



excruciating. He advised another salesperson of his problem, departed the lot in his own car, drove home, and went to bed. The next night claimant's wife called 911 and claimant was transported to the hospital in an ambulance. Claimant has been unable to return to work since the date of injury.

Respondent alleges this matter is similar to the scenario found in Martin v. U.S.D. No. 233, 5 Kan. App. 2d 298, 615 P.2d 168 (1980). In Martin the claimant, a long-term employee of the respondent with a long history of back problems, was exiting his own vehicle prior to beginning work when he felt a sudden sharp pain in his back and down into his left leg. The Court of Appeals, in examining the requirements of the phrases "arising out of" and "in the course of" employment, found the claimant in Martin had been involved in a risk not associated with his employment, not a neutral risk, but instead one considered a personal risk. The only causational factor the Court found significant was claimant's own action in exiting from his own personal truck. This, coupled with claimant's history of back problems, resulted in a finding that his injury was not compensable.

There is no serious dispute that the accident occurred in the course of claimant's employment as claimant was clearly performing activities for his employer when this incident occurred. In the present case, the claimant was exiting from respondent's vehicle after having transported same from Century II to the respondent's car lot. The only serious question is whether the injury arose "out of" claimant's employment.

"This general rule has been elaborated to the effect that an injury arises "out of" employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury [citations omitted].

"An injury arises "out of" employment if it arises out of the nature, conditions, obligations and incidents of the employment [citations omitted]." Martin, *supra*, at 299.

It is the claimant's burden to establish his right to an award for compensation by proving all the various conditions on which his right to a recovery depends by a preponderance of the credible evidence, see Box v. Cessna Aircraft Co., 236 Kan. 237, 689 P.2d 871 (1984).

It is clear to the rational mind that claimant's actions in transporting vehicles for his employer from Century II back to the lot would necessitate that he both enter and exit the vehicles. In this instance, while exiting, claimant experienced a sudden onset of pain in his low back with radiculopathy into his right leg.

Dr. Michael Estivo, in his report of September 16, 1994, states that the claimant does realize his spinal stenosis, a pre-existing condition, was made symptomatic by his injury of August 8, 1994. There is no medical evidence to contradict this comment and there is nothing in Dr. Estivo's medical records to indicate he disagrees with this realization on claimant's part.

The Appeals Board finds, in reviewing the total circumstances of this matter, that claimant's injury of August 8, 1994, did arise out of and in the course of his employment.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Nelsonna Potts Barnes, dated January 11, 1995, is affirmed in all respects.

**IT IS SO ORDERED.**

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

---

BOARD MEMBER

---

BOARD MEMBER

---

BOARD MEMBER

c: Alexander B. Mitchell, Wichita, KS  
Gary A. Winfrey, Wichita, KS  
Nelsonna Potts Barnes, Administrative Law Judge  
George Gomez, Director