

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

CYNTHIA DRISCOLL)	
Claimant)	
VS.)	
)	Docket No. 214,179
CEDAR VALE HOSPITAL, INC.)	
Respondent)	
AND)	
)	
PHICO INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier requested review of the preliminary hearing Order dated April 10, 1997, entered by Administrative Law Judge Nelsonna Potts Barnes.

ISSUES

The Administrative Law Judge awarded claimant temporary total disability and medical benefits. Respondent and its insurance carrier requested the Appeals Board to review the issue of whether claimant's accident arose out of and in the course of employment with respondent.

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.

On April 21, 1996, claimant fell while walking down the hallway of respondent's hospital. Claimant does not know why she fell as she did not trip, slip, or bump into any objects. She was simply walking. Although claimant was carrying laundry at the time of the accident, there is no evidence the laundry contributed to the fall.

Because the accident occurred while claimant was at work, the accident occurred in the course of claimant's employment. However, the accident must also arise out of the employment before it is compensable under the Kansas Workers Compensation Act. See Newman v. Bennett, 212 Kan. 562, 512 P.2d 497 (1973).

The phrase "out of" employment points to the cause or origin of the worker's accident and requires some causal connection between the accident and the employment. An accidental injury arises out of employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is performed and the resulting injury. An injury arises out of employment if it arises out of the nature, conditions, obligations, and incidents of the employment. Kindel v. Ferco Rental, Inc., 258 Kan. 272, 899 P.2d 1058 (1995).

According to Larson's The Law of Workmen's Compensation, Sec. 10.31, the majority of jurisdictions compensate workers who are injured in unexplained falls upon the basis that an unexplained fall is a neutral risk and would not have otherwise occurred at work if claimant had not been working. In Hensley v. Carl Graham Glass, 226 Kan. 256, 597 P.2d 641 (1979), the Kansas Supreme Court adopted a similar risk analysis. It categorized risks into three categories: (1) those distinctly associated with the job; (2) risks which are personal to the workman; and (3) neutral risks which have no particular employment or personal character.

We are directed by K.S.A. 44-501(g) that the legislature intended the Workers Compensation Act to be liberally construed to bring employers and employees within its provisions. With that directive in mind, the Appeals Board finds claimant's unexplained fall was a neutral risk and the Appeals Board adopts the majority view that such falls arise out of and in the course of employment.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order dated April 10, 1997, entered by Administrative Law Judge Nelsonna Potts Barnes should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of July 1997.

BOARD MEMBER

c: Harry M. Bass, Independence, KS
Kendall R. Cunningham, Wichita, KS
Nelsonna Potts Barnes Administrative Law Judge
Philip S. Harness, Director