

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

<b>JESUS VIZCARRA</b>	)	
Claimant	)	
VS.	)	
	)	
<b>CORNELISON, INC.</b>	)	Docket Nos. 244,933
Respondent	)	244,934; 244,935
AND	)	
	)	
<b>FREMONT COMPENSATION</b>	)	
Insurance Carrier	)	

**ORDER**

Claimant appeals from a preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes on September 8, 1999.

**ISSUES**

The Administrative Law Judge found that claimant has proven that he suffered accidental injuries in these three consolidated cases, but she also found that claimant failed to give timely notice in any of the three cases. On appeal, claimant asks the Board to review the ALJ's finding on notice.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and considering the arguments, the Appeals Board concludes the ALJ's Order should be affirmed.

This case involves a direct conflict between testimony of claimant and the testimony of his supervisor, Mr. Andrew Snow. Claimant testified he notified Mr. Snow of his injuries and Mr. Snow testified claimant did not.

Claimant alleges injury to his right thumb, right eye, and right knee in three separate accidents. He testified he injured his thumb in April 1999 and the right eye in May 1999. As to the right knee, claimant's application for hearing alleges **injury** in April 1999 and each day working thereafter. He testified he first injured the right knee approximately one year before the preliminary hearing and then aggravated it again in April 1999. Although he had

some problems after the aggravation in April, he does not testify the work made it worse. In fact, he indicates the symptoms were better.

Claimant testified he notified Mr. Snow promptly of the thumb and right eye injuries. Claimant testified he notified Mr. Snow of the knee injury one year before the preliminary hearing but acknowledges he did not give notice of the aggravation to his knee in April 1999. In contrast, Mr. Snow testified claimant did not notify him of any of these injuries. Although Mr. Snow knew claimant had some problems with his knee, he did not know claimant had a work-related injury to his knee.

The ALJ had the opportunity to observe the witnesses testify. She accepted as true the testimony by Mr. Snow. In this case, credibility of the witnesses is the key question. The Board gives some deference to the ALJ's finding on credibility of witnesses she has seen testify. Doing so in this case, the Board concludes the Order by the ALJ should be affirmed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes on September 8, 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: Joseph Seiwert, Wichita, KS  
Christopher J. McCurdy, Wichita, KS  
Nelsonna Potts Barnes, Administrative Law Judge  
Philip S. Harness, Director