

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

**DIANE E. BROOKS**  
Claimant

VS.

**SALLIE MAE FINANCE CORPORATION**  
Respondent

AND

**VIGILANT INSURANCE COMPANY**  
Insurance Carrier

AND

**KANSAS WORKERS COMPENSATION FUND**



Docket No. 189,126

**ORDER**

Claimant appeals from a Preliminary Hearing Order of November 10, 1994, wherein Administrative Law Judge Floyd V. Palmer denied claimant benefits, finding claimant had failed to carry her burden of proving she more probably than not suffered a compensable injury arising out of and in the course of her employment with respondent on the date alleged.

**ISSUES**

- (1) Whether claimant met with personal injury by accident arising out of and in the course of her employment with respondent on March 16, 1994.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board finds as follows:

The Appeals Board finds claimant has not proven by a preponderance of the credible evidence that she suffered accidental injury arising out of and in the course of her employment while working for respondent on the date alleged.

On the alleged injury date, March 16, 1994, claimant, while walking to the telephone, supposedly struck shoulders with Sharon Lavender with such force as to cause claimant's neck to snap. Claimant heard a pop in her neck, saw stars before her eyes, and felt faint. Claimant alleges she was struck with such force that, had it not been for a cart against

which she struck her leg, she might have fallen to the ground. After the impact, claimant continued to the telephone desk and answered her telephone call. Claimant noticed that her head and neck hurt but thought it was only a temporary condition.

Approximately twenty minutes later, claimant sent an E-mail to Donna Workman and Bill Stumpf, her supervisors, regarding an injury to her low back. There was no mention in this E-mail of claimant's head or neck. It should be noted that claimant was on vacation the Thursday and Friday following the alleged Wednesday collision.

In the room at the time of the alleged collision were several co-employees. The respondent took the deposition of several of these employees, none of whom was able to verify claimant's allegations regarding the collision. Sharon Lavender, with whom claimant supposedly had the collision, denied having any such contact with the claimant on that day or any other day. She does not even recall claimant being in the room on that particular date. Furthermore, claimant returned to work the following week and performed her duties with no indication of any physical problems. Claimant did not discuss being dizzy and did not advise Ms. Lavender that she was suffering from any headaches.

Respondent also deposed Shirley Burke who worked in a room across the hall from the location of the alleged collision. On the date of the alleged collision, claimant came into the room with Ms. Burke, talking about Sharon Lavender, and advised, "Well, I'll fix her." Claimant uttered no complaints regarding her neck or head to Ms. Burke. Ms. Burke was not advised that claimant was in any pain and Ms. Burke has encountered no one who witnessed this alleged collision.

Respondent deposed Janet Mills who worked in the room where the alleged collision occurred. Ms. Mills did not see any collision, was not told by anyone that such a collision occurred, and was never told by claimant of any collision or any injuries suffered therefrom. Claimant did not complain to Ms. Mills about being dizzy or injured in any way.

Respondent deposed Bill Stumpf, the supervisor of document storage, also claimant's supervisor. His desk is located in the same room as the alleged collision. He does not recall any collision on that date and was not told by anyone of any physical contact between claimant and Ms. Lavender. He did read his E-mail the following day, one of claimant's vacation days, and scheduled a meeting with claimant and Ms. Lavender the following Monday. At the Monday meeting, Ms. Lavender denied the collision ever occurred. The E-mail forwarded to Mr. Stumpf indicated claimant's injury was in her back, with no mention of her head or neck. This discrepancy was not explained by claimant at the Monday meeting. Claimant worked the remainder of that next week on her regular job without complaints of headaches, dizziness, vertigo or neck or shoulder pain.

Respondent deposed Donna Shivel who also worked in the same room as the alleged collision. Ms. Shivel witnessed no collision and was told by no one that any collision ever occurred. She was never told by claimant that she had suffered any injury, and further was never told by claimant that she experienced any physical symptoms as a result of any alleged injury. Ms. Shivel did place into evidence a drawing of the room in which the collision allegedly occurred. The drawing indicates that for claimant to have suffered the collision in the location described by claimant, on her way to answer the telephone, she would have had to have taken a circuitous route around a large table which would not have been the most direct route to the telephone. Ms. Shivel did not recall claimant receiving a telephone call on that date.

Respondent deposed Mickey Schauf who also worked in the same room as the alleged collision. Mr. Schauf was the night assistant supervisor and was the one alleged by claimant to have answered the telephone leading up to claimant's collision. Mr. Schauf did not recall claimant having had any collision on the date alleged and was told by no one

in the room that any such collision ever occurred. Claimant did not tell him of any physical problems and claimant did not appear hurt during the week following the alleged collision. Mr. Schauf also does not recall answering the telephone for claimant on the alleged date of injury.

“In proceedings under the workers compensation act, the burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends.” K.S.A. 44-501(a).

K.S.A. 44-508(g) defines burden of proof as follows:

“Burden of proof” means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record.”

This must be established by a preponderance of the credible evidence. Box v. Cessna Aircraft Co., 236 Kan. 237, 689 P.2d 871 (1984).

Whether an accident arises out of and in the course of a worker's employment depends upon the facts peculiar to the particular case. Messenger v. Sage Drilling Co., 9 Kan. App. 2d 435, 680 P.2d 556, rev. denied 235 Kan. 1042 (1984).

It is claimant's burden to provide facts persuasive enough to carry her burden that an injury did occur on the date alleged. The overwhelming lay testimony indicates claimant did not suffer injury on the date alleged. The E-mail provided by claimant on the alleged date of injury discusses only a low back problem. Claimant had been receiving treatment for her back since suffering a low back injury in May 1993.

It is also significant that claimant's first examination by Dr. Hoffman on March 21, 1994, contains no mention of any headaches.

The medical evidence is not supportive of claimant's claim. Dr. Sciara, who examined claimant shortly after the alleged injury, noted claimant had suffered a head injury. At no time during claimant's testimony did she describe a head injury. It should also be noted that Dr. Sciara's diagnosis of mild post-concussion syndrome is not supported by the medical records of Dr. Hoffman who advised she had never heard of a post-concussion syndrome that did not involve a head injury or some type of trauma to the head.

The overwhelming weight of the evidence appears to be contrary to claimant's allegations. The Appeals Board finds claimant has failed in her burden of proving an injury arising out of and in the course of her employment on March 16, 1994, while working with respondent.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Floyd V. Palmer, dated November 10, 1994, is affirmed in all respects.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February, 1995.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

- c: Sally G. Kelsey, Attorney at Law, Lawrence, KS  
H. Wayne Powers, Attorney at Law, Overland Park, KS  
Jeffrey K. Cooper, Attorney at Law, Topeka, KS  
Floyd V. Palmer, Administrative Law Judge  
George Gomez, Director