

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

<b>VICKY L. PARRISH</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 233,990
<b>RUSSELL STOVER CANDIES</b>	)	
Respondent	)	
AND	)	
	)	
<b>HARTFORD ACCIDENT &amp; INDEMNITY</b>	)	
Insurance Carrier	)	

and

<b>VICKY L. PARRISH</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 233,991
<b>GEARY COMMUNITY HOSPITAL</b>	)	
Respondent	)	
AND	)	
	)	
<b>KANSAS HOSPITAL ASSOCIATION</b>	)	
Insurance Carrier	)	

**ORDER**

Respondent, Russell Stover Candies, and its insurance carrier, Hartford Accident & Indemnity, appeal the preliminary hearing Order of Administrative Law Judge Bryce D. Benedict dated July 8, 1998, wherein the Administrative Law Judge granted claimant benefits in the form of temporary total disability compensation and medical treatment.

**ISSUES**

- (1) Did claimant suffer accidental injury on the date alleged?
- (2) Did claimant's accidental injury arise out of and in the course of her employment with respondent, Russell Stover Candies?

- (3) What is the appropriate date of accident and which respondent should be responsible for the benefits granted to claimant?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Claimant began working for the respondent, Geary Community Hospital, on September 15, 1997, as a helper. In October 1997, claimant suffered an accidental injury to her upper and lower back with radiculopathy into her right leg. Claimant was referred to Dr. Morgan, her family physician, who then referred her to Dr. Phelps. She was given a shot, referred to physical therapy and returned to work. Claimant was not placed under any work restrictions. Claimant's back improved and she continued working for the hospital. In February 1998, claimant suffered a second injury to her low back, again accompanied by radiculopathy into her right leg. Claimant was referred for medical treatment to Dr. Phelps, who again recommended physical therapy.

Claimant continued working for respondent, Geary Community Hospital, until March 1998, at which time she terminated her employment, advising that the work was too physically difficult for her. There was some discussion about respondent hospital's reluctance or refusal to accommodate claimant with a lighter duty job. This refusal on respondent hospital's part had some bearing on claimant's decision to terminate her employment.

Claimant worked for a short period of time for her husband, driving a truck while he picked up rocks out of a field near Ft. Riley, Kansas. Claimant did not handle the rocks, but instead only drove the truck. This did not cause her any physical difficulties.

On May 1 or May 2, 1998, claimant was hired by Russell Stover. Claimant worked there until approximately May 14 or May 15, 1998. She experienced certain symptoms in her low back, with radiculopathy down her legs, while working for respondent, Russell Stover. Claimant was working four 10-hour days and one 8-hour day for Russell Stover, standing on a concrete surface, handling boxes weighing between 10 and 15 pounds. Claimant recalled one day in particular when she was feeling "pretty bad." Later that evening, claimant had symptoms in her low back and again down into her leg. Claimant described losing all feeling in her right leg, and she "went down." Claimant had not before this point experienced the complete loss of feeling in her leg.

Claimant took a day off, which she called an occurrence day, and did not improve. She then contacted Russell Stover and advised them that the work was too physically demanding for her, and she terminated her employment. At the time of the preliminary hearing on July 8, 1998, claimant was experiencing pain in her low back and down into her right leg. She had been referred to Dr. Scott Ketcher, who recommended an MRI as a follow up to the x-rays that had already been taken. Claimant described the pain in her right lower extremity as sporadic.

Numerous medical records, including those from Dr. Ketcher, were entered as exhibits at the preliminary hearing. Of significance is the June 1, 1998, medical report of Dr. Ketcher, which describes claimant's injuries with Geary Community Hospital and with the respondent, Russell Stover. The history provided Dr. Ketcher is very similar to the testimony of claimant in that she suffered physical problems to her upper and lower back, with radiculopathy into her right leg, while working for Geary Community Hospital. After treatment, claimant improved somewhat, but appeared to worsen with activity. Claimant testified that, when she started working at Russell Stover, she was asymptomatic. Dr. Ketcher's medical reports then indicate, as was testified to by the claimant, that claimant suffered low back pain, with radiculopathy into her right leg, while working at Russell Stover. Claimant's job primarily involved lifting boxes in the 10- to 15-pound range.

It is clear from the record that claimant suffered accidental injury while working for Geary Community Hospital. There is also significant evidence to verify that claimant has suffered an exacerbation or aggravation of this preexisting condition while working for Russell Stover Candies. Workers compensation law in Kansas is well established. When a subsequent industrial injury aggravates, accelerates or intensifies a preexisting condition, resulting in any type of disability, the employee is entitled to compensation for that injury. Demars v. Rickel Manufacturing Corporation, 223 Kan. 374, 573 P.2d 1036 (1978). The medical evidence, along with claimant's testimony, supports a finding that claimant suffered an aggravation of her preexisting condition at Russell Stover Candies. For preliminary hearing purposes, the Appeals Board finds claimant is entitled to benefits in the form of temporary total disability compensation, if appropriate, and medical treatment at the expense of respondent, Russell Stover, and its insurance carrier, Hartford Accident & Indemnity.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Bryce D. Benedict dated July 8, 1998, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of September 1998.

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BOARD MEMBER

c: Jeff K. Cooper, Topeka, KS  
Brenden W. Webb, Overland Park, KS  
Patrick M. Salsbury, Topeka, KS  
Bryce D. Benedict, Administrative Law Judge  
Philip S. Harness, Director