

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

JOHN TEIGEN)	
Claimant)	
VS.)	
)	Docket No. 251,237
TOPEKA RESCUE MISSION)	
Respondent)	
AND)	
)	
BROTHERHOOD MUTUAL INSURANCE COMPANY))	
Insurance Carrier)	

ORDER

Claimant appeals a preliminary hearing Order entered by Administrative Law Judge Bryce D. Benedict on September 14, 2000.

ISSUES

The Administrative Law Judge denied preliminary hearing benefits to claimant, modifying his previous Order which granted benefits to claimant. On appeal, claimant argues the Administrative Law Judge erred in finding claimant's alleged accidental injury did not arise out of and in the course of his employment with respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes the Order should be affirmed.

This is the second time this case has been before the Board on an appeal from a preliminary hearing order. After the first preliminary hearing, the Administrative Law Judge awarded preliminary hearing benefits. That Order was appealed to the Board. Based upon the record as it existed at that time the Board made the following findings of fact:

Claimant checked people in at the Topeka Rescue Mission. His shift began at 3 p.m. but the evidence indicates claimant reported early from time to time and respondent allowed this. He was paid a set amount each week and was not on the clock. On the date of his injury, October 2, 1999, claimant reported at 2:30 and began performing preliminary duties. Respondent had a general policy regarding appropriate dress. On this day,

claimant was wearing a sweater that pulled up and exposed his stomach. Claimant's supervisor directed claimant to go to the voucher store and obtain a t-shirt to put under the sweater. The supervisor signed a voucher to allow claimant to get the t-shirt. While at the voucher store, claimant fell and injured his right shoulder.

The Board concluded that "although claimant started earlier than scheduled, he had started work. He was responding to the direction of his supervisor at the time of the injury." Accordingly, the Order entered by the Administrative Law Judge was affirmed.

Thereafter, respondent applied for a second preliminary hearing which was held on September 13, 2000. At that hearing, respondent offered the evidentiary deposition of the shift supervisor, John Gassman, and the evidentiary deposition of Stephen Prochaska, a claims adjuster who had obtained a recorded statement from claimant. That statement was likewise offered into evidence.

Based upon this new evidence, the Appeals Board is persuaded that claimant's supervisor did not direct claimant to go to the voucher store and obtain a t-shirt. Also, the supervisor did not sign a voucher to allow claimant to get the t-shirt. Instead, claimant decided on his own that he needed a t-shirt to wear under his sweater and asked Mr. Gassman for the keys to the voucher store, which he was given. Claimant was not working at the time of his accident and, moreover, was not responding to the direction of his supervisor when he was injured. The Administrative Law Judge's finding that claimant's alleged accidental injury did not arise out of and in the course of his employment should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Bryce D. Benedict on September 14, 2000, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of November 2000.

BOARD MEMBER

c: Paul D. Post, Topeka, KS
Matthew S. Crowley, Topeka, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director