

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

<b>JERRY W. JOHNSON</b>	)
Claimant	)
VS.	)
	)Docket Nos. 241,836 & 242,699
<b>DOCTOR'S LAWN &amp; LANDSCAPE</b>	)
Respondent	)
AND	)
	)
<b>UNION INSURANCE COMPANY</b>	)
Insurance Carrier	)

**ORDER**

Respondent and its insurance carrier appealed the May 5, 1999 preliminary hearing Order entered by Administrative Law Judge Julie A. N. Sample.

**ISSUES**

Docket #241,836 is a claim for an accident that occurred on or about October 16, 1998 resulting in alleged injuries to claimant's left arm and shoulder. The respondent and its insurance carrier do not contest the shoulder injury, but they do contest that claimant injured either his hand or arm in that accident.

Docket #242,699 is a claim that was filed for injuries to both arms, both shoulders, the neck and back that allegedly occurred each and every workday through claimant's last day of work in either December 1998 or January 1999.

After conducting a preliminary hearing on May 3, 1999, the Judge awarded claimant temporary total disability and medical benefits for injuries to the left hand and arm. The respondent and its insurance carrier contend the Judge erred. They argue that claimant failed to prove (1) that he injured his left hand and arm at work, and (2) that he provided timely notice of the accident.

The issues before the Board on this appeal are:

1. Did claimant injure his left hand and arm while working for the respondent?
2. If so, did claimant provide the respondent with timely notice of the accidental injury?

**FINDINGS OF FACT**

After reviewing the record compiled to date, the Board finds:

1. Jerry Johnson began working for Doctor's Lawn & Landscape as a laborer in April 1997. On October 16, 1998, Mr. Johnson's left hand became tangled in a stand-behind lawnmower's hand controls. With his left hand and arm caught on the machine, the mower dragged Mr. Johnson for up to several minutes until he was able to free his hand. The parties stipulated that this accident occurred and to timely notice. Doctor's Lawn & Landscape and its insurance carrier do not dispute that this accident injured Mr. Johnson's left shoulder. But they do dispute that the accident injured Mr. Johnson's left hand or arm, or that the accident contributed to the carpal tunnel syndrome that has been diagnosed.
2. After the accident, Mr. Johnson first sought medical treatment from Dr. Gary L. Gustafson. Dr. Gustafson treated Mr. Johnson's shoulder for two weeks and then referred him to an orthopedic specialist, Dr. John A. Gillen II. Dr. Gillen prescribed physical therapy, injections, medications, and restricted Mr. Johnson to light duty.
3. While on light duty, Mr. Johnson continued working for the landscaping company doing planting, trimming, digging, and shoveling. While doing that work and while undergoing physical therapy, he began experiencing symptoms in his wrists and hands.
4. The record does not precisely identify the date that Mr. Johnson first began experiencing the symptoms in his hands and wrists. But, by the time that Mr. Johnson met with Dr. Gillen on January 4, 1999, his shoulder pain was better and his chief complaint was pain in the left arm especially at night. At that office visit, Dr. Gillen decided that an EMG was needed to determine if Mr. Johnson had a peripheral neuropathy, a compression neuropathy, or cervical radicular symptoms.
5. The EMG/NCV studies were done on January 15, 1999. Those studies indicated that Mr. Johnson had bilateral carpal tunnel syndrome, the left worse than the right. The insurance carrier's claims representative, Cindy Kudron, obtained a copy of the doctor's office notes, learned of the test results, and on February 11, 1999, wrote Dr. Gillen to ask questions about the carpal tunnel syndrome diagnosis. The services provided by Dr. Gustafson and Dr. Gillen were authorized by the landscaping company and its insurance carrier.
6. In his March 5, 1999 letter to Ms. Kudron, Dr. Gillen relates Mr. Johnson's carpal tunnel syndrome symptoms to his work at the landscaping company.
7. From the record compiled to date, the Board finds that Mr. Johnson last worked for Doctor's Lawn & Landscape on or about December 14, 1998, when Dr. Gillen restricted him from all work.

**CONCLUSIONS OF LAW**

1. The preliminary hearing Order should be affirmed.
2. The Board finds that it is more probably true than not that Mr. Johnson developed bilateral carpal tunnel syndrome from the work that he did for Doctor's Lawn & Landscape.
3. The landscaping company's insurance carrier had notice of the carpal tunnel injury by February 11, 1999. The knowledge of the company's workers compensation insurance carrier, in this instance, is imputed to the landscaping company. The Board finds that notice was timely as Mr. Johnson was not aware that he had sustained an injury to his left arm, apart from the October lawnmower incident, until Dr. Gillen had determined the source of the symptoms. Mr. Johnson did not report his arm symptoms to the landscaping company within 10 days of his last day of work. But, because Mr. Johnson was not aware that he had sustained a work-related injury to his hands and wrists, the Board finds that just cause existed to extend the notice period to 75 days from his last day of work on or about December 14, 1998.<sup>1</sup> The Board finds the insurance carrier's notice and knowledge of the carpal tunnel injury within that 75 days satisfies the Workers Compensation Act's notice requirements.
4. As provided by the Act, preliminary hearing findings are not final but subject to modification upon a full hearing on the claim or at a later preliminary hearing.<sup>2</sup>

**WHEREFORE**, the Appeals Board affirms the May 5, 1999 preliminary hearing Order entered by Judge Julie A. N. Sample.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of June 1999.

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BOARD MEMBER

c: Michael W. Downing, Kansas City, MO  
Mark A. Buck, Topeka, KS  
Julie A. N. Sample, Administrative Law Judge  
Philip S. Harness, Director

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<sup>1</sup> See K.S.A. 44-520.

<sup>2</sup> K.S.A. 1998 Supp. 44-534a(a)(2).