

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

EDMOND L. GALLAWAY)
Claimant)

VS.)

SOUTHWEST AREA TELEPHONE SERVICES, INC.)
Respondent)

AND)

UNITED FIRE & CASUALTY COMPANY)
Insurance Carrier)

AND)

WORKERS COMPENSATION FUND)

Docket No. 176,320

ORDER

Claimant requested the Appeals Board to review the Award dated February 9, 1996, entered by Special Administrative Law Judge Douglas F. Martin.

APPEARANCES

Jerry L. Soldner of Garden City, Kansas, appeared for the claimant. Mark A. Buck of Topeka, Kansas, appeared for the respondent and its insurance carrier. Wendel W. Wurst of Garden City, Kansas, appeared for the Workers Compensation Fund.

RECORD AND STIPULATIONS

The record considered by the Appeals Board and the parties' stipulations are listed in the Award. Also, the parties stipulated into evidence claimant's attorney's letter dated April 2, 1993, to Christine Zetocka, an employee of respondent's insurance carrier, and

further agreed respondent received the letter on April 5, 1993. In addition, the parties stipulated claimant made no later demand for medical records after the April 2, 1993, letter.

ISSUES

The Administrative Law Judge denied claimant's request for benefits holding that claimant had failed to prove he sustained personal injury as a result of an alleged December 31, 1992, work-related accident. At oral argument the parties requested the Appeals Board to review the following issues:

- (1) Did claimant's accident arise out of and in the course of his employment?
- (2) Did the Special Administrative Law Judge err by failing to quash the letter dated October 31, 1994, along with testimony concerning that medical report, provided by Robert A. Rawcliffe, Jr., M.D.?
- (3) Did the Special Administrative Law Judge err by failing to quash the testimony of Mark Neuman, D.C.?
- (4) Is the Workers Compensation Act applicable to this accident?
- (5) Did the employer/employee relationship exist on the date of accident?
- (6) What is claimant's average weekly wage?
- (7) What is the nature and extent of claimant's injury and disability?
- (8) What benefits is claimant entitled to receive?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds as follows:

The Award should be affirmed. However, the Appeals Board finds that claimant's request for benefits should be denied on different grounds than those set forth by the Special Administrative Law Judge.

On December 31, 1992, claimant slipped and fell on ice in his company's parking lot. Claimant contends he sustained either a permanent injury or permanent aggravation of a preexisting back condition as a result of that fall. Respondent and its insurance carrier

deny the accident arose out of and in the course of employment. In addition, the respondent and its insurance carrier deny claimant sustained permanent injury or permanent aggravation and contend claimant's symptoms are the result of arachnoiditis and scarring which is the natural and probable consequence of disc surgery which was performed in 1977.

Before an accident is compensable under the Workers Compensation Act, the accident must arise out of and in the course of employment. See K.S.A. 1992 Supp. 44-501.

The two phrases "arising out of" and "in the course of" employment have separate and distinct meanings. Both elements must be proved before a claim is compensable. The phrase "arising out of" employment points to the cause or origin of the accident and requires some causal connection between the accident and the employment. Before an accident arises out of employment it should be apparent to the rational mind a causal connection between the work and accident. An injury arises out of employment if it arises out of the nature, conditions, obligations, and incidents of the employment. The phrase "in the course of" employment relates to the time, place, and circumstances under which an accident occurs and means the accident happened while the worker was at work in the employer's service. Kindel v. Ferco Rental, Inc., 258 Kan. 272, 899 P.2d 1058 (1995).

Claimant's accident occurred around 10:30 or 10:45 a.m. in the company parking lot. At the time of the accident claimant was inspecting body shop repairs recently performed upon his daughter's car in an attempt to calm his daughter who was quite upset due to the quality of the body work. Although the car was personally owned by claimant's daughter, it was used for trips to the post office to pick up the company mail for which the company would reimburse gasoline expense. Claimant contends the accident arose out of and in the course of his employment because at the time of the accident he was attempting to calm his daughter, who was also an employee of the company and under his supervision, so she could resume her work duties.

Because the accident occurred while claimant was at work during normal working hours, the accident occurred in the course of employment. However, the Appeals Board finds claimant's accident did not arise out of his employment. The Appeals Board agrees with respondent's contention that inspecting his daughter's automobile did not benefit the company nor was it otherwise part of claimant's job duties. Therefore, the Appeals Board finds the accident did not arise out of the nature, conditions, obligations, or incidents of claimant's employment.

Because of the above finding, the remaining issues are rendered moot and the award denying benefits entered by the Special Administrative Law Judge should be affirmed.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award dated February 9, 1996, entered by Special Administrative Law Judge Douglas F. Martin should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of July 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

DISSENT

We respectfully disagree with the majority's opinion. We find claimant's accident did arise out of and in the course of employment.

The Workers Compensation Act is to be liberally construed to bring employers and employees within its provisions. See K.S.A. 1992 Supp. 44-501(g). Claimant's accident occurred while claimant was at work during normal working hours while he was attempting to counsel an employee who was under his supervision. We believe counseling is a part of directing employees which is as integral to a supervisor's duties as motivating and disciplining. The fact the employee being counseled was claimant's daughter is a red herring. The relevant issue is whether claimant's activities in the company parking lot was in furtherance of respondent's business interests. Had the employee been someone other than claimant's daughter, we do not believe there would be any question that the accident arose out of the nature, incidents, or obligations of the employment relationship. Here, claimant is penalized because of familial relationship.

We find that claimant did injure his back in the December 31, 1992, accident. However, the injury was only temporary in nature as indicated by claimant's chiropractor, Robert K. Seng, D.C. We further find that claimant's present symptoms and impairment are caused by his preexisting condition of arachnoiditis and scarring which developed as

a result of the 1977 disc surgery. In conclusion, claimant would be entitled to temporary total disability and medical benefits for the December 1992 accident, but no permanent partial disability benefits.

BOARD MEMBER

BOARD MEMBER

c: Jerry L. Soldner, Garden City, KS
Mark A. Buck, Topeka, KS
Wendel W. Wurst, Garden City, KS
Douglas F. Martin, Special Administrative Law Judge
Philip S. Harness, Director