

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

MARCIA A. WEST)	
Claimant)	
VS.)	
)	Docket No. 1,022,850
PRESBYTERIAN MANORS)	
Respondent)	
Self-Insured)	

ORDER

Claimant appeals the September 1, 2005 preliminary hearing Order of Administrative Law Judge Bryce D. Benedict. Claimant was denied benefits after the Administrative Law Judge (ALJ) determined that claimant failed to prove that she suffered accidental injury to her back.

ISSUES

1. Did claimant suffer accidental injury to her low back?
2. Did claimant's accidental injury arise out of and in the course of her employment?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence in the record and for the purposes of preliminary hearing, the Appeals Board (Board) finds the Order of the ALJ should be affirmed.

Claimant, a certified nurse's aide (CNA) for respondent, suffered an injury on December 13, 2004, when she fell, injuring her right side, including her right arm, shoulder, neck, upper back and right hip.

After receiving treatment, claimant continued working for respondent. On March 14, 2005, claimant went to the emergency room at Clay County Medical Center, alleging right hip and low back pain. Claimant contends having to work extra hard on March 12 caused her difficulties with her hip and back. Claimant had called in the morning of March 13, 2005, with back pain, advising respondent that she was unable to come to work that day. But claimant was able to work a full shift on March 14, 2005.

Claimant has been treated by several health care providers and undergone numerous tests. There are also numerous documents placed into this record, contesting claimant's allegations of a work-related accident on or around March 12, 2005. On March 23, 2005, claimant assisted in the preparation of a short-term disability form. On that form, there is a question asking whether the accident was related to her job. That question was answered "no." Claimant acknowledged that particular question was answered in her own handwriting. Also on that questionnaire, claimant was asked whether she had had a similar condition in the past. This question was answered "yes," with claimant indicating at the regular hearing that she had had hip bursitis several years before.

On March 29, 2005, claimant filled out a leave of absence form, requesting a leave of absence from March 21, 2005, through April 19, 2005, for bursitis in the right hip. Claimant's low back was not mentioned.

Claimant discussed her problems with Debra Forshee, respondent's director of nursing (DON). Claimant testified that she advised Ms. Forshee that "we had worked short" on March 12 (meaning that they were short of help), and as a result, claimant had begun suffering difficulties. Ms. Forshee knew that claimant had complained of shoulder and elbow problems.¹ Claimant also discussed her difficulties with Shannon Wurtz, respondent's human resource director. Ms. Wurtz stated that she recalled claimant complaining of right hip bursitis, but no complaints to the low back,² although a form contemporaneous with the March 12 to March 15 period indicated complaints of low back pain.³ Ms. Wurtz later stated that claimant complained of bursitis in her hip and lower back.⁴ Claimant advised Ms. Wurtz that on March 13, 2005, she had aggravated her hip and back. Ms. Wurtz alleges that she asked claimant if this was an on-the-job injury, and that claimant responded "no."⁵ However, according to claimant's testimony, claimant never said how it happened.⁶ Ms. Wurtz discussed claimant's situation on April 19, 2005, advising claimant that her leave of absence period was about to expire. However, no additional updates were provided and claimant did not contact Ms. Wurtz after April 19, 2005. As a result, on May 20, 2005, claimant was terminated due to the fact that her leave of absence had expired on April 20, 2005.

¹ P.H. Trans. at 49.

² P.H. Trans. at 76.

³ P.H. Trans., Resp. Ex. B (Absence Report Form dated March 13, 2005).

⁴ P.H. Trans. at 78.

⁵ P.H. Trans. at 78.

⁶ P.H. Trans. at 47.

Both Ms. Wurtz and Ms. Forshee testified that claimant failed to report any low back injuries from the fall on December 13, 2004. Additionally, the medical treatment provided to claimant after the December 13, 2004 incident deals with her right upper extremity, in particular the shoulder. It does not appear from the medical records claimant received any treatment to her low back as a result of that injury.

In workers compensation litigation, it is the claimant's burden to prove her entitlement to benefits by a preponderance of the credible evidence.⁷ In this instance, the ALJ determined that claimant had failed to prove that she suffered accidental injury arising out of and in the course of her employment. The Board concurs with that finding. Medical records contemporaneous with claimant's accident in December of 2004, as well as claimant's request for medical treatment in March of 2005, do not support claimant's contention that she suffered accidental injury to her low back in either March of 2005 or at the time of the original December 2004 accident. Additionally, the medical reports and leave of absence and accident report forms (prepared by claimant or by respondent's employees) contemporaneous with the March 2005 accident do not support claimant's contention that she suffered accidental injury to her low back as a result of any employment activities with respondent. The Board, therefore, finds that the determination by the ALJ that claimant has failed to prove she suffered accidental injury arising out of and in the course of her employment to her low back should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Bryce D. Benedict dated September 1, 2005, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of January, 2006.

BOARD MEMBER

c: Joseph Seiwert, Attorney for Claimant
Kathleen N. Wohlgemuth, Attorney for Respondent
Bryce D. Benedict, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

⁷ K.S.A. 44-501 and K.S.A. 2004 Supp. 44-508(g).