

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

OLIVIA PIPER)	
Claimant)	
)	
VS.)	
)	
WAL-MART)	
Respondent)	Docket No. 1,018,051
)	
AND)	
)	
AMERICAN HOME ASSURANCE CO.)	
Insurance Carrier)	

ORDER

Claimant requests review of the December 30, 2004 preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes.

ISSUES

The Administrative Law Judge (ALJ) found the claimant failed to sustain her burden of proof that she suffered accidental injury arising out of and in the course of employment.

The claimant requests review of whether the accidental injury arose out of and in the course of employment.

Respondent requests the Board to affirm the ALJ's Order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

The claimant alleged she injured her left knee when she turned to pick up a box and twisted her knee. She notified her supervisor but did not immediately seek medical

treatment because she was going to be taking vacation and would be off her feet. Approximately a month and a half later she was sent for medical treatment. After that one visit the respondent notified claimant that it was denying her claim. Two co-workers told respondent claimant lied about her claim. Claimant testified they both wanted her job and further testified that she had not lied about her injury to her knee.

Razella Prouse, a co-worker of claimant, testified that claimant had asked her to be a witness that claimant fell off a ladder. Ms. Prouse declined because she had not witnessed any such incident. Ms. Prouse further testified she was with claimant after respondent told claimant it was denying her claim. Ms. Prouse testified claimant stated that she shouldn't have lied about how she did it.

Apparently, at some time Ms. Prouse had seen claimant trip over a pallet. Ms. Prouse thought claimant injured her ankle and knee in that incident but had wanted to claim her knee injury occurred in a fall from a ladder.

Tracy Block, a co-worker of claimant, testified that she was with claimant after respondent told claimant it was denying her claim. Ms. Block testified claimant stated that she shouldn't have lied about her claim. Ms. Block further testified that Razella Prouse said claimant had asked Ms. Prouse to say she saw claimant fall off the ladder.

The Workers Compensation Act places the burden of proof upon claimant to establish her right to an award of compensation and to prove the conditions on which that right depends.¹ "Burden of proof" means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record."²

An accidental injury is compensable where the accident arose out of and in the course of employment.³ The question of whether there has been an accidental injury arising out of and in the course of employment is a question of fact.⁴

The ALJ observed the claimant testify and concluded she had failed to meet her burden of proof that she sustained an accidental injury arising out of and in the course of her employment. Credibility is a significant factor in this case and the ALJ had the opportunity to observe claimant testify. The ALJ must have found claimant's testimony

¹ K.S.A. 44-510(a).

² K.S.A. 2003 Supp. 44-508(g).

³ K.S.A. 44-501(a).

⁴ *Harris v. Bethany Medical Center*, 21 Kan. App. 2d 804, 909 P.2d 657 (1995).

untrustworthy as the ALJ denied claimant benefits. In this instance, the Board gives some deference to the ALJ's determination that claimant's testimony was not persuasive. Moreover, two co-workers testified that claimant had stated she had lied about her claim and one co-worker testified claimant had asked her to testify that she had seen claimant fall from a ladder. Therefore, for all of the above reasons, the Board also finds claimant failed to meet her burden of proof that she sustained an accidental injury arising out of and in the course of her employment.

As provided by the Workers Compensation Act, preliminary hearing findings are not binding but subject to modification upon a full hearing of the claim.⁵

WHEREFORE, it is the finding of the Board that the Order of Administrative Law Judge Nelsonna Potts Barnes dated December 30, 2004, is affirmed.

IT IS SO ORDERED.

Dated this 28th day of February 2005.

BOARD MEMBER

c: Michael L. Snider, Attorney for Claimant
Alisa Nickel Ehrlich, Attorney for Respondent and its Insurance Carrier
Nelsonna Potts Barnes, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

⁵ K.S.A. 44-534a(a)(2).