

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

OLAH M. JONES
Claimant

VS.

FOOD 4 LESS
Respondent

AND

TRAVELERS INSURANCE COMPANY
Insurance Carrier



Docket No. 206,671

ORDER

Claimant appeals from the preliminary Order of Administrative Law Judge Nelsonna Potts Barnes dated February 2, 1996. The Order denies claimant's request for temporary total disability and medical benefits on the basis of a finding claimant has failed to prove that her injury arose out of and in the course of her employment with respondent.

ISSUES

Has claimant proven by a preponderance of the credible evidence that her injury arose out of and in the course of her employment?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the briefs submitted by the parties, the Appeals Board finds and concludes:

- (1) The issue raised on appeal is one subject to review. K.S.A. 44-534a.
- (2) Claimant has failed to prove that her injury arose out of and in the course of her employment. The material facts are not in dispute. On the date of the accident claimant came to her employer's premises to check her work schedule and to return a bottle of Pepsi she previously purchased from respondent. She was returning the Pepsi because it was flat. Normal procedure for such returns called for the customer to leave the Pepsi bottle with the cashier. Claimant noticed the cashier was busy and offered to take the bottle to the back of the store. After leaving the bottle in the back of the store, an area not open to the public, claimant returned to the store area and while walking back to check her work schedule and to pick up a replacement bottle of Pepsi, claimant slipped on glass and/or water and suffered the injury at issue in this case.

Claimant argues that a liberal construction of the Act brings this claimant's injury within the scope and course of her employment. Claimant acknowledges that the return

of the bottle and even checking her work schedule were not activities in the course of her employment. Claimant argues, however, that taking the bottle to the back of the store, a function not normally performed by customers, she was in the course and scope of her employment.

The Appeals Board disagrees. The return of the bottle and the checking of her schedule were not in the course of her employment. The fact that the act of taking the bottle to the back of the store, an act not normally done by customers, has an advantage to the employer does not bring the accident within the course and scope of her employment. Returning the bottle was a personal errand. Claimant volunteered to take it to the back of the store. The volunteered act of taking the bottle to the back of the store was not part of her work duties.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Nelsonna Potts Barnes dated February 2, 1996, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of April 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Robert R. Lee, Wichita, KS
- William L. Townsley III, Wichita, KS
- Nelsonna Potts Barnes, Administrative Law Judge
- Philip S. Harness, Director