

and medial sesamoiditis of the right great toe versus a fracture of the medial sesamoid of the right great toe.

Brian K. Ellefsen, D.O., of Southwest Missouri Bone and Joint, Inc., diagnosed the medial sesamoiditis after examining claimant and reviewing x-rays. In a letter to claimant's attorney dated August 28, 2000, he stated that, in his professional medical opinion within a reasonable degree of medical certainty, claimant's complaints to her right foot are caused by "the work activities at Twin Oaks Nursing Home on or about May 10, 2000."

Claimant was then referred to board certified orthopedic surgeon Greg A. Horton, M.D., an assistant professor of orthopedic surgery and a member of Kansas University Physicians, Inc. Dr. Horton examined claimant, including reviewing the medical reports, x-rays and tests, and opined that claimant may have ruptured her flexor hallucis longus tendon.

In Dr. Horton's opinion, after reviewing all of the tests and x-rays, the popping sensation which occurred while claimant was walking down the hall at respondent's facility is not related to her employment with respondent. He stated "[w]hile this did occur during the course of her employment, I do not see anything specific to her vocation that specifically lead to this problem." Dr. Horton found it significant that claimant denied any sort of injurious event, but rather that the incident occurred simply while she was walking.

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).

For an injured worker to be entitled to compensation, the worker must prove both that the claimant's accident arose out of and in the course of his or her employment. The worker must prove that both of these conditions exist. Siebert v. Hoch, 199 Kan. 299, 428 P.2d 825 (1967).

Because this accident occurred while claimant was at work, the accident occurred in the course of claimant's employment. However, an accident must also arise out of the employment before it is compensable under the Kansas Workers Compensation Act. Newman v. Bennett, 212 Kan. 562, 512 P.2d 497 (1973).

The phrase "out of" employment points to the causal origin of the worker's accident and requires some causal connection between the accident and the employment. An accidental injury arises out of employment where there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is performed and the resulting injury. An injury arises out of employment if it arises out of the nature, conditions, obligations and incidence of the employment. Kindel v. Ferco Rental, Inc., 258 Kan. 272, 899 P.2d 1058 (1995).

In Hensley v. Carl Graham Glass, 226 Kan. 256, 597 P.2d 641 (1979), the Kansas Supreme Court adopted a risk analysis whereby it categorized risks into three categories:

- (1) Those distinctly associated with the job;
- (2) Risks that are personal to the worker; and
- (3) Neutral risks which have no particular employment or personal character.

Personal risks do not arise out of and in the course of employment and are not compensable. Martin v. U.S.D. 233, 5 Kan. App. 2d 298, 615 P.2d 168 (1980).

In this instance, claimant was pain free and having no difficulties with her foot when walking down respondent's hall. Claimant provided no explanation for the accident and no justification for relating this injury to her employment with respondent. Claimant's mere presence at work does not justify finding every incident which occurs at work to be, in some way, related to her employment.

Additionally, the opinion of Dr. Horton, an assistant professor of orthopedic surgery, carries substantial weight. Dr. Horton could find no circumstance of her employment which caused this injury.

The Appeals Board, therefore, finds that claimant has failed to prove that she suffered accidental injury arising out of her employment with respondent and benefits should be denied.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the amended Order of Administrative Law Judge Brad E. Avery dated February 8, 2001, should be, and is hereby, reversed.

IT IS SO ORDERED.

Dated this ____ day of April 2001.

BOARD MEMBER

c: William L. Phalen, Pittsburg, KS
Gregory D. Worth, Lenexa, KS
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Director