

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

MARIA SPRINKLE)	
Claimant)	
VS.)	
)	Docket No. 1,004,177
LAICH INDUSTRIES CORPORATION)	
Respondent)	
AND)	
)	
CONTINENTAL WESTERN INSURANCE CO.)	
Insurance Carrier)	

ORDER

Claimant appeals the preliminary hearing Order of Administrative Law Judge Julie A. N. Sample dated August 19, 2002. Claimant was denied benefits after the Administrative Law Judge determined that claimant had failed to prove accidental injury arising out of and in the course of her employment with respondent.

ISSUES

- (1) Did claimant suffer accidental injury on the date alleged?
- (2) Did claimant's accidental injury arise out of and in the course of her employment with respondent?
- (3) Did claimant provide timely notice of accident?
- (4) Is claimant entitled to workers' compensation benefits, including ongoing medical treatment, payment of past medical treatment, reimbursement for unauthorized medical treatment and temporary total disability compensation benefits?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board (Board) finds the Order of the Administrative Law Judge should be affirmed.

Claimant alleges on March 21, 2002, during an altercation with her supervisor, Richard James Crawford, a.k.a. Jimmy Crawford, she was grabbed by the wrists and thrown into some boxes. Claimant contends she suffered injury to both of her wrists, her neck and her back as a result of this altercation.

Mr. Crawford, who testified at preliminary hearing, denied any physical contact occurred between claimant and him. He did acknowledge that there was a disagreement between them, as claimant was throwing good hangers into a reject box, which would cost the company substantial amounts of money. He did testify that during the argument, claimant flipped him off. She was then told to leave, which she did. Claimant testified that her son and a co-employee named Oscar Ramirez saw the physical contact between her and Mr. Crawford. However, neither her son nor Mr. Ramirez testified in this matter.

Mr. Crawford contacted Jeff Shopper, the plant manager, and, after a brief telephone discussion, it was determined claimant was to be fired, which she was immediately.

Mr. Crawford testified that he also spoke to claimant's son. While he was talking to claimant's son, he observed claimant speaking on a telephone and slapping each wrist repeatedly with her opposite hand.

The only other witness to testify was Marlon James Jacobs, Jr., a.k.a. James Jacobs, a packer for respondent. Mr. Jacobs, who was working across the aisle from claimant, stated that he heard a commotion. It took him several seconds to complete the duties he was performing, but when he turned to look at claimant and Mr. Crawford, he saw them arguing. He also saw claimant flipping Mr. Crawford off. Mr. Jacobs never saw claimant fall and never saw any physical contact between her and Mr. Crawford.

The description of the floor layout, provided by Mr. Crawford and verified by Mr. Jacobs, indicated that there was a 2½- to 3-foot conveyor directly between claimant and Mr. Crawford during the entire time of the argument. Mr. Crawford stated that it would be impossible for him to grab claimant, as he could not have reached her across the conveyor.

In workers' compensation litigation, it is claimant's burden to prove her entitlement to benefits by a preponderance of the credible evidence.¹ In this instance, the Administrative Law Judge found claimant's testimony lacked credibility. The testimony of Mr. Crawford and Mr. Jacobs, combined, was sufficient to persuade the Administrative Law Judge that no physical contact occurred between claimant and Mr. Crawford. There was, therefore, no wrist grabbing and no shoving and claimant did not fall into any boxes. This

¹ See K.S.A. 44-501 and K.S.A. 2001 Supp. 44-508(g).

would eliminate the possibility of claimant suffering the type of injury that she described in her testimony.

After reviewing the evidence, the Board finds that both Mr. Jacobs' and Mr. Crawford's descriptions of the incident appear to be accurate and credible. The Board finds, therefore, that claimant has failed to prove that she suffered accidental injury arising out of and in the course of her employment with respondent and the denial of benefits by the Administrative Law Judge should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Julie A. N. Sample dated August 19, 2002, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of October 2002.

BOARD MEMBER

c: David Curotto, Attorney for Claimant
Eric T. Lanham, Attorney for Respondent
Julie A. N. Sample, Administrative Law Judge
Director, Division of Workers Compensation