

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

DENISE DECKER)	
Claimant)	
VS.)	
)	Docket No. 239,083
UNITED PARCEL SERVICE)	
Respondent)	
AND)	
)	
LIBERTY MUTUAL INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Claimant appeals the February 25, 2000, Award of Administrative Law Judge Julie A. N. Sample. Claimant was awarded a 10 percent functional impairment to the left upper extremity at the forearm, and respondent was granted credit for the temporary total disability compensation previously paid at the Missouri weekly rate of \$513.01. Oral argument was held on August 18, 2000.

APPEARANCES

Claimant appeared by her attorney, Leah Brown Burkhead appearing for Keith L. Mark of Mission, Kansas. Respondent and its insurance carrier appeared by their attorney, James K. Blickhan of Kansas City, Missouri.

RECORD AND STIPULATIONS

The record and stipulations set forth in the Award of the Administrative Law Judge are adopted by the Appeals Board for the purposes of this award.

ISSUES

- (1) What is the nature and extent of claimant's injury?

- (2) Was temporary total disability compensation paid to claimant and, if so, at what rate? Additionally, what, if any, credit is respondent entitled to under K.S.A. 1996 Supp. 44-525?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary record filed herein, the Appeals Board finds that the Award of the Administrative Law Judge should be affirmed. The Appeals Board agrees with the analysis of the Administrative Law Judge as set forth in the Award.

The Administrative Law Judge awarded claimant a 10 percent functional impairment to the left upper extremity at the forearm. This impairment was in line with the opinions of both Lanny W. Harris, M.D., claimant's treating physician, and Lynn D. Ketchum, M.D., the court appointed independent medical examiner.

The Administrative Law Judge rejected the opinion of P. Brent Koprivica, M.D., finding that Dr. Koprivica had assessed claimant a 20 to 25 percent permanent partial impairment at the level of the forearm. However, a review of Dr. Koprivica's testimony shows that this 20 to 25 percent functional impairment was assessed to claimant following the Missouri interpretations of the AMA Guides to the Evaluation of Permanent Impairment. When Dr. Koprivica was questioned about the use of the Guides under the mandate of the Kansas legislature, he acknowledged that claimant's impairment to the left upper extremity at the forearm would only be 15 percent. This rating is more in line with the opinions expressed both by Dr. Harris and by Dr. Ketchum and provides further support for the Award of the Administrative Law Judge.

Additionally, it was noted that claimant was originally paid temporary total disability compensation at the Missouri rate of \$513.01 per week. The applicable Kansas rate for this date of injury would be \$338 per week. The Administrative Law Judge in the Award granted claimant temporary total disability compensation at the Kansas rate. The Appeals Board affirms that finding and further affirms the fact that K.S.A. 1996 Supp. 44-525 allows for a credit to the respondent for any overpaid temporary total disability compensation benefits against any additional disability benefits due and owing in the award.

Claimant further claimed that she had not received all of the temporary benefits allegedly paid. That issue was not addressed by the Administrative Law Judge. Instead, the Administrative Law Judge noted in the Award that any shortfall in amounts due and owing would be handled through appropriate post-award motions. As that issue was not decided by the Administrative Law Judge, under K.S.A. 1999 Supp. 44-555c, it is not properly before the Workers Compensation Appeals Board for review.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Julie A. N. Sample dated February 25, 2000, should be, and is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of September 2000.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Leah Brown Burkhead, Mission, KS
- James K. Blickhan, Kansas City, MO
- Julie A. N. Sample, Administrative Law Judge
- Philip S. Harness, Director