

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

JENNIFER HENLEY)	
Claimant)	
VS.)	
)	Docket No. 261,912
BOILERMAKERS NATIONAL APPRENTICE)	
Respondent)	
AND)	
)	
FIREMANS FUND)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier appeal from the preliminary hearing Order entered by Administrative Law Judge Steven J. Howard on March 7, 2001.

ISSUES

Respondent contends that claimant failed to prove that she suffered accidental injury arising out of and in the course of her employment and also failed to prove that timely notice of accident was given.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Board finds that the Order by the ALJ should be affirmed. Respondent presented evidence to dispute claimant's allegations both as to how she was injured and as to when she gave notice of her alleged accident. But the ALJ accepted claimant's testimony that she suffered a low back injury lifting and moving boxes at work on September 7, 2000, and that she gave notice of the work-related accident to one of her supervisors, Barbara Dunham, on Monday, September 11, 2000.

The ALJ had the opportunity to observe the testimony of the claimant and the other witnesses. The ALJ obviously found the claimant to be a credible witness and accepted her description of the events. The Board generally gives some deference to the ALJ's assessment of credibility of witnesses who have testified before the ALJ. After reviewing the record, the Board concludes it is reasonable to do so in this case and, therefore, affirms the decision of the ALJ ordering medical treatment benefits and temporary total disability compensation (TTD) as specified in the preliminary hearing Order.

Claimant, in her brief to the Board, attempts to raise an issue concerning the date TTD should commence. Although claimant acknowledges that this issue is not jurisdictional, claimant nevertheless asks the Board to determine if February 19, 2001 was the appropriate date to commence TTD benefits, suggesting benefits would be appropriate for certain periods of time that claimant was off work before February 19, 2001. This the Board cannot do. See K.S.A. 44-551 and K.S.A. 44-534a. In addition, the Board notes on pages 3 and 4 of the Transcript of the March 6, 2001 Preliminary Hearing that claimant only requested TTD from February 19, 2001.

THE COURT: . . . Claimant's requesting temporary total benefits from February 19, 2001, to date and continuing. The parties have agreed that in the event the claim is compensable and claimant's entitled to temporary total benefits the appropriate rate would be \$344.27.

Further, the parties have agreed that in the event additional medical care is needed and the claim is compensable, Dr. Ebelke would be an appropriate physician to provide that care.

I've received into evidence Claimant's Exhibit #1, a packet of information, and Respondent's Exhibit #A, an additional packet. Any other comments before claimant's testimony?

MR. MANSON: No, your Honor.

MR. HORNER: No.

This issue is, therefore, dismissed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order entered by Administrative Law Judge Steven J. Howard on March 7, 2001, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of May 2001.

BOARD MEMBER

c: William G. Manson, Kansas City, MO
Dennis L. Horner, Kansas City, KS
Steven J. Howard, Administrative Law Judge
Philip S. Harness, Director