

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

<b>SANFORD CRAIG SMITH</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,017,827
<b>LOVE BOX COMPANY, INC.</b>	)	
Respondent	)	
Self-Insured	)	

**ORDER**

Respondent appeals the August 17, 2004 preliminary hearing Order of Administrative Law Judge John D. Clark. Claimant was granted temporary total disability benefits after the Administrative Law Judge (ALJ) determined that claimant suffered injuries arising out of and in the course of his employment with respondent on July 2, 2004.

**ISSUES**

Did claimant suffer accidental injury arising out of and in the course of his employment on July 2, 2004?

**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, a ten-year employee for respondent, spent the last year before the July 2, 2004 date of accident driving a forklift. On July 2, 2004, claimant was found standing next to his forklift at the bottom of a stairway with his glasses laying on the floor nearby, a bruise on the back of his head and no memory of the incident. Claimant was described as being disoriented. Ken Sifford, a coworker who found claimant, stated that claimant had a scrape on the top of his head, and later it was determined claimant also had bruises on his right shoulder. Claimant was taken to the emergency room where he underwent a head/shoulder scan and was referred to Paul G. Genilo, M.D., a neurologist to whom claimant had been going for neurological treatment for some time. After the incident, claimant had difficulties walking with balance problems and also exhibited slurred speech.

Claimant was off work for a period of time and currently has returned to work for respondent at a different job, working in the office as a member of the clerical staff.

Claimant's history is significant in that he suffered a serious neck injury in 1971 while playing football. He underwent two surgeries, one of which was a fusion, for that injury. He also had occasional incidents of balance problems and ringing in his ears. In January of 2004, claimant was found outside his home apparently having slipped on the ice. Claimant had no memory of that incident after it occurred either. Claimant did thereafter exhibit altered gait problems which Andrew Azzarito, respondent's logistics site manager and claimant's supervisor, described as being a staggering type of gait.

Respondent contends that the incident at the bottom of the stairs near claimant's forklift was the result of claimant's preexisting condition, which caused him to fall in January of 2004 and also caused him to exhibit balance and speech problems. However, there were no witnesses to the incident other than the individual who found claimant appearing somewhat disoriented, standing next to the forklift.

As part of claimant's duties, he was required to go to the top of the stairs to the receiving area and lock the door. It was discovered upon investigation that the handrail coming down the stairs was partially pulled from the wall. Mr. Azzarito testified that he discovered the handrail damage. He also stated that when he left work at approximately 5:30 p.m., which was several hours prior to claimant's incident, the handrail was undamaged. Mr. Azzarito's office is at the top of the stairway.

Mr. Azzarito testified that he had witnessed claimant staggering after the January 2004 incident, but not before. He testified he probably saw claimant stagger half a dozen times between January and the July 2nd incident.

In workers compensation litigation, it is the claimant's burden to prove his entitlement to benefits by a preponderance of the credible evidence.<sup>1</sup>

While respondent argues that claimant's injury of July 2, 2004, stemmed from his preexisting condition, the evidence in the record is unclear. This incident appears to be more of an unexplained fall which, in Kansas, is compensable.<sup>2</sup>

The Board notes respondent's objections and understands its concern in this situation. The questions which are raised in this record can be clarified by the time this

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<sup>1</sup> K.S.A. 44-501 and K.S.A. 2003 Supp. 44-508(g).

<sup>2</sup> *Davis v. Montgomery Ward*, No. 220,775, WL 637780 (WCAB Sept. 11, 1997); 1 *Larson's Workers' Compensation Law*, § 7.04 (1999).

matter proceeds to regular hearing. As is always the case, preliminary hearing determinations are not final, but are subject to a full presentation of the facts.<sup>3</sup>

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that for preliminary hearing purposes, the preliminary hearing Order of Administrative Law Judge John D. Clark dated August 17, 2004, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of November 2004.

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BOARD MEMBER

c: Joseph Seiwert, Attorney for Claimant  
Kathleen N. Wohlgemuth, Attorney for Respondent and its Insurance Carrier  
John D. Clark, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director

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<sup>3</sup> K.S.A. 44-534a(a).