

respondent with timely notice of the alleged accidental injury. Therefore, they request the Board to deny claimant's request for benefits.

Conversely, claimant requests the Board to affirm the Award.

The issues before the Board on this appeal are:

1. Did claimant sustain personal injury by accident arising out of and in the course of employment with respondent?
2. If so, did claimant provide respondent with timely notice of the accidental injury?
3. If so, what is the nature and extent of claimant's injury and disability?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Board finds and concludes:

1. The Award should be affirmed.
2. The Board finds and concludes that it is more probably true than not that claimant permanently aggravated the degenerative disk disease in her low back from performing her work duties and from undergoing physical therapy that was being administered as treatment for her work-related injuries.
3. Claimant is 5'4", weighs between 100 and 110 pounds, and has a history of low back complaints. The medical records introduced into evidence indicate that as early as March 1998 claimant saw one of the company doctors, making back complaints that she related to her job. That information was sent to Cynthia Garner, respondent's human resources manager.
4. In approximately June 1998, claimant began working as a blow mold operator, a job that is physically demanding as it required claimant to push and pull pallet jacks carrying loads weighing approximately 1,000-1,200 pounds. The medical notes indicate that claimant told one of her treating physicians, Dr. Eden Wheeler, that she began experiencing back pain when she began that work.
5. In early October 1998, claimant slipped at work while pushing a squeegee. At that time, claimant experienced a burning sensation in her right leg and groin. Claimant did not believe she needed medical treatment and continued working. During the month of October, claimant continued to perform her regular duties as a blow mold operator and her leg symptoms progressively worsened.
6. On approximately November 5, 1998, claimant reported her leg symptoms to respondent as her leg was now bothering her both at work and at home. Respondent

referred claimant to the company clinic for treatment. On approximately November 10, 1998, claimant's supervisor prepared an accident report that indicated claimant's leg complaints were caused by repeated pushing and pulling of Gaylords (pallet jacks) and by using the right leg as a main stress point.

7. On November 6, 1998, claimant saw one of the company doctors and reported inner thigh discomfort in the right leg that she related to her work. After that appointment, respondent placed claimant on lighter duties.

8. Claimant returned to the company clinic on November 16, 1998. At that visit, claimant saw a different doctor who determined that claimant's leg symptoms were not related to work. The doctor released claimant to full duties and told her to see her personal physician. Claimant then consulted her personal physician who referred her on to Dr. Eden Wheeler.

9. According to claimant, she did not handle the pallet jacks after approximately November 4, 1998. Claimant continued to perform light duty until approximately March 2, 1999, when respondent allegedly could no longer accommodate her. That was the last time that claimant worked for respondent in any capacity.

10. Claimant first saw Dr. Wheeler on February 10, 1999. The doctor noted that claimant's back ached and that she experienced occasional pain and other symptoms down her posterior thigh. The doctor ordered traction.

11. According to claimant, she had very little back pain when she first saw Dr. Wheeler. But after the doctor changed her physical therapy and placed her in traction, claimant's back complaints flared. In a May 1999 letter to respondent's attorney, Dr. Wheeler wrote that claimant's degenerative disk disease had been possibly aggravated by either her altered gait or the physical therapy that had been prescribed for treating claimant's right hip.

12. Dr. Wheeler prescribed epidural injections that resolved most, if not all, of claimant's leg symptoms. The doctor then referred claimant to Dr. Robert J. Takacs to address her degenerative disk disease. In early November 1999, Dr. Takacs operated on claimant's low back and performed a fusion and graft at the L5-S1 intervertebral level.

13. The only doctors who testified in this proceeding were Dr. Wheeler and Dr. P. Brent Koprivica, who was hired by claimant for purposes of evaluating claimant in this proceeding. In summary, Dr. Wheeler stated that she could not relate claimant's back problems to the October 1998 incident. But Dr. Wheeler did acknowledge that claimant's pushing and pulling the heavy pallet jacks is the type of work activity that would likely aggravate degenerative disk disease. On the other hand, Dr. Koprivica testified that he believed claimant had sustained cumulative trauma and permanent injury to her low back from her work activities. Moreover, Dr. Koprivica testified that claimant had a 25 percent whole body functional impairment from her work-related injuries.

14. The Board agrees with the Judge that claimant injured her low back performing her physically demanding work. The Board finds the appropriate date of accident for this cumulative trauma injury is November 4, 1998, the approximate date that claimant last worked her regular job of blow mold operator and, therefore, last moved the heavy pallet jacks.¹ The Board also notes that any aggravation to claimant's back that she experienced during physical therapy is also compensable as it resulted from treatment of her work-related injury.²

15. The Board concludes that claimant provided respondent with timely notice of the accidental injury. The notice to respondent on November 5, 1998, that she was experiencing symptoms in her right leg that she attributed to the repeated pushing and moving of the heavy pallet jacks placed respondent on notice that claimant had sustained a work-related accident or injury. This is especially true as respondent had information from the company doctor as early as March 1998 that claimant attributed certain back complaints to her work.

16. The Board has held, and continues to hold, that an injured worker is not required to itemize or list each and every injured body part in its notice to an employer. Rather, the worker must provide an employer such information from which a reasonable person would conclude that either an accident or an injury has occurred. When such information is provided, the employer may then begin investigating the accident, including the nature and extent of injury.

17. As November 4, 1998, is the appropriate date of accident for this cumulative trauma injury, the notice claimant provided to respondent on November 5, 1998, is well within the 10 days required by the Workers Compensation Act.³

18. The Board affirms the Judge's finding that claimant has sustained a 25 percent functional impairment as a result of the cumulative trauma injury to her back. That functional impairment rating is uncontradicted. The Board likewise affirms the Judge's award of a 25 percent permanent partial general disability. Claimant has returned to work and has abandoned any request for a work disability (a permanent partial general disability greater than the functional impairment rating).⁴

19. Because this is a compensable claim, claimant is entitled to receive the temporary total disability benefits set forth in the May 16, 2001 Award, payment of all reasonable and

¹ See *Treaster v. Dillon Companies, Inc.*, 267 Kan. 610, 987 P.2d 325 (1999).

² See *Frazier v. Mid-West Painting, Inc.*, 268 Kan. 353, 995 P.2d 855 (2000).

³ See K.S.A. 44-520 (Furse 1993).

⁴ See claimant's brief to the Board at page 11. Also see K.S.A. 1998 Supp. 44-510e.

necessary medical treatment incurred by claimant for treating her leg symptoms and the aggravation of the degenerative disk disease, and unauthorized medical benefits up to the \$500 statutory maximum. Claimant may also seek future medical benefits by making proper application to the Director of the Division of Workers Compensation.

20. The Board adopts the findings and conclusions set forth in the Award that are supported by the record and not inconsistent with the above.

21. The parties are reminded that medical charts contain many documents that have little, if any, evidentiary value. For future reference, the parties are encouraged to introduce only those records that are material to the issues. In this instance, the parties introduced over one hundred pages of medical records that failed to warrant specific reference in the parties' briefs.

AWARD

WHEREFORE, the Board affirms the May 16, 2001 Award entered by Judge Foerschler.

IT IS SO ORDERED.

Dated this ____ day of November 2001.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Mark E. Kelly, Attorney for Claimant
- Mark E. Kolich, Attorney for Respondent and its Insurance Carrier
- Robert H. Foerschler, Administrative Law Judge
- Philip S. Harness, Workers Compensation Director