

plywood or whether the plywood simply cracked. In either instance claimant encountered some difficulty with the roof, causing him to drop the bundle of shingles. Thereafter, claimant inspected the roof, finding what he described as poor carpentry workmanship. Apparently, this discovery angered claimant. He then proceeded to stomp on the insulation, cracking the sheetrock underneath the insulation. At some time during these events, claimant suffered injury to his back, hip and right leg. Claimant also alleges injury to his left arm.

Respondent contends claimant's contradictory testimony regarding the events surrounding the alleged injury defeat claimant's attempt to prove accidental injury arising out of and in the course of his employment. The Appeals Board disagrees. While claimant's description of the accident is contradictory the primary facts surrounding the incident vary little from claimant's description.

Respondent further contends claimant is in violation of K.S.A. 44-501(d)(1) which states in part:

“If the injury to the employee results from the employee's deliberate intention to cause such injury; or from the employee's willful failure to use a guard or protection against accident required pursuant to any statute and provided for the employee, or a reasonable and proper guard and protection voluntarily furnished the employee by the employer, any compensation in respect to that injury shall be disallowed.”

Respondent contends claimant's anger, followed shortly thereafter by the stomping episode was an intentional act resulting in injury, thus precluding recovery under K.S.A. 44-501. The respondent argues in its brief: “The claimant is responsible for an unintended result of his intentional act. The claimant's intentional act causing injury is tantamount to deliberate intention to cause injury.”

The Appeals Board must disagree with the respondent's analysis. While the claimant clearly intended to stomp on the roof and perhaps cause damage to the roof, there is no evidence in the record to show claimant intended to injure himself. K.S.A. 44-501(d) requires “the injury” to the employee result from the employee's deliberate intention to cause such injury. Here, the claimant intended to damage the roof. There is no evidence to show that claimant intended to damage his body. As such, the Appeals Board finds that, for preliminary hearing purposes, claimant has satisfied the burden of proving accidental injury arising out of and in the course of his employment and respondent has failed to show the injury to the claimant resulted from claimant's deliberate intention to cause such injury.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Floyd D. Palmer dated December 7, 1995, should be, and is, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of January 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: John J. Bryan, Topeka, Kansas
Wade A. Dorothy, Lenexa, Kansas
Floyd V. Palmer, Administrative Law Judge
Philip S. Harness, Director