutes.

While in the original trailer, claimant did not mention to any of the supervisors that he had been injured. Claimant also failed to indicate to Mr. Mitchell that he suffered a work-related injury. Mr. Mitchell denied noticing anything unusual about claimant. Claimant did not seem fatigued, dizzy or disoriented. Mr. Mitchell noticed no bruises, cuts or abrasions of any type on claimant's head, face or body. After claimant had been working with Mr. Mitchell under his supervision and training for approximately 30 or 45 minutes, the training concluded and claimant left, saying that he would see Mr. Mitchell the next day. At no time did claimant make any mention of a work-related accident. Claimant also failed to request any type of medical treatment from respondent.

The next day, October, 7, 1998, claimant went to the Research Medical Center Emergency Room in Kansas City, Missouri. X-rays were taken and claimant was examined by an emergency room physician identified as Gregg Minion, M.D. The medical reports of October 7, 1998, indicate claimant's head injury was not serious, he was diagnosed with a possible upper back strain and cervical strain. There is no indication in the October 7 report that this was related to or stemmed from a work-related injury. On October 9, 1998, claimant talked to Vince Hamilton, a supervisor, and a gentleman named Tom, last name unknown, regarding the injury. He received medical treatment October 7, 22, and 27, 1998. Claimant had also received medical treatment after an automobile accident several years before. However, claimant described the earlier automobile accident as involving his low back, while this injury involved his upper back, middle back and shoulders. The medical reports give no indication of any cuts, bruises or external injuries. Claimant explained this by saying that the x-rays taken at that time indicated the bruising was internal only and did not show on the surface. Claimant continued treatment but through the emergency room at Health Midwest on November 1, 1998. At that time, the medical report indicated that this was claimant's fourth visit to the emergency room because of his left shoulder, head and back complaints. Claimant was placed in an examination room and, when the doctor entered the room, he found claimant asleep on his stomach. When claimant awoke, he moved easily from his front to his back, displaying a normal range of motion of his left shoulder and back. The doctor noted in the medical report at that time that he doubted claimant had any continued pain.

The medical report does indicate claimant was capable of returning to work October 9, 1998. In a letter of October 23, 1998, respondent informs claimant a light duty position is available but they had neither heard from claimant nor received any documentation regarding claimant's status. When asked, at preliminary hearing, if he had returned to work, claimant advised he had not because taking the medication and riding

the bus made him dizzy or drowsy, and he was unable to stand and function well. There were no restrictions in any of the medical reports preventing claimant from returning to work. When asked why claimant did not tell the emergency room staff of the accident involving the boxes, he alleged that he did tell them of the boxes falling and striking him, and cannot explain why they failed to include them in the medical reports.

Claimant was asked why he did not report the accident to the three supervisors who entered the trailer immediately after the accident occurred, and he stated that they did not appear concerned about the accident and, because of that, he was not going to discuss it with them. Claimant did not explain how the supervisors were to be concerned about an accident they had not been advised of.

In proceedings under the Workers Compensation Act, the burden of proof shall be on the claimant to establish his or her right to an award of compensation by proving the various conditions upon which his or her right depends by a preponderance of the credible evidence. See K.S.A. 1996 Supp. 44-501 and K.S.A. 1998 Supp. 44-508(g).

K.S.A. 1998 Supp. 44-508(g) defines burden of proof as being:

“Burden of proof” means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party’s position on an issue is more probably true than not true on the basis of whole record.

Claimant alleges accidental injury on October 6, 1998. However, the first three supervisors claimant met were not advised of an accidental injury just moments after it had allegedly occurred. In addition, moments later, claimant was referred to Roderic Mitchell for additional training and made no comment to Mr. Mitchell about any work-related injury. Also, Mr. Mitchell failed to notice anything unusual about claimant. At the end of the training period, claimant simply said that he would see Mr. Mitchell the next day, and left.

The next day, when claimant went to the emergency room, he failed to advise the emergency room doctors that this was a work-related injury. The medical notes from October 7, 1998, note no bruises, cuts or abrasions about claimant’s head, face, shoulders or arms.

It is difficult to imagine a claimant being struck by several boxes, weighing 40 to 50 pounds, with no outward physical signs of trauma being noticed by any of the respondent’s supervisors or by any of the hospital emergency room personnel. In addition, the November 1, 1998, examination discloses certain inconsistencies about claimant’s complaints. Claimant fell asleep in the examining room while lying on his stomach. When awakened by the examining doctor, he turned from his stomach to his back, with no restrictions or limitations of any kind. This is contrary to the range of motion limitations found during claimant’s examination. Even though claimant had substantial complaints of

pain, the examining room doctor noted on the examination chart that he doubted that claimant had continued pain.

After reviewing the evidence, the Appeals Board finds claimant has failed to prove accidental injury arising out of and in the course of his employment on the date alleged. Therefore, the Order of Administrative Law Judge Robert H. Foerschler dated March 31, 1999, should be reversed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Robert H. Foerschler dated March 31, 1999, should be, and is hereby, reversed, and an order for benefits is denied claimant, Johnny J. Williams, against respondent, RPS. Inc., for an alleged injury on October 6, 1998.

IT IS SO ORDERED.

Dated this ____ day of May 1999.

BOARD MEMBER

c: Johnny J. Williams, Kansas City, MO
Timothy G. Lutz, Overland Park, KS
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director