

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

THERESA HARRIS)	
Claimant)	
VS.)	
)	Docket No. 172,992
BETHANY MEDICAL CENTER)	
Respondent)	
Self-Insured)	

ORDER

This case comes before the Appeals Board on remand from the Court of Appeals.

APPEARANCES

Claimant appeared by her attorney, Steven Treaster of Overland Park, Kansas. The respondent, a qualified self-insured, appeared by its attorney, Robert L. Kennedy of Kansas City, Kansas.

RECORD AND STIPULATIONS

The Appeals Board has reviewed the record listed in the Award by the Administrative Law Judge dated April 7, 1994. The Appeals Board has also adopted the stipulations listed in that Award.

ISSUES

The sole issue to be considered on appeal is whether claimant's injury arose out of and during the course of her employment with respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This case initially came before the Appeals Board with oral argument conducted on May 3, 1994. The Appeals Board reviewed the record at that time and in an Order dated December 28, 1994, concluded that claimant's injury, an injury which resulted from an assault by a co-employee, was not a compensable injury. Claimant appealed to the Kansas Court of Appeals. The Court of Appeals ruled that the Appeals Board applied an improper standard to determine compensability and remanded the case to the Appeals Board. Specifically, the Appeals Board concluded foreseeability of the assault was not the standard and looked to determine whether the conduct of the assailant was so condoned that one could say the injury arose out of and in the course of claimant's employment. The Court of Appeals analyzed the relevant case law and decided the Appeals Board had applied a greater test than was appropriate. The Appeals Board understands the Court of Appeals decision as one directing that we determine whether respondent had reason to anticipate that claimant's coworker, Mr. Kirkwood, might become violent and "had reason to anticipate that injury might result to claimant if the two continued to work together." If so, claimant's injury is compensable.

After reviewing the evidence in this case, the Appeals Board concludes the respondent did have reason to anticipate that an injury might occur. Mr. Kirkwood, the individual who struck claimant, on several occasions had called claimant names and, on one occasion, deliberately spilled hot soup on her. Claimant has reported these problems to her supervisor and filled out a police report. On another occasion hospital security had to be called during an altercation between Kirkwood and another employee.

The Appeals Board concludes that, based on the legal standard expressed in the opinion by the Court of Appeals, the claim of Theresa Harris should be considered compensable. The parties have stipulated that if claimant's claim is compensable that claimant suffered a 5 percent functional impairment and no work disability.

For the above foregoing reasons, the Appeals Board finds that the Award of Administrative Law Judge Steven J. Howard dated April 7, 1994, should be, and the same is hereby, affirmed.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Steven J. Howard dated April 7, 1994, should be, and the same is hereby, affirmed.

WHEREFORE, AN AWARD OF COMPENSATION IS HEREIN ENTERED IN FAVOR OF the claimant, Theresa Harris, and against the respondent, Bethany Medical Center, for accidental injury on December 17, 1992. The claimant is entitled to \$7.10 per week for 415 weeks which represents a 5% permanent partial general body disability making a total award of \$2,946.50.

As of August 31, 1996, claimant would be entitled to no weeks of temporary total disability compensation, followed by 193.29 weeks of permanent partial disability compensation at the rate of \$7.10 per week in the sum of \$1,372.36 followed by 221.71 weeks at the rate of \$7.10 per week, until fully paid or further order of the Director.

Claimant is entitled to unauthorized medical expense pursuant to finding No. 3 of the Award by the Administrative Law Judge.

Claimant is entitled to medical expenses and future medical expenses pursuant to finding No. 4 of the Award by the Administrative Law Judge.

Fees necessary to defray the expenses of administration of the Kansas Workers Compensation Act are assessed against the respondent to be paid directly as follows:

Richard Kupper & Associates	
Transcript of 1/18/94	\$ 65.25
Deposition of Theresa Harris	\$238.40

IT IS SO ORDERED.

Dated this ____ day of September 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Steven Treaster, Overland Park, KS
- Robert L. Kennedy, Kansas City, KS
- Steven J. Howard, Administrative Law Judge
- Philip S. Harness, Director