

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

TINA M. LYLE)	
Claimant)	
VS.)	
)	Docket No. 262,358
PRESTIGE LITHO)	
Respondent)	
AND)	
)	
FIREMAN'S FUND INSURANCE COMPANY and AIG)	
Insurance Carriers)	

ORDER

Respondent and AIG, one of its insurance carriers, appealed the May 7, 2001 preliminary hearing Order entered by Administrative Law Judge Julie A. N. Sample.

ISSUES

In the various Applications for Hearing filed with the Division of Workers Compensation, claimant alleges a series of micro-traumas or overuse injuries that occurred from August 21, 2000, through November 7, 2000. In her applications, claimant alleges injuries to her right shoulder and both wrists.

After conducting a preliminary hearing on April 23, 2001, Judge Sample awarded claimant medical benefits after finding that claimant had sustained personal injury by accident arising out of and in the course of employment with respondent.

Respondent and its insurance carriers contend Judge Sample erred. They argue that claimant is not credible and, therefore, claimant failed to prove she injured herself while working for respondent. Respondent and its insurance carriers request the Board to reverse the Judge and deny the application for benefits.

Conversely, claimant contends the Judge's finding of compensability should be affirmed.

The only issue before the Board on this appeal is whether claimant sustained personal injury by accident arising out of and in the course of employment while working for respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Board finds and concludes:

The Board agrees with Judge Sample that claimant sustained personal injury by accident arising out of and in the course of employment with respondent. The Board adopts the findings and conclusions set forth by the Judge in the preliminary hearing Order. The Board finds it is more probably true than not that claimant injured her right shoulder by repetitively pulling on a faulty cabinet drawer and injured the left wrist through overuse.

Additionally, the Board finds that Dr. Anne S. Rosenthal's medical opinions support claimant's contention that she was injured at work. Claimant first saw and began treating with Dr. Rosenthal on November 20, 2000. In medical records from their second visit on November 21, 2000, the doctor records an impression of right shoulder impingement and left wrist pain secondary to overuse. By letter dated December 26, 2000, the doctor wrote respondent's insurance carrier AIG and advised that claimant's symptoms stemmed from the work that she performed for respondent. That letter reads, in part:

I do feel that Ms. Lyle's shoulder pain and wrist pain are coming from her work-related injury. She relates her pain starting with lifting up the plates and opening the heavy drawer she has to pull open 30-80 times per day. This is well delineated in my note from 11/20/00. I do feel that the pain she is experiencing is coming from the repetitive use of the arm that she is performing at work. . . . I do not want her doing any repetitive use of her arms at or above shoulder level, and I do not want her lifting the drawer which is causing her arm pain. . . .

The Board notes the testimonies of claimant's former coworkers Lynn Riddle and Randall Caldwell contradict some of claimant's testimony. But Ms. Riddle acknowledges that claimant had to work with a cabinet drawer that stuck. Also, Mr. Caldwell's testimony that he saw claimant on one occasion applauding with her hands over her head and on another occasion pushing people away to protect herself fails to convince the Board at this juncture of the claim that claimant is lying about her injuries or how they occurred.

WHEREFORE, the Board affirms the May 7, 2001 preliminary hearing Order entered by Judge Sample.

IT IS SO ORDERED.

Dated this ____ day of August 2001.

BOARD MEMBER

c: James R. Shetlar, Overland Park, KS
Joseph C. McMillan, Kansas City, MO
John B. Rathmel, Prairie Village, KS
Julie A. N. Sample, Administrative Law Judge
Philip S. Harness, Director