

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

<b>JUDY QUIGLEY</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 248,626
<b>DILLARD'S, INC.</b>	)	
Respondent	)	
AND	)	
	)	
<b>LIBERTY MUTUAL INSURANCE COMPANY</b>	)	
Insurance Carrier	)	

**ORDER**

Claimant appealed the September 15, 2000 Preliminary Decision entered by Administrative Law Judge Robert H. Foerschler.

**ISSUES**

Claimant alleges a series of repetitive mini-traumas that injured her back while working for respondent from February 10, 1998, through June 15, 1999. In the Preliminary Decision, which is the subject of this appeal, Judge Foerschler denied claimant's request for benefits on the basis that claimant failed to prove that her present medical condition was related to her former employment with respondent.

Claimant contends Judge Foerschler erred. Claimant argues that (1) the Judge ignored Dr. Edward J. Prostic's medical opinion that claimant injured her back while working for respondent and (2) Dr. Prostic's opinion was uncontroverted. Therefore, claimant contends the Judge exceeded his jurisdiction by denying the request for preliminary hearing benefits.

The only issues before the Appeals Board are:

1. Did claimant prove that she injured her back while working for respondent and that her present need for medical treatment is related to that injury?
2. If so, did claimant provide respondent with timely notice of the back injury?

**FINDINGS OF FACT**

After reviewing the record compiled to date, the Appeals Board finds:

1. Claimant began working for respondent on February 10, 1998. Upon commencing that employment claimant experienced low back symptoms. For the first four hours of the workday, respondent had claimant vacuum and do light dusting and cleaning. For approximately one to two hours per day, claimant would work on the dock helping to unload shipments of merchandise. Claimant contends that working for respondent aggravated her low back and, therefore, respondent should be responsible for providing her medical treatment and temporary total disability benefits.
2. Before commencing employment with respondent, claimant had a history of low back problems. In the 1980s, claimant had low back surgery performed by Dr. William O. Reed, Jr. Following surgery, claimant intermittently experienced low back symptoms. In fact, it appears that in September 1997 claimant saw a physician for such severe low back or hip pain that she was unable to bear weight.
3. Claimant worked for respondent through June 15, 1999, when she was involuntarily terminated. From August 31, 1999, through mid-March 2000, claimant worked for O'Reilly Auto Parts as a parts delivery driver. After delivering parts for approximately six and one-half months, claimant quit that job because of her back problems.
4. The record does not include the doctor's name, or that doctor's medical notes, whom it appears that claimant saw in September 1997 for severe low back or hip pain. The record also lacks the medical notes of Dr. Clifford Johnson whom claimant saw in July 1998 for back complaints. But the record does include a letter from Dr. Edward J. Prostic, who examined claimant in June 2000 (almost one year after claimant last worked for respondent), that states that he believes claimant injured her low back while working for respondent.

**CONCLUSIONS OF LAW**

1. This is a difficult case. Nevertheless, the Appeals Board affirms the Judge's finding that claimant failed to prove that her present back condition and need for medical treatment are related to her work for respondent. Claimant was experiencing episodes of severe pain before commencing work for respondent. Further, after leaving respondent's employ, claimant worked for another employer for approximately six and one-half months before quitting that job because of back problems. Admittedly, claimant experienced increased symptoms while working for respondent. But this record is unclear as to whether those increased symptoms constituted only a temporary flare-up or whether they were caused by additional injury.

2. The Workers Compensation Act places the burden of proof on injured workers to establish their right to compensation.<sup>1</sup> And that burden is to persuade the trier of facts by a preponderance of the credible evidence that the workers' position on an issue is more probably true than not when considering the whole record.<sup>2</sup>

3. Because the present record fails to establish that claimant's present need for medical treatment is related to an injury that she sustained while working for respondent, the request for preliminary hearing benefits should be denied. Because of that finding, the notice issue is moot.

4. As provided by the Act, preliminary hearing findings are not binding but subject to modification upon a full hearing of the claim.<sup>3</sup>

**WHEREFORE**, the Appeals Board affirms the September 15, 2000 Preliminary Decision entered by Judge Foerschler.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of November 2000.

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BOARD MEMBER

c: Elaine M. Eppright, Kansas City, MO  
Stephanie Warmund, Overland Park, KS  
Robert H. Foerschler, Administrative Law Judge  
Philip S. Harness, Director

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<sup>1</sup> K.S.A. 1999 Supp. 44-501(a).

<sup>2</sup> K.S.A. 1999 Supp. 44-508(g).

<sup>3</sup> K.S.A. 1999 Supp. 44-534a(a)(2).