

claimant advised that she experienced constant pain in her back and numbness in her hands, and that her fingers felt like she was wearing a glove and they felt thick.

Respondent contended that claimant was injured in the automobile accident and the hand numbness resulted from that accident, with no involvement from claimant's work. Claimant, however, testified that she spent a substantial portion of her day performing data entry on a computer and calculations on a calculator. Claimant testified these hand-intensive labors caused her hand problems to worsen over a period of several months.

Respondent presented several witnesses who worked in claimant's office who testified that claimant's description of the work duties was inaccurate. Respondent's witnesses all agreed that claimant spent no more than one to two hours a day performing data entry and work on the calculator. Additionally, respondent's witnesses denied that claimant ever advised them of any hand-related problems associated with her job. Claimant had testified she would, on a regular basis, stand and shake her hands when they became numb at work. Respondent's witnesses unanimously denied ever seeing claimant shaking her hands in the manner she described.

Claimant did not advise respondent that she was claiming carpal tunnel syndrome as a work-related injury until after she was diagnosed specifically with the carpal tunnel syndrome on August 11, 2000, by William M. Mallonee, M.D. Up to that time, claimant had considered the carpal tunnel syndrome to be, in some way, connected to either the car accident or her manner of sitting at her desk. She thought perhaps her poor posture was causing her arms to go to sleep.

In workers compensation litigation, it is claimant's burden to prove her entitlement to benefits by a preponderance of the credible evidence. See K.S.A. 44-501 and K.S.A. 44-508(g).

K.S.A. 44-520 requires that notice of an accidental injury be given to respondent within 10 days after the date of accident. The 10-day notice shall not bar proceedings for compensation if it is shown the claimant's failure to notify was due to just cause.

In this instance, claimant was aware of ongoing symptomatology, but had a justifiable reason in believing that it was, in some way, either related to her automobile accident or to her posture at work.

The Board has found in the past that there is just cause for failure to give notice within 10 days under K.S.A. 44-520 where the injury occurs gradually or where a worker does not realize the injury or illness is related to his or her work. Fleming v. Ridgeway Controls, Inc., WCAB Docket No. 244,331 (November 1999); Sauerwein v. Sedgwick County Area Educational Services Interlocal Coop (SCAES), WCAB Docket No. 233,967

(July 1999). In this instance, the Appeals Board finds that claimant failed to provide notice within 10 days as required by the statute. However, there was just cause for claimant's failure to provide said notice due to the confusion generated by the similar symptoms experienced after the automobile accident.

With regard to whether claimant actually suffered accidental injury, the Appeals Board looks to the medical reports of J. Mark Melhorn, M.D. Dr. Melhorn was appointed as an independent medical examiner by Judge Moore for the purpose of determining whether claimant's complaints were causally related to her work duties of data entry as opposed to the October 1999 motor vehicle accident. Dr. Melhorn, in his original report of January 25, 2001, viewed the motor vehicle accident as a temporary aggravation. He found claimant's body habitus, life style and the work activities as permanent aggravations contributing to claimant's carpal tunnel syndrome.

In a June 4, 2001, follow-up letter, Dr. Melhorn stated that he believed the motor vehicle accident did not cause claimant's carpal tunnel syndrome but may have represented a trigger resulting in some increased swelling to claimant's hands and wrists. That then made her preexisting carpal tunnel syndrome clinically apparent which claimant noted as she performed her work activities.

It is well established under the workers compensation law 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). The Appeals Board, therefore, finds based upon this limited record that claimant has proven that she suffered accidental injury arising out of and in the course of her employment resulting in her bilateral carpal tunnel syndrome. Claimant's testimony is sufficient to convince the Board for preliminary hearing purposes that her work-related duties aggravated her carpal tunnel syndrome. The Appeals Board, therefore, finds that the Order of the Administrative Law Judge granting claimant medical benefits for the treatment of her carpal tunnel syndrome should be affirmed.

Claimant was denied temporary total disability compensation as she is currently off work for treatment of the back injuries resulting from the car accident. That issue is not one over which the Board has jurisdiction on appeal from a preliminary hearing. See K.S.A. 44-534a and K.S.A. 44-551.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Bruce E. Moore, dated June 15, 2001, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of August 2001.

BOARD MEMBER

c: M. John Carpenter, Great Bend, KS
James M. McVay, Great Bend, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director