

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

**MARY JOHNSON**

Claimant

VS.

**EMERSON ELECTRIC COMPANY**

Respondent

Self-Insured

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Docket Nos. 241,991 & 241,992

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**ORDER**

Claimant appeals from a preliminary hearing Order entered by Administrative Law Judge Jon L. Frobish on July 29, 1999.

**ISSUES**

Claimant's Application for Review states that the Order is appealed on the grounds that the ALJ exceeded his jurisdiction. The Application for Review does not state in what respect the claimant contends the ALJ exceeded his jurisdiction. The Order denies the requested medical treatment but does not state a reason. Neither party has filed a brief.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the evidence, the Appeals Board concludes claimant has not met her burden of proving her injury, the injury for which she currently seeks medical treatment, arose out of and in the course of her employment. As a result, the Order should be affirmed.

This case involves two separately docketed claims. In Docket No. 241,992, claimant alleges accidental injury on August 26, 1996, through the present. In Docket No. 241,991, claimant alleges accidental injury on April 29, 1998, through the present.

Respondent admits that claimant sustained a compensable back injury on August 26, 1996. Respondent provided medical treatment for the August 1996 accident through Dr. Gregory H. Mears. Dr. Mears provided treatment on three dates and after the last date, September 23, 1996, claimant was to call Dr. Mears back. When she did not call, Dr. Mears presumed the problem had cleared up and that she had reached maximum medical improvement. The evidence presented at the preliminary hearing indicates that in fact claimant returned to work and continued to perform work activities that involved bending, twisting, reaching, and lifting. The uncontradicted testimony is that the work activities caused ongoing back symptoms. Medical records from 1997 also show ongoing back problems.

On April 29, 1998, claimant again injured her back at work. She caught her foot on a chair leg and fell. She testified she reported the incident to her supervisor and the next day to the department head. Claimant also testified that after this accident and as she continued to work, she had conversations with her supervisors about her work and the problems with her back. She advised them that certain activities would make her back hurt. Winding wire and applying the tape were activities that she told her supervisor were hurting her back. On occasion her back hurt enough that she had to go home.

In 1999, respondent began requiring that claimant work 10-hour days. At about the same time, claimant went to see Dr. Bradley H. Barrett. Dr. Barrett's notes of February 22, 1999, describe claimant's condition as an acute and recurrent lumbosacral strain. The note refers to an injury over the weekend but also mentions claimant's work:

Pt hurt her back over the weekend. She wasn't really lifting anything, just normal day to day activities. But she can hardly bend over. It hurts to twist and bend. She has to do a lot of twisting at work. She picks a motor up to her L, does something in the station in front of her and then passes it off to the R. This is very uncomfortable for her. Of course she has a rheumatological disease of some sort and she's had this sort of pain in her back in the past.

In March 1999, claimant was given restrictions against working over 40 hours per week. This doctor's note, from Dr. Barrett, stated the restriction was due to heart disease and arthritis. Respondent would not accommodate this restriction and claimant's last day of work for respondent was March 10, 1999.

At the preliminary hearing, respondent raised several defenses. Respondent stated it assumed the injury in 1996 had reached maximum medical improvement. Respondent also contended claimant had not given timely notice or made timely written claim for the 1998 injury. Respondent also asserted, based on Dr. Barrett's reference to injury at home, that claimant suffered an intervening accident at home in February 1999. Finally, respondent asserted, again based on Dr. Barrett's records, that the condition from which claimant now suffers is a rheumatological disease and a heart disease. Respondent argues the condition, therefore, is not one caused by claimant's work.

The Board's jurisdiction is limited in appeals from a preliminary hearing. The Board has authority to review allegations that the ALJ exceeded his jurisdiction. K.S.A. 44-551. This includes review of the issues identified in K.S.A. 44-534a as jurisdictional. Those issues are : (1) whether claimant suffered an accidental injury; (2) whether the injury arose out of and in the course of the employee's employment; (3) whether notice is given;(4) whether timely written claim is made; or (5) whether certain defenses apply. In this case, the ALJ has not indicated how or whether he has ruled on any of these issues. At the close of the evidence, the ALJ questioned whether claimant needed medical treatment. If the decision to deny benefits is based on a conclusion that claimant does not need medical treatment, that conclusion is not subject to review by the Board at this stage of the proceedings. If the

decision is based on other issues, raised by respondent, the decision is reviewable. The Board will review the jurisdictional issues.

As to the jurisdictional issues, the Board finds and concludes:

1. Claimant suffered accidental injury. This conclusion is based on the uncontradicted testimony given by claimant.
2. Claimant has failed to prove that her current injury, the injury for which she is now seeking medical treatment, arose out of and in course of her employment.

Dr. Barrett's records of February 22, 1999, refer to a rheumatological disease. The records do not otherwise mention a rheumatological disease. The records had earlier referred to a lumbar strain. The leave slip of March 8, 1999, then states it is due to heart disease and arthritis. There is no suggestion that the heart disease is work related. In context, it is not clear whether the arthritis is a rheumatoid arthritis.

Claimant's counsel refers, on the record, to a report from Dr. King. He states he is asking the ALJ to order respondent to provide the treatment recommended by Dr. King. Claimant's counsel also advised the ALJ that the report is attached to the letter of intent sent by claimant's counsel and then asked the ALJ if it is necessary to introduce the report as an exhibit. The ALJ responded: "We already have it." Unfortunately, the report from Dr. King is not attached to the letter of intent. It is not included in the ALJ's files as an attachment to the letter of intent or otherwise. Only a copy of the return receipt for the certified mailing is attached to the letter of intent. The report from Dr. King also is not introduced as an exhibit to the hearing.

Based on the evidence before the Board, the Board concludes claimant has not met her burden of proving that her injury, the injury producing the current symptoms, arose out of and in the course of employment.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Jon L. Frobish on July 29, 1999, should be, and the same is hereby, affirmed.

**IT IS SO ORDERED.**

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

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BOARD MEMBER

c: Patrick C. Smith, Pittsburg, KS

**MARY JOHNSON**

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**DOCKET NOS. 241,991 & 241,992**

Edward D. Heath, Jr., Wichita, KS  
Jon L. Frobish, Administrative Law Judge  
Philip S. Harness, Director