

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

<b>ESTHER MURRAY</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 250,777
<b>THRASH FLOOR MAINTENANCE</b>	)	
Respondent	)	
AND	)	
	)	
<b>CONTINENTAL WESTERN CASUALTY COMPANY</b>	)	
Insurance Carrier	)	

**ORDER**

Claimant appeals the April 5, 2000, preliminary hearing Order of Administrative Law Judge John D. Clark. Claimant was denied benefits after the Administrative Law Judge found claimant had not proven she suffered a work-related injury. That is the only issue before the Board from this appeal.

**ISSUES**

Did claimant prove she suffered a work-related injury?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the entire record, the Appeals Board concludes the Order should be affirmed.

Claimant worked as a cleaner and maintenance worker for respondent beginning July 4, 1999. Her job involved cleaning and waxing floors and cleaning carpets. On July 23, 1999, while claimant was cleaning a bathroom, a stool started to overflow. As she was leaving the stool stall, claimant alleges she struck her elbow on the door. Claimant's supervisor, Sallah, whose actual name is Ra-heru-khuti Khepra, was not working that day but claimant stated she told him the next day of the injury. Sallah was to tell claimant's boss, the company owner Russell Thrash, and arrange for a medical examination. Several weeks went by without Sallah discussing the matter with claimant. Claimant also had

several contacts with Mr. Thrash during this time, but failed to mention the incident to him until mid-September 1999.

Mr. Thrash and Sallah both testified at the time of preliminary hearing. Sallah denied claimant ever advised him of a work-related accident. Instead, Sallah testified that claimant told him she had injured her elbow while in a fight with a tenant at her apartment complex. Apparently, claimant had had difficulties with this tenant before and, shortly before the alleged date of accident, during the struggle, claimant fell down or was knocked down a flight of stairs, suffering the injury to her right elbow.

In workers' compensation litigation, it is claimant's burden to prove her entitlement to benefits by a preponderance of the credible evidence. See K.S.A. 1999 Supp. 44-501 and K.S.A. 1999 Supp. 44-508(g). When a claimant's injury hinges on the credibility of the witnesses who testify before an administrative law judge, the Appeals Board grants some deference to the administrative law judge's conclusions as he or she had the opportunity to observe the witnesses' live testimony. This ability to observe live testimony allows the administrative law judge the opportunity to more accurately assess the credibility of those witnesses. Here, the Appeals Board finds that the Administrative Law Judge, having observed claimant, her supervisor Sallah and the company owner Mr. Thrash testify, found claimant's credibility to be lacking.

The Appeals Board finds that claimant has failed to prove accidental injury arising out of and in the course of her employment with respondent.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark dated April 5, 2000, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of May 2000.

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BOARD MEMBER

c: Randy S. Stalcup, Wichita, KS  
James B. Biggs, Topeka, KS  
John D. Clark, Administrative Law Judge  
Philip S. Harness, Director