

initially treated at the Shawnee Mission Medical Center emergency room and has received follow-up treatment for the injuries she sustained in that slip and fall accident.

Respondent contends that claimant is precluded from receiving workers compensation benefits by virtue of the "going and coming rule" contained in K.S.A. 44-508(f) which provides:

"The words 'arising out of and in the course of employment' as used in the workers compensation act shall not be construed to include injuries to the employee occurring while the employee is on the way to assume the duties of employment . . . the proximate cause of which injury is not the employer's negligence."

It is the respondent's contention that claimant was simply on her way to work at the time of the accident and, therefore, her injury is not compensable by the Kansas Workers Compensation Act.

Claimant argues that as a traveling nurse, she was required to travel between different locations to provide nursing services. She contends, therefore, that her situation fits into the exception to the "going and coming rule" concerning employments which by their nature have no premises thereby making travel an integral, inherent and necessary element of the employment. Messenger v. Sage Drilling Co., 9 Kan App. 2d 435, 680 P.2d 556 (1984) and Kennedy v. Hull & Dillon Packing Co., 130 Kan. 191, 285 Pac. 536 (1930). The Appeals Board disagrees that claimant's employment in this instance is analogous to the oil field drilling crew in Messenger or the traveling salesman in Kennedy. Although there was some testimony to indicate that claimant might be required to travel from one job site to another in the course of a day, this was not clearly established as a usual and customary practice. On the date of her accident, which was her first job assignment for respondent, she was assigned to one job site for the entire eight (8) hour work day. She had not received any other assignments. Although from past experience claimant testified that she was expected to and likely would travel to more than one job site in a given work day, the facts of this case are such that claimant was not traveling between work sites at the time of her accident. Furthermore, the record shows that claimant was not paid for her travel expenses such as mileage, gasoline or even her travel time between job assignments.

Claimant argues in the alternative that her situation falls within a second exception to the "going and coming" rule, which involves an injury which is sustained by an employee on the premises of their employer. Thompson v. Law Offices of Alan Joseph, 256 Kan. 36, 883 P.2d 768 (1994) and Teague v. Boeing Airplane Co., 181 Kan. 434, 312 P.2d 220 (1957). We find this exception to be the more analogous to claimant's situation. Although she had no permanent work location, we find the location of each temporary assignment to be her work site for purposes of her employment. Therefore, claimant was on the premises of her work site at the time of her accident. She was assigned to the Shawnee Mission Medical Center and her accident occurred on their premises. Accordingly, the Appeals Board finds her accident to have arisen out of and in the course of her employment.

The claimant also raises in her brief an issue as to the claimant's average weekly wage. This is not an issue over which the Appeals Board has jurisdiction to review the findings of the Administrative Law Judge from an appeal from a preliminary order.

WHEREFORE, it is the finding, decision and order of the Appeals Board that the March 31, 1995 Order of Administrative Law Judge Steven J. Howard should be, and the same is hereby, reversed and this matter is remanded to the Administrative Law Judge for

further proceedings consistent with this Order regarding claimant's request for preliminary medical and temporary total disability benefits.

IT IS SO ORDERED.

Dated this ____ day of July, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Leah Brown Burkhead, Mission, KS
Michael Downing, Kansas City, MO
Steven J. Howard, Administrative Law Judge
David Shufelt, Acting Director