

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

MONICA JOHNSTON)	
Claimant)	
VS.)	
)	Docket Nos. 236,156
BRADLEY KRASNE, D.D.S., and)	& 251,860
APPLEBEE'S)	
Respondent)	
AND)	
)	
CONTINENTAL CASUALTY COMPANY,)	
a.k.a. CNA, and SUPERIOR NATIONAL)	
INSURANCE GROUP)	
Insurance Carrier)	

ORDER

Respondent, Applebee's, and Superior National Insurance Group, its insurance carrier, appeal the March 10, 2000, Order of Administrative Law Judge Bruce E. Moore. Claimant was awarded medical treatment with 50 percent of her medical expenses ordered paid by Applebee's and Superior National Insurance Group in Docket No. 251,860. The other half of the medical expenses were assessed to Bradley Krasne, D.D.S., and Continental Casualty Company, a.k.a. CNA. After oral argument to the Board, the parties, by their letter of May 22, 2000, advised that all issues between claimant, Dr. Krasne and CNA Insurance Companies, in Docket No. 236,156, have been settled and are no longer before the Board for its consideration.

ISSUES

Respondent, Applebee's, contends claimant has failed to prove that she suffered accidental injury arising out of and in the course of her employment with Applebee's. That is the only issue before the Appeals Board at this time.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board finds as follows:

Claimant, a dental assistant with Dr. Krasne for five years, began developing bilateral hand and arm problems in early 1998, but first received medical treatment on approximately June 8, 1998. Claimant continued working for Dr. Krasne through July 16, 1998, at which time her employment with Dr. Krasne was terminated.

Claimant ultimately came under the care of orthopedic surgeon George L. Lucas, M.D., of Wichita, Kansas. Dr. Lucas concurred with the diagnosis of John T. Burton, M.D., of right wrist de Quervain's stenosing tenosynovitis, secondary to the overuse activities at her work.

After being terminated from Dr. Krasne's employment, claimant went to work for Applebee's restaurant. At Applebee's, claimant first worked part time as a waitress. Claimant testified those waitress activities caused her no physical difficulties. However, some time later, claimant was promoted to assistant manager trainee and her hours were increased to full time. While being trained as an assistant manager, claimant spent a short time, about one to two weeks, in the kitchen, working with tongs. Claimant testified that she had to use these tongs to pick up the meat products. This physical activity began causing claimant hand problems. When she reported the difficulties to her supervisors at Applebee's, they immediately modified her job duties and no longer required that she train with the tongs. Claimant stated this temporary situation with the tongs was the only time her job at Applebee's caused her any problems.

Claimant testified her management training with Applebee's continued without further incident. The physical activities involved in the management duties did not cause claimant any problems with her hands.

Claimant underwent surgery with Dr. Lucas for her de Quervain's condition on the right side on March 9, 1999. The surgery proved to be successful, and Dr. Lucas's records indicated claimant was doing "quite well." Claimant returned to work without restrictions and, at the time of preliminary hearing, continued working for Applebee's.

Claimant returned to Dr. Lucas in August of 1999, at about the same time she was training as an assistant manager and using the tongs. Claimant advised Dr. Lucas that the use of the tongs caused her pain. Dr. Lucas referred claimant to physical therapy at NovaCare and recommended that claimant use a splint.

Dr. Lucas testified that, after the surgery, claimant's de Quervain's problem resolved and she suffered no permanency from that condition. Dr. Lucas further stated in his letter of February 15, 2000, that he felt claimant's difficulties arose from her job with Dr. Krasne, the dentist, and that she sustained no additional injury while working at Applebee's.

Claimant also testified during preliminary hearing that, with the exception of the short period of time when she was using the tongs, her responsibilities at Applebee's caused her no physical problems.

The Administrative Law Judge in the Orders assessed half of claimant's ongoing medical expenses against Applebee's and half against Dr. Krasne.

The Appeals Board has, on many occasions, considered disputes between insurance companies as nonjurisdictional when appealed from a preliminary hearing. However, when a dispute exists between two respondents rather than two insurance companies, then the question becomes whether claimant suffered accidental injury arising out of and in the course of his or her employment with one or both of those employers. The question here is whether claimant's injury suffered at Dr. Krasne's employment was aggravated by her employment with Applebee's.

It is well established under the Workers Compensation Act in Kansas that, when a worker's job duties aggravate or accelerate an existing condition or disease, or intensify a preexisting condition, the aggravation becomes compensable as a work-related accident. Demars v. Rickel Manufacturing Corporation, 223 Kan. 374, 573 P.2d 1036 (1978).

However, where work-related factors only produce a temporary increase in symptoms, this is not considered to be a permanent aggravating factor for the purpose of proving whether claimant suffered accidental injury arising out of and in the course of his or her employment. See West-Mills v. Dillon Companies, Inc., 18 Kan. App. 2d 561, 859 P.2d 382 (1993).

Here, claimant's employment with Dr. Krasne caused her to develop de Quervain's. Her later employment with Applebee's, however, created only a temporary aggravation of claimant's symptoms with no aggravation of the actual underlying condition. Claimant's testimony supports this finding. In addition, the February 15, 2000, letter from Dr. Lucas states that claimant's difficulties arose from her job with Dr. Krasne, with no additional injury being suffered while working at Applebee's.

The Appeals Board finds that claimant's injuries arose as a result of her employment with Dr. Krasne. Therefore, the Order of Administrative Law Judge Moore, which assesses one-half of the costs of claimant's medical expenses to Applebee's and Superior National Insurance Group, should be reversed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Bruce E. Moore dated March 10, 2000, awarding half of claimant's medical expenses against Applebee's and its insurance carrier, Superior National Insurance Group, should be, and is hereby, reversed.

IT IS SO ORDERED.

Dated this ____ day of May 2000.

BOARD MEMBER

c: Michael L. Snider, Wichita, KS
Ronald J. Laskowski, Topeka, KS
D. Steven Marsh, Wichita, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director