

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

<b>GEORGE A. PROCHASKA</b>	)	
Claimant	)	
VS.	)	
	)	
<b>EVCON INDUSTRIES</b>	)	
Respondent	)	Docket No. <b>237,006</b>
AND	)	
	)	
<b>INS. CO. STATE OF PENNSYLVANIA</b>	)	
Insurance Carrier	)	

**ORDER**

Claimant appeals from an Award entered by Administrative Law Judge Nelsonna Potts Barnes on January 8, 2001. The Appeals Board heard oral argument August 10, 2001, in Wichita, Kansas.

**APPEARANCES**

W. Walter Craig of Wichita, Kansas, appeared on behalf of claimant. Vincent A. Burnett of Wichita, Kansas, appeared on behalf of respondent and its insurance carrier.

**RECORD AND STIPULATIONS**

The Appeals Board has considered the record and adopted the stipulations listed in the Award.

**ISSUES**

The ALJ found claimant failed to prove his injury was work-related. As a result, the ALJ denied claimant's request for workers compensation benefits. Claimant argues he is permanently and totally disabled as a direct result of the personal injury by accident he sustained at work on June 8, 1998. Respondent disputes that claimant's condition arose out of and in the course of his employment and that timely notice of accident was given.

If the claim is found to be compensable, then the nature and extent of claimant's disability is also at issue.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and considering the arguments, the Appeals Board finds that the Award should be affirmed.

The claimant alleges injury to his back from pushing and pulling a die in and out of a press during his shift on June 8 and 9, 1998. The Board finds claimant may have suffered symptoms at work on the date alleged but that claimant's injury and resulting disability was from a personal condition and, therefore, did not arise out of and in the course of the employment.

To arise out of the claimant's employment, the injury must have some causal connection to employment. Bailey v. Mosby Hotel Co., 160 Kan. 258, 160 P.2d 701 (1945); Brobst v. Brighton Place North, 24 Kan. App.2d 766, 955 P.2d 1315 (1997); Martin v. U.S.D. No. 233, 5 Kan. App.2d 298, 615 P.2d 168 (1980). In this case, the greater weight of the credible medical evidence fails to support claimant's contention that his work caused, aggravated or accelerated his current condition. The fact that claimant was able to return to work following his alleged date of accident makes it unlikely that the compression fracture and/or osteomyelitis resulted from the incident at work on June 8 or 9, 1998. Rather, it is more likely that the back injury resulted from claimant's uncontrolled diabetes and infection. The Board therefore concludes, as did the ALJ, that claimant's injury did not arise out of the claimant's employment.

In the Award, the ALJ sets out her findings of fact and conclusions of law in some detail. It is not necessary to repeat them here. The Board adopts those findings and conclusions as its own.

#### **AWARD**

**WHEREFORE**, it is the finding, decision and order of the Appeals Board that the Award entered by Administrative Law Judge Nelsonna Potts Barnes on January 8, 2001, should be, and the same is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August 2001.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: W. Walter Craig, Wichita, KS  
Vincent A. Burnett, Wichita, KS  
Nelsonna P. Barnes, Administrative Law Judge  
Philip S. Harness, Director