

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

SAN JUANA MORALES

Claimant

VS.

IBP, INC.

Respondent,
Self-Insured

)
)
)
)
)
)
)

Docket No. 253,100

ORDER

Respondent appealed the September 21, 2000 preliminary hearing Order entered by Administrative Law Judge Brad E. Avery.

ISSUES

This is a claim for a series of repetitive mini-traumas from June 30, 1998, through January 30, 1999, that allegedly resulted in injury to the right upper extremity. After conducting a preliminary hearing on September 15, 2000, Judge Avery granted claimant's request for benefits.

Respondent contends Judge Avery erred. Respondent argues that claimant failed to prove that the Kienbock's disease in the right wrist was caused or aggravated by her work activities. Conversely, claimant contends that the preliminary hearing Order should be affirmed. Claimant argues that all the doctors who examined her believe that her work activities aggravated the Kienbock's disease and made it symptomatic.

The only issue before the Appeals Board on this review is whether the Kienbock's disease (avascular necrosis of the carpal lunate) in claimant's right wrist was either caused by, contributed to, or aggravated by the work that claimant performed for respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

1. The preliminary hearing Order should be affirmed.

2. Claimant began working for respondent in August 1997. While working for respondent, claimant developed pain in her right wrist as she repetitively used the right hand cutting and trimming pieces of meat.

3. After reporting the right wrist symptoms to respondent, the company referred claimant for medical treatment. As a result of the company's referrals, claimant eventually saw, among others, Dr. Lanny Harris and Dr. J. Mark Melhorn.

4. In medical notes dated April 29, 1999, Dr. Harris recorded that claimant's work was a factor in the cause of claimant's wrist problems. The doctor wrote, in part:

This patient [claimant] has been employed for quite some time, since 8/18/97, as brisket bone cleaner. It does involve a lot of repetitive use, twisting of her wrist. There was never any other history of an injury, and she has developed this condition over a period of time.

Kienbock's causes are unknown with absolute certainty, but the many theories behind that are repetitive micro trauma, one time trauma, or fracturing of the lunate. There may very well be spontaneous occurrences of Kienbock's, but many times these are thought to be related to some type of trauma.

It is my opinion that the repetitive nature of her work, the heaviness, has probably had something to do with the cause of this condition. There is certainly no way to prove any of that, but that would be my opinion, based on the knowledge and history of the Kienbock's. (Emphasis added.)

Those notes were forwarded to respondent's workers compensation examiner LaRae Smith.

5. In a letter to Ms. Carol Morales dated October 20, 1999, Dr. Melhorn advised that claimant's avascular necrosis of the lunate of the wrist was the result of a genetic predisposition and an aggravation from work activities. The doctor wrote:

In response to your letter of October 17, 1999. As shared during Juana Morales['] [claimant's] office visit of 8/31/99 and our phone call of 10/20/99. I believe that San Juana Morales has avascular necrosis of the lunate. **This is a result of a genetic predisposition and an aggravation from work activities.** (Emphasis added.)

6. In May 2000, claimant saw Dr. Robert L. Bassett. In his medical report, Dr. Bassett notes that claimant has Kienbock's in both wrists but only the right wrist is symptomatic at this time. The doctor also noted that the right wrist had a significantly greater collapse of

bone than the left wrist. The doctor, therefore, confirmed there was objective evidence that claimant's work may have caused the increased disease found in the right wrist. The doctor wrote:

The ulnar variation is a predisposition of the Kienbock's and it appears by history that **the repetitive motion of her job either aggravated for [sic] facilitated the actual microfractures which caused the fractures themselves.** Clearly this is a generic [sic] predisposition with the ulnar minus variance and there is a significant history of repetitive wrist trauma with the cutting to either cause or push the fracture over the edge.

...

... It is the right side that is symptomatic and the argument can be made that the pain and the symptomatology are associated with what could be conceived as **excessive use of the right wrist at work in the face of having Kienbock's disease** and she is left at this stage with a symptomatic right wrist and a relatively asymptomatic left wrist . . .

Added information for the record is that the **right side has significantly greater collapse than the left, indicating that the work may in fact have been associated with increased progression of the disease.** (Emphasis added.)

7. An injury is compensable under the Workers Compensation Act even where the accident only serves to aggravate a preexisting condition.¹ The test is not whether the accident causes the condition, but whether the accident aggravates, intensifies, or accelerates a preexisting condition.²

8. The Appeals Board affirms the Judge's finding that claimant sustained personal injury by accident arising out of and in the course of employment with respondent. Based on this record, the evidence is overwhelming that claimant's repetitive work activities more probably than not aggravated, and contributed to, the avascular necrosis in the right wrist.

WHEREFORE, the Appeals Board affirms the September 21, 2000 preliminary hearing Order entered by Judge Avery.

IT IS SO ORDERED.

¹ Odell v. Unified School District, 206 Kan. 752, 481 P.2d 974 (1971).

² Woodward v. Beech Aircraft Corp., 24 Kan. App. 2d 510, 949 P.2d 1149 (1997).

Dated this ____ day of November 2000.

BOARD MEMBER

c: Derek R. Chappell, Ottawa, KS
Bradley D. Thornton, Dakota City, NE
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Director