

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

TARA K. FLORENTIN)	
Claimant)	
VS.)	
)	Docket Nos. 231,856; 237,050;
KALMAR INDUSTRIES/OTTAWA TRUCK)	& 247,190
Respondent)	
AND)	
)	
ZURICH INSURANCE COMPANY and)	
SECURITY INSURANCE COMPANY OF HARTFORD))	
Insurance Carriers)	

ORDER

Respondent and Security Insurance Company of Hartford (Security Insurance) appealed the July 21, 2000 preliminary hearing Order entered by Administrative Law Judge Julie A. N. Sample.

ISSUES

Docket #231,856 is a claim for a December 16, 1997 accident. Docket #237,050 is a claim for a series of accidents from August through September 3, 1998. And Docket #247,190 is a claim for a May 20, 1999 accident and resulting injury to the left upper extremity and neck. Respondent's workers compensation insurance carrier at the time of the first two alleged accidents was Zurich Insurance Company. But the insurance carrier at the time of the latest alleged accident was Security Insurance.

After conducting a preliminary hearing on July 10, 2000, Judge Sample found that claimant sustained a new and separate accident on May 20, 1999, and, therefore, respondent and Security Insurance were responsible for providing claimant both medical and temporary partial disability benefits.

Respondent and Security Insurance contend Judge Sample erred. They argue that claimant's left upper extremity injury is the natural and probable consequence of the two earlier work-related accidents and, therefore, they argue that claimant did not sustain a new injury on May 20, 1999. In the alternative, respondent and Security Insurance argue that, if claimant did sustain a new accident, claimant only injured her left wrist and,

therefore, the Judge erred by awarding temporary partial disability benefits for a scheduled injury.

Conversely, claimant argues that on May 20, 1999, she injured her neck, left shoulder, left arm, and left hand. Claimant contends the preliminary hearing Order should be affirmed.

Respondent and Zurich Insurance Company argue that claimant did sustain a new accident on May 20, 1999, but that the Judge erred by awarding temporary partial disability benefits.

The only issues before the Appeals Board on this review are:

1. Did claimant sustain personal injury by accident arising out of and in the course of employment with respondent on May 20, 1999?
2. Did the Judge err by awarding claimant temporary partial disability benefits?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. After reviewing the record and the parties' arguments, the Appeals Board concludes the preliminary hearing Order should be affirmed. The Appeals Board adopts the findings and conclusions set forth in the Order.
2. Based on claimant's testimony, which the Appeals Board finds credible, claimant sustained a distinct accident on May 20, 1999, when she felt a pop in the back of her left hand while turning a nut. The incident satisfies the Workers Compensation Act's definition of "accident" as an undesigned, sudden and unexpected event usually manifested by force.

"Accident" means an undesigned, sudden and unexpected event or events, usually of an afflictive or unfortunate nature and often, but not necessarily, accompanied by a manifestation of force. . . .¹

Therefore, the Appeals Board concludes that claimant sustained personal injury by accident arising out of and in the course of employment with the respondent on May 20, 1999.

3. Claimant also testified that she was having ongoing symptoms in her neck and contends that the May 1999 incident aggravated a preexisting neck injury.

¹ K.S.A. 1998 Supp. 44-508(d).

4. Respondent and Security Insurance contend the Judge exceeded her jurisdiction by awarding temporary partial disability benefits. The Appeals Board disagrees.

Claimant contends that she aggravated her neck in the May 1999 accident. Therefore, at this juncture of the claim, claimant is alleging an “unscheduled” injury. The Appeals Board has held on numerous occasions that an administrative law judge has the authority to order temporary partial disability benefits at a preliminary hearing for “unscheduled” injuries. Therefore, the Judge has not exceeded her jurisdiction in determining that temporary partial disability benefits are appropriate. In an appeal from a preliminary hearing order, the Appeals Board does not have the authority to redetermine the nature and extent of claimant’s injury to determine whether claimant is or is not entitled to temporary partial disability benefits.

5. As provided by the Workers Compensation Act, preliminary hearing findings are not binding but subject to modification upon a full hearing on the claim.²

WHEREFORE, the Appeals Board affirms the July 21, 2000 preliminary hearing Order entered by Judge Sample.

IT IS SO ORDERED.

Dated this ____ day of September 2000.

BOARD MEMBER

c: Derek R. Chappell, Ottawa, KS
Ronald J. Laskowski, Topeka, KS
Wade A. Dorothy, Lenexa, KS
Julie A. N. Sample, Administrative Law Judge
Philip S. Harness, Director

² K.S.A. 1999 Supp. 44-534a(a)(2).