

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

<b>LAVETTE PARKER</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 233,018
<b>INDUSTRIAL CHROME, INC.</b>	)	
Respondent	)	
AND	)	
	)	
<b>HARTFORD ACCIDENT &amp; INDEMNITY</b>	)	
Insurance Carrier	)	

**ORDER**

Claimant appeals the July 17, 2008, Award of Administrative Law Judge (ALJ) Rebecca A. Sanders.

Claimant appeared by Roger D. Fincher and Richard Billings, of Topeka, Kansas. Respondent and its insurance carrier (respondent) appeared by Patricia A. Wohlford, of Overland Park, Kansas.

The Appeals Board (Board) has considered the record and adopts the stipulations contained in the Award of the ALJ. The Board heard oral argument on October 22, 2008.

**ISSUES**

The ALJ found that claimant had not sustained his burden of proof that the injuries alleged or the medical conditions he currently has were due to his work-related injury and, accordingly, denied his request for workers compensation benefits.

Claimant contends that he met with personal injury by accident that arose out of and in the course of his employment with respondent on February 17, 1998, and, as a result, sustained an 8 percent functional impairment to the body as a whole.

Respondent asserts that the ALJ correctly determined that claimant did not meet with personal injury by accident on February 17, 1998, and failed to establish that his current condition, impairment, or need for treatment arose out of and in the course of his

employment with respondent. Respondent contends that claimant further failed to establish any permanent impairment due to his alleged injury of February 17, 1998.

1. Did claimant suffer personal injury by accident that arose out of and in the course of his employment with respondent?
2. If so, what is the nature and extent of his disability?

#### FINDINGS OF FACT

Claimant began working for respondent on January 13, 1998, as a polisher/plater. On February 17, 1998, he sustained an electrical shock when he touched two tanks used in the chrome plating process. He testified he felt a jolt go through his body and said he was thrown ten feet down three stairs and into a door. Claimant testified at the preliminary hearing on May 24, 2006, that this incident occurred between 1:00 and 3:00 a.m. Claimant complained of a numb and tingling sensation in his hands and shoulders after the incident but did not seek medical treatment that day because he had not been working for respondent long. He reported the accident to his supervisor and was placed on light duty work for the rest of his shift. Claimant was terminated from his job on February 23, 1998, for excessive absences.

Robert Strimple, a supervisor at respondent, testified that claimant told him he had touched two tanks at the same time and had been shocked. Claimant told him he had hurt his hands and shoulders, that he had numbness and a tingling sensation in his hands and shoulders, but did not want to go to the emergency room. After filling out an accident report, Mr. Strimple sent claimant back to work. Mr. Strimple testified that he did not see any indications of burns or electrical shock and said claimant was capable of getting up and walking. At some point, Mr. Strimple walked between the two tanks and grabbed hold of both of them. He said he felt a very mild tingle go through his body. Mr. Strimple testified that there was only a possibility of 4 volts of DC current going through the tanks.

Claimant testified that he went to the emergency room from a day or two to a week after the incident. Dr. Allen J. Parmet's review of the medical records indicates that claimant went to the emergency room on March 5, 1998, complaining of neck pain and a numb feeling in both hands since a possible shock at work two weeks earlier.

Claimant was seen by Dr. Sharon L. McKinney on March 23, 1998. Claimant told Dr. McKinney that he touched the tanks and felt a current run through him, and he was shocked. He told her he screamed and fell to the floor on one knee. He complained of a myriad of problems, including headaches, pain in his shoulders and neck, numbness in his arms, tingling in his hands, decreased memory, muscle spasms and bed wetting.

Claimant was incarcerated from October 1998 through September 2005. He received no medical treatment for his work-related injury while incarcerated, although he complained of numbness and tingling in his left shoulder, around his neck area, down his arms and in both hands. Claimant testified that his problems became worse while he was in prison. His grip is not the same and he has a constant tingling feeling from the left side of his neck midway down his back, around his shoulder and down his arm. While in prison, claimant cut hair from 8:00 a.m. until about 2:00 to 3:00 p.m. This job lasted about one year and occurred in 2001.

Claimant was seen by Dr. Lynn A. Curtis, who is board certified in physical medicine, rehabilitation and spinal cord injuries, on December 9, 2005, at the request of claimant's attorney. Claimant described the incident of February 1998, saying he felt a shock in both arms and was knocked forward. He reported that he felt pain on the right side of his arm and in his left hand, and then developed pain in his left neck, left shoulder, left arm, and left hand. He complained of problems gripping with his left hand. There is no indication in his record that Dr. Curtis was ever advised as to the level of electrical shock suffered by claimant on the alleged date of accident.

Dr. Curtis diagnosed claimant with an "electro shock"<sup>1</sup> with bilateral hand and arm pain, bilateral hand numbness, left greater than right, left cervical thoracic radiculopathy, and peripheral neuropathy in both extremities. He ordered tests, including an MRI and an EMG of the upper extremities. The EMG showed that claimant had mild carpal tunnel syndrome in both hands and a loss of the left radial sensory response on the left hand. The MRI showed degenerative disc disease at C5-6 and C6-7. Dr. Curtis continued to treat claimant after the independent medical examination until August 9, 2006.

Based on the *AMA Guides*,<sup>2</sup> Dr. Curtis rated claimant as having a 15% permanent partial impairment to the body as a whole. Claimant had a preexisting 7% disability, which Dr. Curtis deducted from his rating, giving claimant an 8% permanent partial impairment to the body as a whole for the February 1998 accident.

Claimant was evaluated by Dr. Allen J. Parmet on November 28, 2006, at the request of respondent. Dr. Parmet specializes in occupational and aerospace medicine. He has treated patients with shock injuries and burn injuries. He reviewed medical records of Dr. Curtis, Dr. McKinney and Dr. Sushmita Veloor, as well as the transcript of the preliminary hearing held May 24, 2006. He took a history from claimant and reviewed his current complaints. Claimant told Dr. Parmet that he was walking between wash and rinse tanks of the small plating line when he touched both of the tanks on either side of him.

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<sup>1</sup> Curtis Depo. at 6.

<sup>2</sup> American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the *Guides* unless otherwise noted.

Claimant stated that he felt a “surge” and he was catapulted into the office, a distance of about 5 feet. This accident occurred at about 6:30 p.m. Claimant reported that he immediately felt like jelly from his spine through his upper body.<sup>3</sup>

Christopher Needham, respondent’s plant manager, testified the distance from the tanks to the office door was 25 feet. He knew this because they had done some renovations on the line and the distance had been measured. He stated that he had never encountered anyone being electrocuted by a DC current in a plating facility. He also tested the current going through the tanks, although several years after the alleged accident. He noted a slight tingling, similar to how he feels when using a TENS unit.

Dr. Parmet testified he has never seen anyone injured by being shocked with 4 volts of DC current. He explained that he routinely tests 9-volt (DC) batteries by putting them on his tongue. He explained that there is not enough energy in a 9-volt DC battery to “do anything”.<sup>4</sup> He said that claimant’s complaints did not correlate with an electrical-type injury but, instead, more fit a mechanical-type injury.

Upon examination, Dr. Parmet found no scars compatible with a burn-type injury. None of the objective tests supported any neurologic loss based on an electrical injury. Dr. Parmet diagnosed claimant with left carpal tunnel syndrome, possible cubital tunnel syndrome, and shoulder strain, but it was his opinion that those were not related to the history of injury claimant related. He opined that claimant had no permanent partial impairment as a result of the incident of February 17, 1998.

### **PRINCIPLES OF LAW AND ANALYSIS**

In workers compensation litigation, it is the claimant’s burden to prove his or her entitlement to benefits by a preponderance of the credible evidence.<sup>5</sup>

The burden of proof means the burden of a party to persuade the trier of fact by a preponderance of the credible evidence that such party’s position on an issue is more probably true than not true on the basis of the whole record.<sup>6</sup>

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<sup>3</sup> Parmet Depo., Ex. 2 at 1-2.

<sup>4</sup> Parmet Depo. at 10.

<sup>5</sup> K.S.A. 1997 Supp. 44-501 and K.S.A. 1997 Supp. 44-508(g).

<sup>6</sup> *In re Estate of Robinson*, 236 Kan. 431, 690 P.2d 1383 (1984).

If in any employment to which the workers compensation act applies, personal injury by accident arising out of and in the course of employment is caused to an employee, the employer shall be liable to pay compensation to the employee in accordance with the provisions of the workers compensation act.<sup>7</sup>

The two phrases “arising out of” and “in the course of,” as used in K.S.A. 44-501, *et seq.*,

. . . have separate and distinct meanings; they are conjunctive and each condition must exist before compensation is allowable. The phrase “in the course of” employment relates to the time, place and circumstances under which the accident occurred, and means the injury happened while the workman was at work in his employer’s service. The phrase “out of” the employment points to the cause or origin of the accident and requires some causal connection between the accidental injury and the employment. An injury arises “out of” employment if it arises out of the nature, conditions, obligations and incidents of the employment.”<sup>8</sup>

The ALJ determined that claimant had “not sustained his burden of proof that the injuries or medical conditions he currently has were due to work related injury”.<sup>9</sup> While this works to deny claimant added medical treatment and disability benefits, it does not fully answer the question as to whether claimant actually suffered an accidental injury which arose out of and in the course of his employment. Claimant contends that he touched two tanks simultaneously and received a shock. When he first reported this to Mr. Strimple, claimant indicated he felt numbness and tingling in his hands and shoulders. Claimant refused medical treatment at that time. Claimant was then terminated on February 23, 1998, for attendance problems.

On March 5, 1998, claimant went to the emergency room and reported neck pain and numbness in both hands. On March 23, 1998, claimant was examined by Dr. McKinney, at which time he reported a myriad of problems, including headaches, pain in his shoulders and neck, numbness in his arms, tingling in his hands, decreased memory, muscle spasms, and bed wetting. He also told Dr. McKinney that when he was shocked, he screamed and fell to one knee.

When claimant testified at the preliminary hearing on May 24, 2006, he described an accident wherein he was shocked, thrown down three steps and into an office door several feet away. While the progression of this accident is entertaining, it lends nothing

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<sup>7</sup> K.S.A. 1997 Supp. 44-501(a).

<sup>8</sup> *Hormann v. New Hampshire Ins. Co.*, 236 Kan. 190, 197-98, 689 P.2d 837 (1984); citing *Newman v. Bennett*, 212 Kan. 562, Syl. ¶ 1, 512 P.2d 497 (1973).

<sup>9</sup> ALJ Award (July 17, 2008) at 5.

to claimant's credibility. The Board finds that claimant has failed to prove that he suffered personal injury by accident on the date and in the manner alleged. He has failed to prove that he suffered an accidental injury which arose out of and in the course of his employment.

For the sake of argument, even if the Board were to accept claimant's allegation of an accident on February 17, 1998, the ALJ's determination that claimant failed to prove that his injuries and symptoms being experienced at this time or claimant's current need for medical treatment are related to that alleged incident is fully supported by this record. Claimant has been diagnosed with left radial nerve loss, left posterior shoulder pain, left upper extremity weakness, cervical radiculopathy, left carpal tunnel syndrome and possible cubital tunnel syndrome, left shoulder rhomboid strain and possible rotator cuff injury. While Dr. Curtis testifies that several of these conditions stem from the alleged accident, it is clear that Dr. Curtis was never advised as to the level of shock to which claimant was exposed. As noted by Dr. Parmet, the force generated from 4 volts of DC current is similar to that of a TENS unit and, in both Dr. Parmet's and Mr. Needham's experiences, is not sufficient to cause even the slightest injury, let alone the myriad of complaints expressed by claimant at various times in this record.

#### CONCLUSIONS

Having reviewed the entire evidentiary file contained herein, the Board finds the Award of the Administrative Law Judge should be affirmed. Claimant has failed to prove that he suffered the accidental injury alleged on February 17, 1998, and further, the symptoms he currently exhibits and his current need for medical treatment are not related to this alleged accident with respondent.

#### AWARD

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Rebecca A. Sanders dated July 17, 2008, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of November, 2008.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Roger D. Fincher and Richard Billings, Attorneys for Claimant  
Patricia A. Wohlford, Attorney for Respondent and its Insurance Carrier  
Rebecca A. Sanders, Administrative Law Judge