

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

<b>JOHN M. THOMPSON, JR.</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 242,961
<b>EARTHGRAINS</b>	)	
Respondent	)	
AND	)	
	)	
<b>PACIFIC EMPLOYERS INSURANCE COMPANY</b>	)	
Insurance Carrier	)	

**ORDER**

Respondent and its insurance carrier appealed the preliminary Order for Compensation dated September 2, 1999 entered by Administrative Law Judge Brad E. Avery.

**ISSUES**

Judge Avery ordered respondent and its insurance carrier to pay temporary total disability compensation and to provide medical treatment, specifically naming Dr. Sharon L. McKinney as the authorized treating physician. Respondent did not file a brief, but in its Application for Board of Appeals Review respondent raised the issue of whether claimant's injury arose out of and in the course of his employment.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record compiled to date, the Appeals Board finds the ALJ's order should be affirmed.

(1) The claimant, John M. Thompson, Jr., testified that he was first injured while working for respondent in December 1998.<sup>1</sup> That accident resulted in a torn anus. Thereafter, on April 10, 1999, claimant was lifting a box of product at Sam's Club to put it back on a rack when he felt a burning pain in his low back.<sup>2</sup> When Mr. Thompson returned to the depot he reported his injury to Bill Berry. Mr. Berry assigned Greg Stahl to help claimant with his route the rest of the day. Mr. Stahl did all the lifting.

---

<sup>1</sup> The December 3, 1998 accident is the subject of a separate claim bearing Docket No. 242,960.

<sup>2</sup> This April 10, 1999 accident is the subject of Docket No. 242,961.

- (2) When they next returned to the terminal claimant asked for treatment and was sent to Midwest Occupational Health Services, but when claimant arrived there they were closed.
- (3) Claimant called Mr. Berry and was instructed to return to the depot. He was then taken to the emergency room at Stormont-Vail Hospital. Claimant was taken off work and the following Monday he was seen by Dr. Frye.
- (4) Dr. Frye restricted claimant to part time light duty work. Respondent said they would accommodate claimant's restrictions by having him answer the telephone. But when claimant reported to work he was asked to resign in lieu of being terminated.
- (5) Dr. Frye also ordered physical therapy which claimant attended one time before respondent terminated its authorization of all treatment. Claimant's present need for medical treatment is directly related to the April 10, 1999, incident at work.
- (6) After observing claimant, Bobby Evarts, Donald Eastwood and Rick Wilson testify, Judge Avery found claimant's testimony credible and found claimant's work activities on April 10, 1999 to be the cause of his back condition. Considering both claimant's testimony and the medical records, the Appeals Board agrees. Therefore, the Appeals Board affirms the finding that claimant sustained personal injury by accident arising out of and in the course of his employment.
- (7) As provided by the Act, preliminary hearing findings are not binding but subject to modification upon a full hearing on the claim.<sup>3</sup>

**WHEREFORE**, the Appeals Board affirms the Order for Compensation dated September 2, 1999, entered by Administrative Law Judge Brad E. Avery.

**IT IS SO ORDERED.**

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

---

BOARD MEMBER

c: Billy E. Newman, Topeka, KS  
Douglas C. Hobbs, Wichita, KS  
Brad E. Avery, Administrative Law Judge  
Philip S. Harness, Director

---

<sup>3</sup> K.S.A. 1998 Supp. 44-534a(a)(2).