

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

ANDRE L. JENKINS)	
Claimant)	
VS.)	
)	Docket No. 201,079
STATE OF KANSAS)	
Respondent)	
Self-Insured)	

ORDER

Claimant requested review of the preliminary hearing Order dated December 6, 1996, entered by Administrative Law Judge Bryce D. Benedict.

ISSUES

Based upon the finding that claimant failed to prove the alleged accident occurred on respondent's premises, the Administrative Law Judge denied the request for benefits. The only issue before the Appeals Board on this review is whether claimant's June 7, 1994, accident arose out of and in the course of his employment with respondent or, in the alternative, whether claimant sustained personal injury by accident arising out of and in the course of his employment on June 6, 1994.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, for preliminary hearing purposes the Appeals Board finds as follows:

The preliminary hearing Order should be affirmed.

Under K.S.A. 1996 Supp. 44-534a, the Appeals Board has the jurisdiction and authority to review preliminary hearing findings pertaining to whether claimant sustained personal injury by accident arising out of and in the course of his employment.

Claimant contends he sustained cervical injury either as a result of his bumping heads with a coworker on June 7, 1994, or as a result of his work activities the day before. The Administrative Law Judge found that claimant had failed to prove the alleged accidental injury arose out of and in the course of employment. The Appeals Board agrees with that conclusion.

The question whether the June 7, 1994, incident arose out of and in the course of employment is governed by K.S.A. 44-508(f) which provides in part:

“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 or after leaving such duties, the proximate cause of which injury is not the employer’s negligence. An employee shall not be construed as being on the way to assume the duties of employment or having left such duties at a time when the worker is on the premises of the employer or on the only available route to or from work which is a route involving a special risk or hazard and which is a route not used by the public except in dealings with the employer.”

Based upon the evidence presented to date, the Appeals Board finds the head-bumping incident occurred after claimant had left work and after claimant had left respondent’s premises. Although claimant testified the incident occurred simultaneously as he exited respondent’s building and before he had stepped onto the public sidewalk, the Appeals Board finds it is more probably true than not true that the incident occurred off respondent’s premises.

Because the head-bumping incident occurred on a public sidewalk which others regularly used for purposes other than accessing respondent’s premises, claimant’s argument that a special hazard existed is not relevant.

Claimant alleged in the alternative that his work activities on June 6, 1994, caused his cervical injury. The Appeals Board finds that the evidence fails to establish that claim. At the preliminary hearing held on May 22, 1995, claimant’s attorney told Administrative Law Judge James R. Ward he had no medical evidence specifying what caused claimant’s neck complaints although Dr. Sankoorikal “tends to look like he’s relating it to the head bump.” At the most recent hearing held on November 27, 1996, claimant’s attorney told Administrative Law Judge Bryce D. Benedict that he was not certain whether claimant sustained one or two accidents “[b]ut given the fact that it was the head bump that gave rise to the immediate treatment, we felt that was probably the cause of the incident [*sic*].” As noted by Judge Benedict at that hearing, there is no indication in the medical records that Dr. Sankoorikal’s latest diagnosis of transverse ligamentous sprain or strain was related to claimant’s work activities on June 6, 1994.

Based upon the above, for preliminary hearing purposes claimant has failed to prove his entitlement to workers compensation benefits for either a June 6 or June 7, 1994, accident. The Appeals Board finds claimant's June 7, 1994, incident did not arise out of and in the course of claimant's employment with the respondent. Additionally, claimant has failed to prove he sustained injury by reason of work activities he allegedly performed on June 6, 1994.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order dated December 6, 1996, entered by Administrative Law Judge Bryce D. Benedict should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of February 1997.

BOARD MEMBER

c: Derek J. Shafer, Topeka, KS
Scott M. Gates, Topeka, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director