

After reviewing the record and considering the arguments of the parties, the Appeals Board finds:

(1) The Appeals Board finds claimant's injuries did arise out of and in the course of his employment. He was injured in an automobile accident on December 13, 1988. Although claimant does not recall the accident or the events leading to the accident, circumstances leave no doubt that he was, at the time of the accident, returning to his home in Garden City, Missouri. Claimant had that day attended staff meetings at his employer's offices in Overland Park, Kansas, and a mandatory Christmas party that evening at the Doubletree Hotel, also located in Overland Park, Kansas.

Respondent contends that claimant's injury did not arise out of and in the course of his employment as that phrase is defined in K.S.A. 1988 Supp. 44-508(f). The definition there excludes "injuries to the employee occurring while the employee is on the way to assume the duties of employment or after leaving such duties. . . ."

The Administrative Law Judge found claimant's employment was an exception to the general "going and coming" rule. The Appeals Board agrees. The "going and coming" to work rule is not applicable to employment where travel is a necessary and integral part of the employment. Newman v. Bennett, 212 Kan. 562, 512 P.2d 497 (1973) and Messenger v. Sage Drilling Co., 9 Kan. App. 2d 435, 680 P.2d 556, rev. denied 235 Kan. 1042 (1984).

Claimant worked for respondent as a boiler inspector. The work required that he travel throughout a given territory conducting inspections. Respondent paid all his travel-related expenses and provided him a company automobile. He took business trips which ranged from single day trips to three to five days on the road. Claimant testified that he did his paper work at the Home Insurance Company's home office for approximately four hours each Monday. The remainder of the workweek involved traveling on the road throughout the territory. During the approximately one week prior to the accident, claimant had been on the road. Claimant did not return home between the business trip and the staff meeting on December 12. Claimant was returning home from the extended business trip at the time of the accident.

The Appeals Board finds that claimant's job was similar to that of a traveling salesman. In Kennedy v. Hull & Dillon Packing Co., 130 Kan. 191, 285 Pac. 536, (1930), the Kansas Supreme Court held that the traveling employee constitutes an exception to the "going and coming" rule. In that case, the claimant was killed traveling from his residence to his first appointment of the day. The Court held that the employment required the travel from place to place within a territory almost continuously in the discharge of his duties and, therefore, ruled that the injury which occurred while traveling to the first appointment did arise out of and in the course of the claimant's employment.

Similarly, Schmidt v. Jensen Motors, Inc., 208 Kan. 182, 490 P. 2d 383 (1971), the Kansas Supreme Court ruled that an employee injured traveling home from a community where his employment had taken him did arise out of and in the course of his employment. In Blair v. Shaw, 171 Kan. 524, 233 P. 2d 731 (1951), the Court held that when a business trip is an integral part of the claimant's employment the "entire undertaking is to be considered from a unitary standpoint rather than divisible."

Applying the principals announced in the above-referenced cases, the Appeals Board concludes that the claimant's travel was an integral part of claimant's employment. The injury on the return trip home is, therefore, an injury which arose out of and in the course of his employment.

(2) The Appeals Board finds as a result of the compensable work injury claimant is permanently and totally disabled.

The Administrative Law Judge found the evidence relating to work disability unpersuasive and, therefore, limited claimant's award to functional impairment of forty percent (40%) of the whole body. After reviewing the entire record the Appeals Board finds the evidence does establish that claimant is permanently and totally disabled. This conclusion is supported by medical as well as vocational testimony.

Dr. Revis Lewis performed an independent medical examination when the parties could not agree on the nature and extent of claimant's functional impairment. As a result of the automobile accident claimant suffered a head injury which has resulted in memory loss, difficulty learning new information and some personality change. He also suffered a compound comminuted fracture of the right femur. His right leg is now one and one half inches (1½") shorter than the left. He also injured his right arm and has residual clumsiness and weakness in that right arm. Dr. Lewis diagnosed organic brain syndrome secondary to cerebral contusion. Dr. Lewis stated in his written report that claimant is not a candidate for occupation in the open labor market.

Two vocational experts also testified. Marianne Lumpe testified that she works as a vocational consultant with Crawford Healthcare Management. She is certified as a vocational rehabilitation counselor by the Department of Labor. She has been a vocational rehabilitation counselor since 1985. She conducted an evaluation of claimant's employability in 1992 on referral from Travelers. She reviewed medical records and conducted an interview with claimant which included social, vocational and work background. She also talked with a health psychologist at Baptist Medical Center to evaluate the defects which are characteristic of closed-head injuries. The conclusion of her evaluation was that claimant was totally disabled.

Janell Mallein-Skinner testified to the same conclusion. Ms. Mallein-Skinner was employed by the Rehabilitation Institute as a case manager for individuals with traumatic brain injuries. She specialized in assisting such individuals in retaining employment. She attempted to place claimant in employment making boxes, collating and packaging, with a coach with him while he worked. The employment was described as "supported employment" paid for by the Missouri Department of Vocational Rehabilitation. Neither this nor subsequent efforts to place claimant in employment produced employment which claimant was able to retain. Ms. Mallein-Skinner testified that symptoms consistent with his head injury rendered claimant unable to retain employment. She testified that he would likely be able to obtain employment but would not be able to sustain an employment relationship. He has problems with not only performing the work but memory loss, impulsiveness and difficulty in consistently showing up for work. After extended efforts to place and maintain claimant in an employment relationship, she concluded he was not employable even in a supported setting.

The evidence leading to the conclusion that claimant is essentially and realistically unemployable is uncontradicted in the record except by claimant's own statement that he

believes he could work. Ms. Mallein-Skinner acknowledged claimant's belief that he could obtain and retain employment. This belief is described as consistent with his symptoms and an unrealistic assessment of his own abilities following the head injuries. After review of the record the Appeals Board finds claimant is permanently and totally disabled and entitled to benefits on that basis.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the claimant is entitled to benefits to be paid by Home Insurance Company, a self-insured, for a permanent total disability from accidental injury arising out of and in the course of his employment on December 13, 1988.

Claimant is entitled to weekly benefits beginning December 13, 1988 in the amount of \$263.00 per week for 475.29 weeks in the total amount not to exceed \$125,000.00.

As of February 29, 1996, there will be due and owing 376.43 weeks in the total amount of \$99,001.09 less amounts previously paid, if any, which should be paid in one lump sum. Respondent will thereafter pay 98.86 weeks at \$263.00 per week for a total award not to exceed \$125,000.00.

Unauthorized medical expense pursuant to K.S.A. 44-510(c) in the amount of \$350.00 is also awarded to the claimant.

Future medical treatment for the claimant for injuries compensated in this proceeding may be awarded upon a proper application and a hearing upon notice to all parties.

Costs of transcripts in the record are taxed against respondent and carrier as follows:

Metropolitan Court Reporters, Inc.	\$ 304.50
Jay E. Suddreth & Associates, Inc.	\$1,927.35

IT IS SO ORDERED.

Dated this ____ day of February 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Richard H. Wagstaff III, Overland Park, Kansas

Laura E. Thompson, Kansas City, Missouri
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director