

work because of her back injury. Therefore, respondent argues claimant failed to provide notice of accident within 10 days or establish just cause for failure to provide notice within 75 days as required by K.S.A. 44-520.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Appeals Board finds that claimant has proved her repetitive work activities caused her back injury. Further, claimant's back symptoms continued to worsen as she performed the repetitive work activities through her last day worked of January 4, 1999. The preliminary hearing established that claimant specifically reported to the respondent's nurse on December 23, 1998, that the work was causing her back problems to worsen.

Claimant established through her testimony that in October 1998 her back became symptomatic as she continued to work in the confined area of the tail cone performing repetitive work activities. She first sought medical treatment for her back symptoms through her own family physician on October 9, 1998. Claimant missed work because of the back problems on October 13 through October 15, 1998. Her family physician wrote claimant an excuse from work for those dates.

The respondent contends the medical records do not support claimant's claim that her back problems were work related until she reported to respondent's nurse on December 23, 1998. But Donna St. Clair, D.O., one of claimant's family physicians, noted during claimant's follow-up visit on October 23, 1998, that claimant's back pain was so bad at work she had to leave work. Dr. St. Clair also noted it would be better for claimant to take one or two weeks off because she was a sheet metal worker. This indicates that the work was at least an aggravating factor at that time.

Finally, claimant testified that on December 23, 1998, her back became so painful that she was unable to continue work and reported to the nurse crying because of the pain. At that time, respondent's nurse filled out an accident report indicating that claimant was making a workers compensation claim for her continuing back problems. Respondent then took claimant off work on January 5, 1999, and placed her on a leave of absence because claimant's family physician had prescribed a narcotic for the severe back pain.

In regard to the notice issue, the preliminary hearing record established the respondent took claimant off work because of her work-related back injury on January 5, 1999, with her last day worked of January 4, 1999. On December 23, 1998, claimant reported to respondent's nurse that her work activities were causing her back problems. The Appeals Board finds claimant's last day worked of January 4, 1999, is claimant's appropriate accident date. See Berry v. Boeing Military Airplanes, 20 Kan. App. 2d 220, 885 P.2d 1261 (1994). Since claimant notified respondent on December 23, 1998, that her work activities were causing her back problems, claimant satisfied the notice requirement contained in K.S.A. 44-520.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Nelsonna Potts Barnes' April 9, 1999, preliminary hearing Order should be, and is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of June 1999.

BOARD MEMBER

c: Dale V. Slape, Wichita, KS
Terry J. Torline, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director