

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

**KAREN S. BRATTON** )  
Claimant )  
VS. )  
**BURLINGTON COAT FACTORY** )  
Respondent )  
AND )  
**HARTFORD INS. CO. OF THE MIDWEST** )  
Insurance Carrier )

Docket No. **1,056,912**

**ORDER**

Respondent and its insurance carrier request review of the August 25, 2011 preliminary hearing Order entered by Administrative Law Judge John D. Clark.

**ISSUES**

Ms. Karen Bratton, a store manager for respondent, was accosted by an armed robber at the workplace. Bratton alleged that during the robbery she suffered physical and mental injuries. Respondent noted the absence of a medical record detailing any physical injury and denied the claim. Following a preliminary hearing, the Administrative Law Judge (ALJ) determined claimant suffered mental and physical injuries from the incident. Consequently, the ALJ ordered respondent to pay temporary total disability compensation and provide claimant psychological treatment. The ALJ further designated a doctor to perform an independent medical examination to determine claimant's need for medical treatment for her physical injuries.

Respondent requests review of whether the ALJ erred in awarding claimant compensation benefits for a psychological injury in the absence of a physical injury.

Bratton argues the ALJ's Order should be affirmed.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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

Bratton, a store manager, has worked for respondent approximately 11 years. Her job duties included opening and closing the store as well as managing everything that goes on in the store. On June 6, 2011, claimant was held at gun point by an armed robber. She testified:

I had closed the store, went upstairs. We finished everything in accounting. I was going to get my wallet so we could leave and I walked into the man on the stairway. He had a gun.

Q. Did he say anything to you?

A. He grabbed my left arm, pushed the gun in my left side, told me to be quiet, that he wanted the money.

Q. So where did you go from there?

A. The assistant manager was in the store manager's office, she heard me scream. She came to the other end of the hallway. He came up the last stair, put the gun in my back, said that he wanted the money, we had to the count of five. He was pushing me down the hallway and -- and she had turned to go to opening the accounting doors.<sup>1</sup>

Bratton testified she injured her neck and shoulder while reaching behind the assistant manager in an awkward manner in order to place the money on top of the counter. She immediately experienced pain in her neck and shoulder. She further testified that she injured her left wrist, mid back and ribs ostensibly from being grabbed and prodded with the firearm.

Bratton testified she spoke with Mary Harrison on June 9, 2011, regarding the robbery and told Ms. Harrison that she had suffered physical as well as psychological injuries. Bratton requested medical treatment. Ms. Harrison referred claimant to an employee assistance program through Affiliated Psychiatric, LLC. Bratton went there on June 13, 2011. Bratton then requested medical treatment for her neck and shoulder and was referred to Dr. Romeo Smith at Occupational Health Services. Bratton saw Dr. Smith on June 15, 2011. She advised Dr. Smith that she had injured her neck, shoulder and right arm during the armed robbery. Dr. Smith prescribed Restoril and also referred Bratton to a psychologist or psychiatrist. But Dr. Smith's off work slip merely listed a diagnosis of anxiety without any mention of physical injuries.

Bratton has tingling and numbness in her right arm. She also has sharp pains and a pinching in her neck. Her employment with respondent was terminated on June 11, 2011.

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<sup>1</sup> P.H. Trans. at 5-6.

The Kansas Supreme Court has long held that traumatic neurosis, as well as other psychiatric problems are compensable. “[W]e have held that traumatic neurosis *following physical injury*, and shown to be directly traceable to such injury, is compensable under the act.”<sup>2</sup> However, the court in *Berger*<sup>3</sup> cautioned:

Even though this court has long held that traumatic neurosis is compensable; we are fully aware that great care should be exercised in granting an award for such injury owing to the nebulous characteristics of a neurosis. An employee who predicates a claim for temporary or permanent disability upon neurosis induced by trauma, either scheduled or otherwise, bears the burden of proving by a preponderance of the evidence that the neurosis exists and that it was caused by an accident arising out of and during the course of his employment.

In *Love*<sup>4</sup>, the Kansas Court of Appeals stated:

In order to establish a compensable claim for traumatic neurosis under the Kansas Workers' Compensation Act, K.S.A. 44-501 *et seq.*, the claimant must establish: (a) a work-related physical injury; (b) symptoms of the traumatic neurosis; and (c) that the neurosis is directly traceable to the physical injury.

Respondent contends that Bratton has failed to meet her burden of proof to establish that she suffered a physical injury during the robbery and as a consequence any psychological injury is not compensable. Respondent argues there is no medical record detailing a physical injury. But the ALJ noted that Bratton's testimony that she suffered physical injuries was uncontradicted.

Bratton's uncontradicted testimony established that she told Ms. Harrison and an adjustor, Francis Goodman, that she had shoulder and neck complaints. She further testified that after her first visit to Affiliated Psychiatric, LLC., she then requested medical treatment for her neck and shoulder and was sent to Dr. Romeo Smith at Occupational Health Services. Bratton told Dr. Smith about her neck and shoulder complaints and that she was also real upset and emotional. And after this visit respondent denied Bratton any further medical treatment. The claimant's testimony alone is sufficient evidence of her physical condition.<sup>5</sup> This Board Member concludes claimant has met her burden of proof

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<sup>2</sup> *Jacobs v. Goodyear Tire & Rubber Co.*, 196 Kan. 613, 616, 412 P.2d 986 (1966).

<sup>3</sup> *Berger v. Hahner, Foreman & Cale, Inc.*, 211 Kan. 541, 550, 506 P.2d 1175 (1973).

<sup>4</sup> *Love v. McDonald's Restaurant*, 13 Kan. App. 2d 397, Syl., 771 P.2d 557, *rev. denied* 245 Kan. 784 (1989).

<sup>5</sup> *Hanson v. Logan U.S.D.* 326, 28 Kan. App. 2d 92, 11 P.3d 1184, *rev. denied* 270 Kan. 898 (2001).

to establish that she suffered physical injury during the armed robbery. Consequently, the ALJ's Order is affirmed.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.<sup>6</sup> Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2010 Supp. 44-551(i)(2)(A), as opposed to being determined by the entire Board when the appeal is from a final order.<sup>7</sup>

**WHEREFORE**, it is the finding of this Board Member that the Order of Administrative Law Judge John D. Clark dated August 25, 2011, is affirmed.

**IT IS SO ORDERED.**

Dated this 4th day of November, 2011.

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HONORABLE DAVID A. SHUFELT  
BOARD MEMBER

c: Shayla C. Johnston, Attorney for Claimant  
P. Kelly Donley, Attorney for Respondent and its Insurance Carrier  
John D. Clark, Administrative Law Judge

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<sup>6</sup> 2011 Session Laws of Kansas, Chapter 55, Sec. 22(a)(2). K.S.A. 44-534a.

<sup>7</sup> K.S.A. 2010 Supp. 44-555c(k).