

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

CINDY P. HOISINGTON
Claimant

VS.

LITTLE MEX
Respondent

AND

UNINSURED
Insurance Carrier

AND

KANSAS WORKERS COMPENSATION FUND



Docket No. 193,713

ORDER

Claimant appealed from a Preliminary Hearing Order of January 10, 1995, wherein Administrative Law Judge Robert H. Foerschler denied claimant benefits, finding claimant failed to prove by a preponderance of the credible evidence that she suffered accidental injury arising out of and in the course of her employment with respondent.

ISSUES

- (1) Whether claimant suffered accidental injury.
- (2) Whether claimant's accidental injury arose out of and in the course of her employment.
- (3) Whether claimant suffered an intervening, nonwork-related injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

In proceedings under the Workers Compensation Act, the burden of proof shall be upon the claimant to establish the claimant's right to an award of compensation by proving the various conditions on which the claimant's right depends. K.S.A. 44-501(a). 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 accidental injury arises out of and in the course of the 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).

The evidence in the record contradicts claimant's allegations of an injury to her knee arising out of and in the course of her employment with respondent. Both lay testimony and the medical records of the doctors placed into evidence by claimant's own attorneys cast doubt upon the validity of her claim.

The Appeals Board finds claimant has not proven by a preponderance of the credible evidence that the injury alleged on August 30, 1994, arose out of and in the course of her employment, and claimant's request for benefits must be denied.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Decision of Administrative Law Judge Robert H. Foerschler, dated January 10, 1995, is affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of April 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Derek R. Chappell, Ottawa KS
- Richard H. Wagstaff III, Overland Park KS
- Roger Jerguson, Paola KS
- Robert H. Foerschler, Administrative Law Judge
- George Gomez, Director