BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

JUAN GARCIA	)	
Claimant	)	
VS.	)	
	)	Docket Nos. 244,980
OTTAWA TRUCK CORPORATION	)	& 258,859
Respondent	)	
AND	)	
	)	
ZURICH U.S. INSURANCE COMPANY	)	
ROYAL & SUNALLIANCE INSURANCE COMPANY	)	
BERKLEY RISK ADMINISTRATORS	)	
Insurance Carriers	)	

ORDER

Respondent and one of its insurance carriers, Royal & SunAlliance Insurance Company (Royal), appeal the January 29, 2003 Award of Administrative Law Judge Julie A.N. Sample. Respondent and Royal contest the date of accident utilized in Docket No. 258,859, arguing that claimant instead suffered either an accident on June 20, 1998, resulting in additional injury, or a series of accidents through June 27, 2001, his last day worked with respondent. Board Member Julie A.N. Sample has recused herself from this matter as she was the Administrative Law Judge in this matter. Appeals Board Member Pro Tem Jeff Cooper has been appointed in her place for the purposes of this appeal. The Appeals Board (Board) heard oral argument on September 17, 2003.

APPEARANCES

Claimant appeared by his attorney, Derek R. Chappell of Ottawa, Kansas. Respondent and its insurance carrier Zurich U.S. Insurance Company (Zurich) appeared by their attorney, Clinton D. Collier of Kansas City, Missouri. Respondent and its insurance carrier Royal appeared by their attorney, Joseph C. McMillan of Overland Park, Kansas. Respondent and its insurance carrier Berkley Risk Administrators (Berkley) appeared by their attorney, Eric T. Lanham of Kansas City, Kansas.

RECORD AND STIPULATIONS

The Board has considered the record and adopts the stipulations contained in the Award of the Administrative Law Judge.

ISSUES

Docket No. 244,980

What is the nature and extent of claimant's injury and disability? There is also a dispute regarding the apportionment of the award in this matter. That will, in part, be determined by the Board's determination of the date of accident in Docket No. 258,859.

Docket No. 258,859

(1) What is the appropriate date of accident in this dispute?

(2) Did claimant suffer accidental injury on the date or dates alleged?

(3) Did claimant's accidental injury arise out of and in the course of his employment with respondent on the date or dates alleged?

(4) Did claimant provide timely notice of accident?

(5) Did claimant provide timely written claim in this matter?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary file contained herein, the Board finds that the Award of the Administrative Law Judge should be affirmed.

The Award sets out findings of fact and conclusions of law in considerable detail and it is not necessary for the Board to repeat those herein. The Board adopts those findings and conclusions as its own.

While there are multiple issues presented in this dispute, the primary concern is the appropriate date of accident in Docket No. 258,859. The Administrative Law Judge determined that claimant's onset of symptoms on December 15, 1999, constitutes an accident arising out of and in the course of his employment and awarded claimant benefits based upon that date. The Board finds the evidence supports that conclusion. While there are other possible accident dates, including a series of accidents from June 20, 1998 (the date of accident in Docket No. 244,980) or a series of accidents from December 15, 1999, through claimant's last day worked, June 27, 2001, the evidence supports a finding that claimant suffered a traumatic incident on December 15, 1999, resulting in additional injury.

The Board understands that claimant testified that his condition continued to worsen through his last day. However, based upon the medical evidence, the Board finds this to be no more than a natural consequence of the December 15, 1999 injury. Additionally,

claimant testified that after leaving respondent, his back continued to worsen, even though claimant was no longer employed.

The Administrative Law Judge set forth in considerable detail findings and conclusions in this matter. The Board in affirming the Award of the Administrative Law Judge adopts those findings and conclusions as its own with regard to the above listed issues.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Julie A.N. Sample dated January 29, 2003, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of October 2003.

_____
BOARD MEMBER

_____
BOARD MEMBER

_____
BOARD MEMBER

c: Derek R. Chappell, Attorney for Claimant
Clinton D. Collier, Attorney for Respondent and its Insurance Carrier (Zurich)
Joseph C. McMillan, Attorney for Respondent and its Insurance Carrier (Royal)
Eric T. Lanham, Attorney for Respondent and its Insurance Carrier (Berkley)
Kenneth Hursh, Administrative Law Judge
Paula S. Greathouse, Director