

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

<b>MARILYN JONES</b>	)	
Claimant	)	
VS.	)	
	)	Docket Nos. 261,118
<b>EATON CORPORATION</b>	)	& 265,423
Respondent	)	
Self-Insured	)	

**ORDER**

Claimant appeals the April 28, 2003 Award of Administrative Law Judge Bruce E. Moore. Claimant contends she is entitled to a functional impairment and a substantial work disability for injuries occurring through a series of microtraumas ending October 24, 2000, and a second series of microtraumas ending April 24, 2001. Claimant also argues she is essentially unemployable and, therefore, is entitled to an award based upon a permanent and total disability for the injuries occurring through April 24, 2001. The Administrative Law Judge awarded claimant a 5 percent impairment to the body as a whole for the injuries occurring through October 24, 2000, but denied claimant any additional permanency for the April 2001 injuries, finding that claimant had failed to prove timely notice of accident for her upper extremities for the first date of accident or any permanent worsening of her upper extremity condition through the second date of accident.

Respondent argues that the Award should be affirmed. The Appeals Board (Board) heard oral argument on October 8, 2003.

**APPEARANCES**

Claimant appeared by her attorney, Scott J. Mann of Hutchinson, Kansas. Respondent appeared by its attorney, Edward D. Heath, Jr., of Wichita, Kansas.

**RECORD AND STIPULATIONS**

The Board has considered the record and adopts the stipulations contained in the Award of the Administrative Law Judge. At oral argument, the parties agreed that

claimant's date of accident on the second series claimed in Docket No. 265,423 was April 24, 2001. There was some confusion in the record regarding the exact date of accident. The stipulation of the parties has clarified that accident date.

### ISSUES

#### Docket No. 261,118

- (1) Did claimant provide timely notice of accident to her upper extremities through a series of accidents occurring on or before October 24, 2000?
- (2) What is the nature and extent of claimant's injury and disability for that date of accident of October 24, 2000?

#### Docket No. 265,423

- (1) Did claimant suffer accidental injury arising out of and in the course of her employment on the date or dates alleged?
- (2) Did claimant provide timely notice of accident for a series of accidents occurring through April 24, 2001?
- (3) What is the nature and extent of claimant's injury and disability as it relates to her accidental injury claimed through a series of accidents culminating on April 24, 2001?

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary record filed herein, the Board finds the Award of the Administrative Law Judge should be affirmed.

The Award sets out findings of fact and conclusions of law in some detail and it is not necessary to repeat those herein. The Board adopts the findings and conclusions of the Administrative Law Judge as its own.

The Administrative Law Judge determined that claimant failed to prove that she provided timely notice of accident as it relates to her bilateral upper extremity claims. The Board agrees. Claimant, after undergoing left shoulder surgery and treatment to her neck for an injury beginning in 1994, settled that claim in Docket No. 250,127, with a stipulated

date of accident of September 8, 1999, and a permanent impairment of function rating of 10 percent to the left shoulder and 10 percent to the neck.

Claimant then suffered an aggravation to her neck, and C. Reiff Brown, M.D., board certified in orthopedic surgery, performed an evaluation of claimant on April 12, 2001. This evaluation, performed at claimant's attorney's request, resulted in a 15 percent impairment to the body as a whole based upon the American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (4th ed.). The Administrative Law Judge determined that the 15 percent impairment should be reduced by the 10 percent impairment awarded claimant from the settlement regarding the 1999 accident. The Administrative Law Judge awarded claimant a 5 percent impairment of function to the body as a whole, above and beyond her previous award of benefits, for injuries suffered to her shoulder and neck through a series of accidents culminating on October 24, 2000, and the Board agrees.

Claimant, however, also alleges that she suffered upper extremity injuries as a result of a series of microtraumas, ending in surgery to her right hand, wrist and elbow on June 15, 2000, and to her left hand, wrist and elbow on August 15, 2000.

However, claimant testified that when she first sought medical treatment for her carpal tunnel and ulnar cubital tunnel syndromes, she proceeded with her family physician, Dr. Lamasney, who referred her to Dr. Loewen, and turned the bills in to her health care provider, electing not to claim a workers' compensation injury. Claimant did not advise respondent that she was alleging an October 24, 2000 workers' compensation injury to her bilateral upper extremities until April 2001, well beyond the 10-day limit set forth in K.S.A. 44-520. The dates involved also exceed the 75-day limitation allowed in K.S.A. 44-520 if there was just cause for the delay in notifying respondent of the injury. The Administrative Law Judge, therefore, denied claimant any treatment and/or impairment resulting from the upper extremity injuries alleged through the June 15, 2000 surgery date.

Claimant later argued that she suffered an aggravation of her upper extremity conditions after returning to work in January of 2001 and working through her last day on April 24, 2001. The medical evidence in the record, while somewhat in conflict, does not support claimant's argument. Philip R. Mills, M.D., board certified in physical medicine and rehabilitation, examined claimant at respondent's request on May 9, 2002. Dr. Mills diagnosed the bilateral ulnar and bilateral carpal tunnel conditions for which claimant underwent the earlier surgeries. He testified that with regard to her upper extremity conditions, the work between January and April of 2001 was a temporary aggravation, at best, with no permanency resulting.

Claimant went on her own to Jonathan Loewen, M.D., board certified in orthopedic surgery, on April 24, 2000. Dr. Loewen also diagnosed bilateral carpal tunnel syndrome

and bilateral cubital tunnel syndrome, as well as tendinitis of the flexor tendons of the wrist and medial epicondylitis. Dr. Loewen testified that claimant suffered an aggravation of her upper extremity conditions during the work period from January through April 24, 2001. However, when asked about any permanent impairment to claimant's upper extremities, he adopted the impairment ratings of Dr. Brown at 19 percent to each upper extremity. He also adopted the restrictions placed upon claimant by Dr. Brown. However, Dr. Brown testified that his restrictions placed upon claimant would apply both before and after the January through April 24, 2001 period.

The Board finds it inconsistent to have both Dr. Brown and Dr. Loewen testify that claimant's condition was aggravated during the return to work period in 2001, but neither doctor provided claimant with any additional restrictions or any additional impairment for that specific period of time.

The Administrative Law Judge determined that claimant had failed to prove any additional permanency during that period of time, stating that she suffered, at most, a temporary exacerbation of her condition through her last day worked in April 2001. The Board, after reviewing the entire record, finds that the evidence supports the Administrative Law Judge's determination, thereby limiting claimant to a 5 percent impairment to the body as a whole for the injuries suffered through October 24, 2000, and awarding no additional permanency for the temporary aggravation suffered through April 24, 2001, her last day worked.

The Board, therefore, finds that the Award of the Administrative Law Judge should be affirmed in all regards.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Bruce E. Moore dated April 28, 2003, should be, and is hereby, affirmed, subject to the modification concerning the stipulated April 24, 2001 date of accident in Docket No. 265,423.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of October 2003.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Scott J. Mann, Attorney for Claimant  
Edward D. Heath, Jr., Attorney for Respondent  
Bruce E. Moore, Administrative Law Judge  
Paula S. Greathouse, Director