

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

<b>LAWANA K. HALL</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 217,031
<b>CESSNA AIRCRAFT COMPANY</b>	)	
Respondent	)	
AND	)	
	)	
<b>KEMPER INSURANCE COMPANIES</b>	)	
Insurance Carrier	)	

**ORDER**

Respondent appeals from a November 7, 1996, preliminary hearing Order entered by Administrative Law Judge John D. Clark.

**ISSUES**

The Administrative Law Judge granted claimant's request for medical benefits. Also, temporary total disability compensation was ordered paid if claimant is taken off work by the authorized treating physician. Respondent appealed raising the issue of whether claimant met her burden of proving an accident arising out of and in the course of her employment with respondent.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the evidence presented and for purpose of preliminary hearing, the Appeals Board finds as follows:

The Appeals Board has jurisdiction to review a finding regarding a disputed issue of whether the employee suffered an accidental injury which arose out of and in the course of the employee's employment. K.S.A. 44-534a, as amended.

Claimant testified she was injured on Friday, September 6, 1996, when performing her regular job duties. On that date, she was unloading parts weighing 51 pounds from an oven. She did not feel the immediate onset of pain. She worked the rest of that day without pain. However, on her way home from work, while riding as a passenger in a car, her back started hurting. The pain continued and when she got home she had trouble getting out of the car due to the back pain. The next day at work, her pain worsened. She told her supervisor that she had injured her back at work the day before, but that she did not realize it until after she had left work. Claimant worked five of her scheduled eight hours that next day and then left work to go to the doctor. Thereafter, when she returned to work the following Monday, she went to the respondent's first-aid office, reported her injury and received treatment.

Claimant denies doing anything at home to injure herself. Claimant denies that she was injured getting into or out of the car. The pain started while she was riding in the car shortly after leaving work and before she had done anything else. Also, she reports her pain worsening the next day, Saturday, September 7, 1996, while at work. Claimant denies any prior back injuries and denies having any previous treatment for her back. At the time of the preliminary hearing, claimant was still working but was under certain restrictions from her physician.

Respondent is not alleging that claimant's injury occurred getting in or out of her car. What respondent does contend is that the record fails to sustain claimant's burden of proof that she sustained personal injury arising out of and in the course of her employment. Respondent's contention is based primarily upon the fact that claimant did not experience any immediate onset of pain while lifting objects at work on the alleged date of accident and that her onset of pain did not occur at work.

There is no real dispute as to the facts of this case. The evidence is consistent with regard to claimant's activities and the onset of her back pain. While it is true that she did not initially experience symptoms at work, the onset of her symptoms did occur shortly after leaving work and before engaging in any activity which can be pointed to as a alternative explanation for claimant's condition. In addition, claimant testified that her condition worsened while performing her job duties the following day. Claimant believes her symptoms are the result of her work activities, particularly the lifting of the 51-pound objects. There is no expert medical opinion in the record, at this time, which either supports or refutes claimant's contention as to causation.

The Appeals Board finds that claimant has, by the barest of margins, sustained her burden of proof. The Administrative Law Judge's finding that claimant sustained personal injury by accident arising out of and in the course of her employment with respondent should be affirmed.

**WHEREFORE**, it is the finding, decision , and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge John D. Clark dated November 7, 1996, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of January 1997.

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BOARD MEMBER

c: James B. Zongker, Wichita, KS  
P. Kelly Donley, Wichita, KS  
John D. Clark, Administrative Law Judge  
Philip S. Harness, Director