

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

<b>JANA ZUERCHER</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 244,909
<b>DODGE CITY COMMUNITY COLLEGE</b>	)	
Respondent	)	
AND	)	
	)	
<b>EMC INSURANCE COMPANY</b>	)	
Insurance Carrier	)	

**ORDER**

Respondent and its insurance carrier appealed the preliminary hearing Order for Medical Treatment dated September 1, 1999, entered by Administrative Law Judge Pamela J. Fuller.

**ISSUES**

This is a claim for a November 15, 1998 accident. Claimant slipped and fell as she was leaving work and walking from one residence hall to another. The issue before the Judge was whether the accident arose out of and in the course of employment.

The issues before the Board on this appeal are:

1. For purposes of the premises exception to the going and coming rule, must the part of respondent's premises where claimant is injured be a place where an employee is reasonably expected to be when performing the duties of employment?
2. If the accident occurred on respondent's premises must claimant also prove that the accident occurred while she was on duty?

**FINDINGS OF FACT**

After reviewing the record compiled to date, the Appeals Board finds:

- (1) Jana Zuercher worked as a residence assistant at Dodge City Community College at a residence hall located on the college campus.
- (2) On November 15, 1998, Ms. Zuercher fell as she was walking from the residence hall where she worked to an adjacent residence hall where she lived.
- (3) Dodge City Community College owned and maintained the area where Ms. Zuercher fell.
- (4) The sidewalk area where Ms. Zuercher fell was also part of the general area she was responsible for patrolling when on duty.
- (5) Dodge City Community College required someone to be "on call" through the entire night on certain weekends. On the night when claimant was injured, she was on call until 8:00 a.m. the following morning. Ms. Zuercher was required to be on campus and available during the period she was on call.

#### CONCLUSIONS OF LAW

- (1) The preliminary hearing Order for Medical Treatment should be affirmed.
- (2) Accidents occurring while employees are on their way to or from work are generally not compensable. But accidents that occur either on an employer's premises or on the only available route to or from work may be compensable depending upon the facts.

The words "arising out of and in the course of employment" as used in the workers compensation act shall not be construed to include injuries to the employee occurring while the employee is on the way to assume the duties of employment or after leaving such duties, the proximate cause of which injury is not the employer's negligence. **An employee shall not be construed as being on the way to assume the duties of employment** or having left such duties at a time **when the worker is on the premises of the employer or on the only available route to or from work which is a route involving a special risk or hazard and which is a route not used by the public except in dealings with the employer.**<sup>1</sup> (Emphasis added.)

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<sup>1</sup> K.S.A. 1998 Supp. 44-508(f).

(3) The above statute is a codification of Kansas' "going and coming" rule. And the statute permits two exceptions to that rule - a "premises" exception and a "special hazard" exception.<sup>2</sup>

(4) Kansas narrowly construes "premises" to be a place either controlled by the employer or where a worker may reasonably be when performing his or her job duties.<sup>3</sup>

(5) Following that construction, the Appeals Board concludes that the area where Ms. Zuercher fell was a part of Dodge City Community College's premises. The area was owned and maintained by respondent.<sup>4</sup>

(6) But before the going and coming rule will apply, the accident must occur while enroute to or from work. In other words, the going and coming rule applies when an employee is enroute to assume the duties of employment or leaving employment. It is not applicable when an employee is on duty.

(7) The Appeals Board concludes that Ms. Zuercher has proven that she was on duty and that her injury occurred at a place where she was reasonably expected to be when performing the duties of her employment as an on call residence assistant.

(8) Ms. Zuercher's injury arose out of and in the course of her employment because her activity and her location were, in part, for the benefit of Dodge City Community College.<sup>5</sup>

**WHEREFORE**, the Appeals Board affirms the preliminary hearing Order for Medical Treatment dated September 1, 1999, entered by Administrative Law Judge Pamela J. Fuller.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of December 1999.

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<sup>2</sup> Thompson v. Law Offices of Alan Joseph, 256 Kan. 36, 883 P.2d 768 (1994).

<sup>3</sup> See *id.* at 39. See also, Chapman v. Victory Sand & Stone Co., 197 Kan. 377, 383, 416 P.2d 754 (1966).

<sup>4</sup> Cf. Curless v. Southern Education Council, WCAB Docket No. 233,051 (Nov. 1998).

<sup>5</sup> See Leecy v. State of Kansas, WCAB Docket No. 201,870 (Aug. 1998); Vaughn v. City of Wichita, WCAB Docket No. 184,562 (Feb. 1998).

**BOARD MEMBER**

- c: Gary E. Patterson, Wichita, KS  
James M. McVay, Great Bend, KS  
Pamela J. Fuller, Administrative Law Judge  
Philip S. Harness, Director