

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

JANET K. POORE)	
Claimant)	
VS.)	
)	Docket No. 264,423
THE BOEING COMPANY)	
Respondent)	
AND)	
)	
INSURANCE COMPANY)	
STATE OF PENNSYLVANIA)	
c/o AMERICAN INTERNATIONAL GROUP)	
Insurance Carrier)	

ORDER

Claimant appealed the April 27, 2001 Order entered by Administrative Law Judge Nelsonna Potts Barnes.

ISSUES

Respondent and its insurance carrier presented to the Judge an Order for Inspection and Reproduction of Medical Records and Related Information (proposed order). On April 26, 2001, the Judge conducted a hearing to address claimant's objections that the proposed order was overly broad.

On April 27, 2001, Judge Barnes entered an Order that directed respondent and its insurance carrier to amend the proposed order to delete that part of the order requiring the inspection and reproduction of records from psychological institutions and practitioners. The Judge further ordered that the proposed order be amended to restrict the production of all vocational rehabilitation records and employment records to those "within the fifteen (15) years of employment prior to Claimant's accident."

Claimant contends Judge Barnes erred. Despite the Judge's amendments, claimant argues that the proposed order remains overly broad as it requires the production of all types of employment records, without limitation. Claimant contends that this issue was

previously decided by the Board in the *Rhodeman*¹ claim. Although claimant argues that the proposed order can be reasonably narrowed in such a manner that it protects the interests of the parties, claimant does not say how it should be narrowed and no suggested language is proffered. Nevertheless, claimant requests the Board to either reverse or modify the April 27, 2001 Order.

Conversely, respondent and its insurance carrier argue that the April 27, 2001 Order should be affirmed. They contend the amendments ordered by Judge Barnes properly narrowed the proposed order as the Judge deleted the reference to the production of psychological records and limited the employment records to those less than 15 years old.

The only issue before the Board on this appeal is whether the proposed order for inspection and reproduction is overly broad.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

1. The April 27, 2001 Order should be affirmed.
2. The administrative law judges have the power to compel the production of documents and records to the same extent as the district courts.² Generally, parties may obtain discovery regarding any matter, not privileged, which is relevant to the issues.³
3. The frequency or extent of discovery should be limited only if (1) the discovery sought is unreasonably cumulative or duplicative, or obtainable from some other source that is more convenient, less expensive, or less burdensome; (2) the party seeking discovery has had ample opportunity to obtain the information sought; or (3) the burden or expense of the discovery outweighs its likely benefit, considering the amount in controversy, the needs of the case, the parties' resources, the importance of the issues, and the importance of the discovery in resolving the issues.⁴

The essence of discovery is a search for the truth. It is not a game but an enlightened procedure to encourage the resolution of cases based on merit and not on surprise and ambush. To that end, a party may be compelled to disclose relevant information, not privileged, within his or her

¹ *Rhodeman v. Moore Management*, WCAB Docket No. 234,890 (October 1999).

² K.S.A. 44-551(b)(1).

³ See K.S.A. 2000 Supp. 60-226(b)(1).

⁴ See K.S.A. 2000 Supp. 60-226(b)(2).

knowledge or possession. Disclosure is required if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.⁵

4. Persons and businesses not parties to the action may be compelled to produce documents or submit to an inspection by subpoena, to which they may object.⁶ Parties are required to take reasonable steps to avoid imposing an undue burden or undue expense on a person subject to a subpoena and the court will enforce that duty with sanctions.⁷

Where there is a possibility of relevancy in documents subpoenaed and there is no showing that a subpoena is unreasonable or oppressive, the statutes granting the power to subpoena should be liberally construed to permit inquiry.⁸

. . . A subpoena duces tecum is subject to K.S.A. 60-245(b) and it must be relevant and not unreasonable or oppressive.⁹

5. Claimant argues that despite the modifications ordered by Judge Barnes, the proposed discovery order remains overly broad. But, other than garnishment documents, claimant is unable to specify how the proposed order should be further narrowed. The Board agrees with the argument presented by respondent and its insurance carrier and concludes that the proposed discovery order as amended by Judge Barnes is proper. Further limitations on the scope of the proposed order are not required. Therefore, the Board concludes that the proposed order is not overly broad and the April 27, 2001 Order should be affirmed.

WHEREFORE, the Board affirms the April 27, 2001 Order entered by Judge Barnes.

IT IS SO ORDERED.

⁵ *Hawkins v. Dennis*, 258 Kan. 329, 341, 905 P.2d 678 (1995).

⁶ K.S.A. 2000 Supp. 60-245 and K.S.A. 2000 Supp. 60-245a.

⁷ K.S.A. 2000 Supp. 60-245(c)(1).

⁸ *In re Tax Appeal of Collingwood Grain, Inc.*, 257 Kan. 237, syl. 7, 891 P.2d 422 (1995).

⁹ *In re Tax Appeal of Collingwood Grain, Inc.*, syl. 8.

Dated this ____ day of July 2001.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

DISSENT

I respectfully disagree with the majority's decision as I believe the April 27, 2001 Order should be modified to further order respondent and its insurance carrier to narrow the type of employment record that must be produced for inspection and reproduction.

The issue now before the Board was previously addressed and decided in the *Rhodeman* decision. In that claim, the Board held that an order requiring the production of all vocational rehabilitation and employment records was overly broad and, therefore, invalid. The Board found that the order could have been read to include *any* employment record rather than those that might reasonably lead to relevant evidence. The Board held:

As to the merits, claimant does not, as indicated, dispute the portion of the Order relating to medical records and the Board will not address that portion of the Order. The only issue is related to production of employment records. The Act gives the Director and the Board the power to compel the production of documents and records to the same extent as is conferred on district court[s] of this state under the code of civil procedure. K.S.A. 44-549. The Board agrees that the Order for production of vocational rehabilitation and employment records in this case is too broad. It can reasonably be read to include any employment record. Respondent is entitled to discover information necessary to ascertain what tasks claimant performed in the 15 years before the accident. K.S.A. 44-510e. Respondent is also entitled to information the employers or vocational rehabilitation counselors might have about related injuries as well as the skills claimant may have to apply if new employment becomes necessary. And, depending on the issues in the case, respondent may be entitled to various other types of information from previous employers and vocational rehabilitation counselors. **But the respondent is not entitled to each and every document from claimant's**

prior employment without limitation on *the period* or *the types of documents* to be disclosed. The Order can be reasonably narrowed and at the same time protect the interests of both parties. The Board, therefore, concludes that portion of the Order relating to vocational rehabilitation and employment records should be declared void.¹⁰ (Emphasis added.)

Despite the limited changes ordered by Judge Barnes, the proposed order remains overly broad as it does not limit in any manner the type of employment documents that are subject to inspection and reproduction. Under *Rhodeman*, the proposed discovery order should be further narrowed and the April 27, 2001 Order should be modified.

BOARD MEMBER

c: Gary A. Winfrey, Wichita, KS
Frederick L. Haag, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director

¹⁰ *Rhodeman*, p. 3.