

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

<b>EFRAIM MURR</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 242,413
<b>SUNSET MANOR, INC.</b>	)	
Respondent	)	
AND	)	
	)	
<b>AMCO INSURANCE COMPANY</b>	)	
Insurance Carrier	)	

**ORDER**

Claimant appeals Administrative Law Judge Steven J. Howard's July 31, 2000, Award. The Appeals Board heard oral argument on January 24, 2001.

**APPEARANCES**

Claimant appeared by his attorney, William L. Phalen of Pittsburg, Kansas. Respondent and its insurance carrier appeared by their attorney, Garry W. Lassman of Pittsburg, Kansas.

**RECORD AND STIPULATIONS**

The Appeals Board has considered the record and has adopted the stipulations listed in the Award.

**ISSUES**

The claimant appeals from the Administrative Law Judge's Award that denied claimant workers compensation benefits. The Administrative Law Judge found that claimant failed to prove he injured his low back while working for the respondent on January 4, 1999.

On appeal, claimant contends he proved by a preponderance of the credible evidence that he injured his low back while lifting a patient at work on January 4, 1999. Claimant requests the Appeals Board to reverse the Administrative Law Judge's Award and to enter an order awarding claimant workers compensation benefits including a 7 percent permanent partial general disability.

In contrast, respondent contends the Administrative Law Judge's Award should be affirmed. Respondent argues claimant failed to prove his low back injury was a result of a January 4, 1999, work-related accident while employed by the respondent.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record, considering the briefs, and hearing the parties' arguments, the Appeals Board finds the Award should be affirmed.

The Appeals Board finds the Administrative Law Judge's findings and conclusions, as expressed in the Award, are accurate and supported by the record. It is not necessary to repeat those findings and conclusions in this Order. The Appeals Board hereby approves those findings and conclusions and adopts them as its own.

In particular, the Appeals Board finds claimant's version as to how and when he injured his low back at work is suspect. Claimant testified he injured his low back while he was working for the respondent on the 3 p.m. to 11 p.m. shift on January 4, 1999. He claims his low back injury occurred as he was lifting a 300-pound patient. Claimant also testified that after the lifting incident he discussed the injury with the charge nurse, Debbie Walker.

But the Appeals Board finds the evidence as a whole contradicts and creates significant doubt as to the truthfulness of claimant's version of the facts. First, claimant was not working on the alleged January 4, 1999, accident date. Second, Debbie Walker, the charge nurse whom claimant allegedly notified, testified that claimant never told her that he had injured his low back while lifting a patient at work. Third, Ms. Walker did testify, however, that claimant told her he injured his back but that conversation occurred on January 3, 1999, just before they started the 3 p.m. work shift. Also, Ms. Walker testified that claimant did not tell her that he injured his back at work but told her that he injured his back the night before when his Blazer broke down in the respondent's parking lot and he had to push the Blazer into a parking place. Fourth, the patient claimant testified he was lifting when he hurt his low back did not weigh 300 pounds as indicated by claimant but actually weighed only 189 pounds. Fifth, after claimant was told at the regular hearing that he had not worked on January 4, 1999, he then testified he must have hurt his back on January 3, 1999, when he did work. But both Ms. Walker and Ann Bennett, a coworker, testified that claimant was sliding on the ice in respondent's parking lot after his shift was over on January 3, 1999. Also, Ms. Walker, who provided a ride home for both Ms. Bennett and claimant after work on January 3, 1999, testified that when claimant got out of the car, he jumped a ditch and ran to his house, showing no adverse physical effects of the injury.

The Appeals Board also concludes there is nothing to indicate that either Ms. Walker or Ms. Bennett had any reason to fabricate a story to discredit the claimant. In fact, neither of these women came forward and told the respondent's management personnel about their experiences with claimant until they found out that claimant was alleging a work-related low back injury for either January 3, 1999, or January 4, 1999. Additionally, Ms. Walker testified that she considered claimant a friend.

The medical evidence contained in the record, when considered in its entirety, does indicate that claimant was treated for a low back problem that probably became symptomatic sometime during the first week of January 1999. But claimant's treating physician, William J. Sullivan, D.O., who saw claimant on five separate occasions for a lumbar strain, found overall that claimant's subjective complaints were out of proportion to the objective physical findings. An MRI examination of claimant's lumbar spine was within normal limits. On April 22, 1999, Dr. Sullivan determined that claimant's lumbar strain had resolved, claimant was at maximum medical improvement, and he was released to return to normal activity without restrictions.

The burden of proof, in a workers compensation proceeding, is placed squarely on the worker to prove by a preponderance of the credible evidence his or her entitlement to an award of compensation and to prove the various conditions on which that right depends.<sup>1</sup> The Appeals Board finds, as did the Administrative Law Judge, that claimant, in this case, failed to meet that burden of proof and claimant's request for workers compensation benefits is denied.

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Steven J. Howard's July 31, 2000, Award should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February 2001.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

- c: William L. Phalen, Pittsburg, KS
- Garry W. Lassman, Pittsburg, KS
- Steven J. Howard, Administrative Law Judge
- Philip S. Harness, Director

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<sup>1</sup> See K.S.A. 1998 Supp. 44-501(a) and K.S.A. 1998 Supp. 44-508(g).