

FINDINGS OF FACT

After reviewing the entire record, the Appeals Board finds as follows:

- (1) The claimant, Steven E. Anderson, is a self-employed engineering consultant.
- (2) On January 2, 1996, Mr. Anderson drove from his Whitewater office into Wichita to purchase a refill for his appointment book, which he used primarily for business purposes.
- (3) While driving home from the office supply store, another driver struck Mr. Anderson's vehicle killing the other driver.
- (4) The parties stipulated Mr. Anderson sustained a 24 percent functional impairment to the right leg as a result of the accident. Also, the parties stipulated that the average weekly wage for this accident was sufficient to entitle Mr. Anderson to the maximum weekly permanent partial disability benefit.
- (5) In his business, Mr. Anderson designs, surveys, stakes, and inspects construction work for developers, municipalities, and other individuals. On average, he spends one-third of his time out of his office at various locations. Driving is an integral, necessary, and inherent part of his work.
- (6) The Appeals Board adopts the findings as set forth in the Award to the extent they are not inconsistent with the above.

CONCLUSIONS OF LAW

- (1) The Workers Compensation Act is to be liberally construed to bring both employers and workers within the Act's provisions and protections. K.S.A. 44-501(g).
- (2) Workers compensation statutes are to be liberally construed to effect legislative intent and award compensation to a worker where it is reasonably possible to do so. Kinder v. Murray & Sons Construction Co., Inc., Docket No. 76,296 (Kan. 1998).
- (3) Before one is entitled to compensation under the Workers Compensation Act, the accident must "arise out of and in the course of employment." That phrase is not construed to include injuries that occur while the worker is on his way to work or after the worker has left work. K.S.A. 1995 Supp. 44-508(f). An exception, however, applies when driving is either an integral part of or inherent in the nature of or is necessary to the employment. Messenger v. Sage Drilling Co., 9 Kan. App. 2d 435, 680 P.2d 556, *rev. denied* 235 Kan. 1042 (1984).
- (4) Mr. Anderson's work as a self-employed engineering consultant required him to travel on a regular basis to different meetings and project sites. Travel is a necessary and integral part of Mr. Anderson's work.

(5) Because travel is inherent in Mr. Anderson's work and because the accident occurred when he was returning home from performing a work-related activity, the accident arose out of and in the course of his self-employment.

(6) The insurance carrier requests the Appeals Board to adopt a "special errand rule." The rule, however, as adopted in other jurisdictions expands rather than restricts the situations where an accident is found to arise out of and in the course of employment. The rule is:

When an employee, having identifiable time and space limits on his employment, makes an off-premises journey which would normally not be covered under the usual going and coming rule, the journey may be brought within the course of employment by the fact that the trouble and time of making the journey, or the special inconvenience, hazard, or urgency of making it in the particular circumstances, is itself sufficiently substantial to be viewed as an integral part of the service itself.

But even if adopted, the rule would not be applicable to these facts as it applies only to those workers who have identifiable time and space limits in their employment.

(7) The Award entered by the Administrative Law Judge should be affirmed.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award dated September 30, 1997, entered by Administrative Law Judge Nelsonna Potts Barnes is affirmed.

IT IS SO ORDERED.

Dated this ____ day of April 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Norman G. Manley, El Dorado, KS
- Kendall R. Cunningham, Wichita, KS
- Nelsonna Potts Barnes, Administrative Law Judge
- Philip S. Harness, Director