

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

TERESA L. BRAZIL)	
Claimant)	
VS.)	
)	Docket No. 253,906
BANK ONE CORPORATION)	
Respondent)	
AND)	
)	
KEMPER INSURANCE COMPANIES)	
Insurance Carrier)	

ORDER

Respondent appealed Administrative Law Judge Julie A. N. Sample's June 27, 2000, preliminary hearing Order.

ISSUES

Claimant alleges she injured her low back while employed by the respondent. She claims the low-back injury was the result of a series of accidents occurring between September 27, 1999, and November 15, 1999. Claimant requests that the respondent be ordered to provide her with medical treatment for her low-back injury through an orthopedic surgeon.

The Administrative Law Judge found claimant's low-back injury was related to her employment and ordered respondent to provide claimant with a list of three orthopedic physicians for claimant to select an authorized treating physician.

On appeal, respondent contends claimant failed to prove her low-back injury arose out of and in the course of her employment with respondent. Respondent's principle argument is that claimant failed to prove a causal connection between her low-back injury and her working conditions. Respondent argues that claimant simply developed pain in her low back as she was sitting in a chair at work. Respondent further argues that

claimant's low-back injury was a result of a risk personal to the claimant and, therefore, not compensable.¹

Conversely, claimant contends she proved her work activities aggravated, intensified, or accelerated a preexisting low-back condition. Claimant requests the Appeals Board to affirm the preliminary hearing Order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the parties' briefs, the Appeals Board makes the following findings and conclusions:

The Appeals Board finds the Administrative Law Judge's preliminary hearing Order should be affirmed. The Appeals Board does so for the reasons stated in the Administrative Law Judge's findings and conclusions and adopts them as its own.

The claimant testified she started having pain and discomfort in her lower extremities as she was sitting, reviewing mortgage files on November 15, 1999, while she was on an assignment for respondent in Beaumont, Texas. She had started her work day by leaving Kansas City on a 6:30 a.m. flight, arrived in Houston, Texas, and rode in a rental car two and one half hours to Beaumont, Texas. She then started immediately reviewing mortgage files at a mortgage bank in Beaumont, Texas. She was required to bend over and take each file from a stack on the floor, review each file, and then complete in writing a due diligence report for each file. Claimant would review thirty to forty files per day.

Because of the increasing pain and discomfort in her low back and legs, claimant had to leave her assignment in Beaumont, Texas, and return to Kansas City. Upon her return to Kansas City, she sought medical treatment and was eventually referred by her primary care physician Sharon E. Prohaska, M.D., to neurosurgeon Charles A. Clough, M.D. In a letter to Dr. Prohaska, dated May 4, 2000, Dr. Clough wrote, "I feel her problems are all related to the episode that she had down in Beaumont, Texas with her underlying spondylotic back changes." Claimant's medical treatment records indicate claimant's low back had preexisting mild lumbar spondylosis with multi-level degenerative disk disease.

The Appeals Board finds, as did the Administrative Law Judge, that claimant's work activities, specifically the act of sitting for extended periods of time, aggravated claimant's preexisting low-back condition and caused her low-back symptoms. In a workers compensation case, it has long been established, where a preexisting condition is

¹See Martin v. U.S.D. No. 233, 5 Kan. App. 2d 298, 615 P.2d 168 (1980).

aggravated or accelerated by a worker's usual work tasks, the resulting injury is compensable.²

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Julie A. N. Sample's June 27, 2000, preliminary hearing Order should be, and hereby is, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of September 2000.

BOARD MEMBER

c: James E. Martin, Overland Park, KS
Frederick J. Greenbaum, Kansas City, KS
Julie A. N. Sample, Administrative Law Judge
Philip S. Harness, Director

²See Claphan v. Great Bend Manor, 5 Kan. App. 2d 47, 611 P.2d 180, *rev. denied*, 228 Kan. 806 (1980).