

On July 14, 1999, claimant filed an Application for Hearing in this case and alleged he injured his low back, left lower extremity, and ribs lifting a furnace at work on February 3, 1999. At claimant's attorney's request, he was examined and evaluated by Truett L. Swaim, M.D., on August 10, 1999. Claimant related to Dr. Swaim that he had injured his back at work on February 27, 1999. At the September 2, 1999, preliminary hearing, claimant testified he hurt his back on Wednesday of the second week of January 1999 or January 13, 1999. Claimant also testified that he notified his immediate supervisor, Jim Stiles, who incidentally no longer works for the respondent, that he injured his back lifting the furnace at work. The supervisor then told claimant that he had to go to his own doctor for treatment.

The first medical treatment claimant testified he sought for the alleged back injury was on February 3, 1999, at the Olathe Medical Center emergency department. Claimant gives no explanation as to why he did not seek medical treatment for the alleged back injury before February 3, 1999. Claimant testified he sought treatment on February 3, 1999, because of severe pain in his back and also pain radiating down his left leg. Additionally, claimant testified he gave the medical personnel at the emergency department a history of hurting his back at work on January 13, 1999.

But the Olathe Medical Center's medical records, admitted into evidence at the preliminary hearing, indicate that claimant reported an acute onset of severe left upper quadrant and left flank abdominal pain shortly after eating pizza. Claimant also related a six month history of intermittent similar pain but not as severe. After claimant was examined and diagnostic testing was completed the emergency physician's assessment was abdominal pain unclear etiology maybe gastritis. Claimant was also required to complete a questionnaire that asked him whether he had any past medical problems or hospitalizations. Claimant left that particular section blank. Approximately two months before this emergency visit, claimant had presented himself for treatment to the Truman Medical Center-East emergency room with similar abdominal pain in the left lower quadrant radiating to the umbilicus and back to his chest. At that time, claimant gave a history of the pain being present on and off for the last two months usually brought on by drinking alcohol.

After the February 3, 1999, Olathe Medical Center visit, claimant was referred to Steven D. Kaster, M.D., a physician with Consultants In Gastroenterology, P.C. Dr. Kaster's medical records do not contain a history of a work-related back injury. Dr. Kaster had claimant undergo an upper endoscopy and colonoscopy. Those diagnostic tests found claimant with two polyps in the colon. Also, an earlier CT scan had shown cysts on claimant's pancreas.

After the Olathe Medical Center visit and the follow-up by Dr. Kaster for the gastrology problem, claimant next sought treatment with his personal chiropractic, James P. Foltz, D.C. The doctor's records were admitted into evidence at the preliminary hearing and indicated he had treated claimant since December 5, 1990, and on numerous

occasions the treatment included claimant's low back. On February 27, 1999, Dr. Foltz saw claimant for a low-back sprain. Dr. Foltz's medical records show that he treated claimant for low-back pain on February 27, 1999; March 5, 1999; April 16, 1999; May 3, 1999; and June 18, 1999. Claimant testified he gave Dr. Foltz a history of injuring his back at work in the second week of January 1999. But Dr. Foltz's records do not show such a history. In fact, Dr. Foltz's note of the April 16, 1999, treatment indicates the low-back pain is from a fall on November 16, 1997. The claimant, however, three days before the September 2, 1999, preliminary hearing, on August 30, 1999, returned to Dr. Foltz and requested that he add to his medical records that claimant had given him a history that he hurt his back at work. Dr. Foltz added to his records a note that he initialed and dated August 30, 1999, that reads, "This was the result of fall while lifting furnace on the job location 2nd week of January 1999."

The medical records dated May 5, 1999, from the emergency department of Lafayette Regional Health Center of Lexington, Missouri, were also admitted into evidence at the preliminary hearing. Those records indicate claimant sought treatment for low to mid-back pain that had an initial onset of May 2, 1999. The nurse's notes indicate claimant gave a history of back pain over the past year but denied any know injury. But claimant testified he gave the nurse a history that he had hurt his back in the second week of January of 1999 while working for the respondent. At that time, x-rays were taken of claimant's thoracic spine and left ribs. The x-rays revealed a healing fracture of the left seventh rib and minor spurring on the right of the thoracic spine.

In regard to the notice issue, respondent's operation manager, Bobbie Green, testified that during the time claimant's supervisor, Mr. Stiles, was employed by respondent she had never been notified by an employee that Mr. Stiles would not refer the employee for medical treatment as a result of a work-related injury. Claimant also testified he knew respondent was required to provide medical treatment for work-related injuries. Further, claimant testified he knew he could have requested authorized medical treatment from Ms. Green but failed to do so.

The Administrative Law Judge denied claimant's request for medical treatment finding the medical treatment records admitted into evidence cast a good deal of doubt on claimant's credibility. The Appeals Board agrees with the Administrative Law Judge's conclusion and finds it is possible a health care provider may fail on occasion to accurately record a history provided by the patient that his injury is related to his work. But it is not probable that four separate health care providers would all fail to record a history provided by the claimant that he was injured at work as argued by claimant.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Robert H. Foerschler's October 11, 1999, Preliminary Decision should be, and is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of December 1999.

BOARD MEMBER

c: Leah Brown Burkhead, Mission, KS
Steven J. Quinn, Kansas City, MO
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director