

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

HEATHER R. PAGE)
Claimant)
)
VS.)
)
ADECCO EMPLOYMENT SERVICES)
Respondent)
)
AND)
)
AMERICAN HOME ASSURANCE CO.)
Insurance Carrier)

Docket No. 1,027,405

ORDER

Respondent and its insurance carrier request review of the April 19, 2006 preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes.

ISSUES

At preliminary hearing the litigated issues included whether claimant suffered an accidental injury arising out of her employment with respondent and whether claimant provided timely notice. The Administrative Law Judge (ALJ) found the claimant's accidental injury arose out of and in the course of employment and notice was timely given.

The respondent requests review of whether the accidental injury arose out of and in the course of employment. Respondent argues claimant's injury occurred as a result of normal day-to-day living activities. Moreover, respondent further argues the medical evidence fails to establish claimant's meniscus tear was caused by the incident at work.

Claimant argues the ALJ's Order should be affirmed.

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, Heather Page, was employed by respondent, a temporary employment agency. She had been placed with a company that provided a tax software program. Her job duties included answering the telephone and customer's questions if they had problems with their software. On December 28, 2005, the claimant was returning to work from her break when she heard or felt a pop in her knee while climbing the stairs. Claimant testified:

I was coming back from break, was going up the stairs. When I did, I heard or I felt, it felt like my knee went too far backwards. It made this horrible pop. So I went forward to brace myself. It hurt. I went ahead and went back upstairs.¹

By the end of her shift, the knee had swollen to the size of a cantaloupe. Within a few days she told her supervisor she had injured her knee going up the stairs when she returned from her break. On January 9, 2006, the claimant sought medical treatment with her family physician. The claimant was taken off work from January 19, 2006, through April 11, 2006. An MRI revealed what appeared to be a tear of the medial meniscus.² The claimant denied having any preexisting problems with or medical treatment for her knee before this incident at work.

In workers compensation litigation, it is the claimant's burden to prove his entitlement to benefits by a preponderance of the credible evidence.³

Because the accident occurred while claimant was at work, the accident occurred in the course of claimant's employment. However, the accident must also arise out of the employment before it is compensable under the Kansas Workers Compensation Act.⁴

The phrase "out of" employment points to the cause or origin of the worker's accident and requires some causal connection between the accident and the employment. An accidental injury arises out of employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is performed and the resulting injury. An injury arises out of employment if it arises out of the nature, conditions, obligations, and incidents of the employment.⁵

¹ P.H. Trans. at 9.

² *Id.*, Cl. Ex. 1.

³ K.S.A. 2005 Supp. 44-501 and K.S.A. 2005 Supp. 44-508(g).

⁴ See *Newman v. Bennett*, 212 Kan. 562, 512 P.2d 497 (1973).

⁵ *Kindel v. Ferco Rental, Inc.*, 258 Kan. 272, 899 P.2d 1058 (1995).

In *Hensley*⁶, the Kansas Supreme Court adopted a risk analysis. It categorized risks into three categories: (1) those distinctly associated with the job; (2) risks which are personal to the workman; and (3) neutral risks which have no particular employment or personal character. According to *Larson's*⁷, the majority of jurisdictions compensate workers who are injured in unexplained falls upon the basis that an unexplained fall is a neutral risk and would not have otherwise occurred at work if claimant had not been working. The Board has consistently held that neutral risks or unexplainable falls occurring in the course of an employee's employment, even though they have no particular employment or personal character, are compensable.

The respondent cites *Martin*⁸, as a case with similar facts that supports its position that claimant's injury did not arise out of the employment relationship with the respondent. The worker in *Martin* had a history of back problems and alleged he injured his back when he exited his truck while at work. The Court of Appeals held that a worker's preexisting back condition was a risk personal to the worker and any everyday activity would have a tendency to aggravate his condition. The court concluded this was a risk that was personal to the worker and, therefore, not compensable. The respondent argues that in the present case there is no evidence in the record that establishes that a risk associated with the employment caused claimant's injury and thus claimant's injury is not compensable.

The Board disagrees with the respondent's reliance on the *Martin* case as support for its argument that the claimant's injury is not compensable. There is no evidence in the preliminary hearing transcript or medical records attached thereto that claimant had a previous history of left knee problems before her knee gave out at work. Therefore, the claimant in this case did not have preexisting problems that would constitute a personal risk to her as was the factual circumstance in *Martin*. Nor is this a case that claimant's disability resulted from the wear and tear common to acts of everyday living combined with a preexisting condition, as was the case in *Boeckmann*.⁹

In following the majority rule as set out in *Larson's*, *supra*, the Board finds, for preliminary hearing purposes and based upon the record compiled to date, that this neutral risk or unexplained incident where claimant's knee gave out is compensable. Accordingly, the Board affirms the ALJ's Order for Compensation.

⁶ *Hensley v. Carl Graham Glass*, 226 Kan. 256, 597 P.2d 641 (1979).

⁷ 1 *Larson's Workers' Compensation* §7.04[1][a] (2005).

⁸ *Martin v. U.S.D. No. 233*, 5 Kan. App. 2d 298, 615 P.2d 168 (1980).

⁹ *Boeckmann v. Goodyear Tire & Rubber Co.*, 210 Kan. 733, 504 P.2d 625 (1972).

WHEREFORE, it is the finding of the Board that the Order of Administrative Law Judge Nelsonna Potts Barnes dated April 19, 2006, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of June 2006.

BOARD MEMBER

c: R. Todd King, Attorney for Claimant
Elizabeth R. Dotson, Attorney for Respondent and its Insurance Carrier
Nelsonna Potts Barnes, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director