

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

|   |   |                    |
|---|---|--------------------|
| <b>TIERRA K. LLAMAS</b>                 | ) |                    |
| Claimant                                | ) |                    |
| VS.                                     | ) |                    |
|   | ) | Docket No. 258,657 |
| <b>DILLARD DEPARTMENT STORES, INC.</b>  | ) |                    |
| Respondent                              | ) |                    |
| AND                                     | ) |                    |
|   | ) |                    |
| <b>LIBERTY MUTUAL INSURANCE COMPANY</b> | ) |                    |
| Insurance Carrier                       | ) |                    |

**ORDER**

Respondent and its insurance carrier requested review of the preliminary hearing Order for Compensation dated October 19, 2000, entered by Administrative Law Judge Brad E. Avery.

**ISSUES**

The Administrative Law Judge awarded claimant temporary total disability and medical benefits. Respondent and its insurance carrier requested the Appeals Board to review the issue of whether claimant's accident arose out of and in the course of employment with respondent.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record, for preliminary hearing purposes the Appeals Board finds as follows:

The preliminary hearing Order for Compensation should be affirmed.

On July 8, 2000, claimant fell while walking down a carpeted aisle in respondent's department store. Claimant testified she slipped and fell. Respondent presented the testimony of a store security guard who testified that claimant told him that she fell because her knee gave out. But at the Preliminary Hearing, claimant was definite that her knee did not give out. She attributes her fall to slipping on the carpet which was due to her wearing slick soled dress shoes. This testimony is supported by the July 10, 2000 office notes of Dr. Michael T. McCoy. Although mindful of claimant's preexisting knee problems, Dr. McCoy's notes give a history of an accident at work from slipping, not from the knee

giving out: "Tierra is a pleasant, a [sic] 22 year old female, who's had trouble with subluxing [sic] and dislocating patellas before. She slipped to [sic] work on 07/08/00 and injured her left knee."

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

The phrase "out of" employment points to the cause or origin of the worker's accident and requires some causal connection between the accident and the employment. An accidental injury arises out of employment when 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 incidents of the employment. Kindel v. Ferco Rental, Inc., 258 Kan. 272, 899 P.2d 1058 (1995). See also, Scott v. Wolf Creek Nuclear Operating Corp., 23 Kan. App. 2d 156, 159, 928 P.2d 109 (1996).

According to Larson's The Law of Workmen's Compensation, Sec. 10.31, the majority of jurisdictions compensate workers who are injured in unexplained falls upon the basis that an unexplained fall is a neutral risk and would not have otherwise occurred at work if claimant had not been working. In Hensley v. Carl Graham Glass, 226 Kan. 256, 597 P.2d 641 (1979), the Kansas Supreme Court adopted a similar risk analysis. It categorized risks into three categories: (1) those distinctly associated with the job; (2) risks which are personal to the workman; and (3) neutral risks which have no particular employment or personal character. The Appeals Board has followed the majority rule to find unexplained falls to be a neutral risk and compensable. See, e.g., Toumi v. Senne & Company, Inc., WCAB Docket No. 237,798 (Jan. 1999); Davis v. Montgomery Ward, WCAB Docket No. 220,775 (Sept. 1997); Driscoll v. Cedar Vale Hospital, Inc., WCAB Docket No. 214,179 (July 1997).

Although walking could be described as a normal activity of day-to-day living, K.S.A. 44-508(e) does not exclude "accidents" that are the result of such activity, but rather excludes injuries where the "disability" is a result of the natural aging process or the normal activities of day-to-day living. See Turley v. State of Kansas, WCAB Docket No. 247,457 (Nov. 1999); Corbett V. Schwan's Sales Enterprises, WCAB Docket No. 216,787 (May 1998).

In this case there was a specific onset of injury caused by an accident at work. There is no allegation in this case that claimant's disability resulted from the effects of the ordinary wear and tear common to acts of everyday living on a preexisting condition, as was the case in Boeckmann v. Goodyear Tire & Rubber Co., 210 Kan. 733, 504 P.2d 625

(1972). Neither is this a case where claimant had a preexisting condition which was worsened or made symptomatic by a solely personal risk as in Martin v. U.S.D. No. 233, 5 Kan. App. 2d 298, 615 P.2d 168 (1980). The Appeals Board finds claimant's unexplained fall was a neutral risk and the Appeals Board adopts the majority view that such falls arise out of and in the course of employment. Accordingly, the Appeals Board finds the injury that occurred from the slip and fall while walking does constitute an injury that arose out of the employment.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order for Compensation dated October 19, 2000, entered by Administrative Law Judge Brad E. Avery should be, and hereby is, affirmed.

**IT IS SO ORDERED.**

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

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BOARD MEMBER

c: James B. Biggs, Topeka, KS  
John M. Graham, Jr., Overland Park, KS  
Brad E. Avery, Administrative Law Judge  
Philip S. Harness, Director