

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

<b>JAMES EWING</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 220,431
<b>GREAT PLAINS MANUFACTURING, INC.</b>	)	
Respondent	)	
AND	)	
	)	
<b>SENTRY CLAIMS SERVICES</b>	)	
Insurance Carrier	)	

**ORDER**

Respondent filed an application for review by the Appeals Board of the preliminary hearing Order entered by Administrative Law Judge Bruce E. Moore on April 24, 1997.

**ISSUES**

Respondent requested review of whether claimant suffered an accidental injury that arose out of and in the course of his employment with respondent.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

Whether claimant suffered a work-related injury is a jurisdictional issue that is listed in K.S.A. 1996 Supp. 44-534(a) and subjects a preliminary hearing order to review by the Appeals Board.

Claimant filed an application for a preliminary hearing requesting an order for medical treatment and temporary total disability compensation for an injury to his left knee. Claimant alleged the injury occurred while he was working for respondent on February 4, 1997. After hearing claimant testify and reviewing the medical records admitted as exhibits at the preliminary hearing, the Administrative Law Judge granted claimant's preliminary hearing benefit requests.

Respondent argues that claimant failed to prove the injury to his left knee arose out of his employment with respondent. Respondent does not dispute that claimant injured his knee in the course of his employment as claimant was at work in the employer's service when the injury occurred. What respondent does dispute is whether claimant's left knee injury arose out of his employment. Respondent argues that claimant's left knee injury was caused by a personal risk not associated with claimant's employment and, therefore, not compensable. Respondent cites the cases of Hensley v. Carl Graham Glass, 226 Kan. 256, 597 P.2d 641 (1979) and Martin v. U.S.D. No. 233, 5 Kan. App. 2d 298, 615 P.2d 168 (1980) in support of its argument.

Claimant testified he felt a popping in his left knee as he was walking back to his machine from the time clock during the second shift at approximately 10:00 p.m. on February 4, 1997. After claimant heard this popping sound, he noticed that his left knee felt loose but he was able to finish the remainder of the shift. At that time, claimant testified that he did not have pain in his left knee. However, claimant woke up the next morning with pain in his knee and he could not stand on his left leg. Claimant notified respondent of his left knee injury and requested medical treatment. Respondent refused to authorize medical treatment indicating that claimant's injury was not work related.

Claimant then went on his own to a family emergency center located in Salina, Kansas. At the emergency center, claimant was evaluated by a family physician and then referred to Jeryl G. Fullen, M.D., an orthopedic surgeon in Salina, Kansas. Dr. Fullen diagnosed a medial meniscus tear of claimant's left knee. The tear was surgically repaired by Dr. Fullen on February 17, 1997. Claimant was returned to work for respondent without restrictions on March 31, 1997.

Claimant testified that immediately prior to his injury he was operating a Greibal machine that cut sheets of steel, measuring four feet by 96 inches and weighing 285 pounds, from a large roll. The sheets were cut from the machine and laid on a table. Claimant testified he was required to lift one end of each sheet and slide the sheet off the table onto a pallet. The evening of his injury, claimant had finished cutting 43 sheets for an order that took him an hour from 9:00 to 10:00 p.m. Following the work order, claimant was required to punch the time clock to record the amount of time required to complete the order. Claimant testified that as he returned from the time clock to the machine he felt his knee pop. Claimant testified, prior to this incident, he had never injured his left knee or had any other problems with his left knee.

Claimant admitted into evidence at the preliminary hearing a letter dated February 25, 1997, from his treating physician, Dr. Fullen. Dr. Fullen opined as follows:

“In my opinion the meniscal injury which this patient sustained was an on the job injury. The patient denies any history of prior injury. He indicates that he does a lot of heavy lifting and twisting using his knees to assist in this activity. This obviously could have been the cause and relationship. Certainly there would be no way to absolutely confirm which event at work resulted in his injury.”

The Appeals Board finds this opinion establishes a causal relationship between claimant’s work and his injury.

Therefore, based on the present state of the preliminary hearing record, the Appeals Board finds that claimant has presented persuasive evidence through his testimony and the medical opinion of his treating physician to prove, at this juncture of the proceeding, it is more probably true than not that his left knee injury arose out of his employment with respondent.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge Bruce E. Moore dated April 24, 1997, should be, and is hereby, affirmed in all respects.

**IT IS SO ORDERED.**

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

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BOARD MEMBER

c: Brian D. Pistotnik, Wichita, KS  
Kurt W. Ratzlaff, Wichita, KS  
Bruce E. Moore, Administrative Law Judge  
Philip S. Harness, Director