

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

<b>BURTON SCOFIELD JR.</b>	)	
Claimant	)	
	)	
VS.	)	
	)	
<b>INTERIOR CONTRACTORS, INC.</b>	)	
Respondent	)	Docket No. <b>259,495</b>
	)	
AND	)	
	)	
<b>BUILDERS ASSN. SELF-INS. FUND</b>	)	
Insurance Carrier	)	

**ORDER**

Respondent requests review of a preliminary order entered by Administrative Law Judge Brad E. Avery dated December 11, 2000.

**ISSUES**

1. Whether the claimant met with personal injury by accident.
2. Whether the claimant's alleged accidental injury arose out of and in the course of his employment with the respondent.

**FINDINGS OF FACT & CONCLUSIONS OF LAW**

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

The claimant was employed by and began work for the respondent on September 21, 2000. The following morning, September 22, 2000, the claimant testified that he had carried a bucket of compound up a stairway on some scaffolding and as he was coming back down he slid through the stairs, caught his left shoulder on a plank and one leg went through the staircase. The claimant testified that he started having pains in his back and right leg. The claimant left work at noon and went home. He testified that he

had advised two co-employees that he was leaving because he was hurt and had also advised his supervisor that he was leaving the job site because he had sustained the injury.

The following Monday, September 25, 2000, the claimant telephoned the respondent's office and requested his paycheck. The claimant alleged that he attempted to explain about the accident but instead an argument occurred. Claimant felt he was terminated because of the conversations that took place on that date. The claimant testified that was the only call he made to the respondent.

The respondent's field superintendent testified that he was on the job site on September 22, 2000, and that the claimant did not report an injury to him on that date. He further testified that as a result of his later investigation regarding the claimant's allegation he was unable to locate anybody, including the two co-employees claimant had allegedly advised about the accident, who knew anything about the occurrence of an accident.

The respondent's project manager testified that he received a phone call from the claimant on September 25, 2000, and during the course of that conversation the claimant only inquired about his paycheck. The claimant was upset and concerned that if he didn't get paid soon his utilities would be cut off. The project manager emphasized that the claimant did not report an accident or request medical treatment during the conversation.

The respondent's owner testified that he also received a telephone call from the claimant and again the only issue discussed was the claimant's paycheck. The following day, September 26, 2000, the claimant telephoned and advised the respondent's owner that he had been injured on the job. An investigation regarding the claimant's allegations never revealed any information to support the claimant's contention that he was injured at work. Moreover, the respondent's owner testified that there was a fork lift to raise the compound up onto the scaffolding and it was not the practice for employees to carry it up the stairway within the scaffolding.

The preponderance of the credible evidence indicates that the claimant left the job site at noon on September 22, 2000, without notifying the supervisor that he had been injured. Moreover, he did not report the injury to the office during multiple telephone conversations regarding his paycheck on the following Monday. During those conversations, the claimant was advised that he needed to come to the office and fill out his W-4 and other paperwork in order to receive a paycheck. Investigations by the respondent's owner as well as the field superintendent failed to corroborate the claimant's testimony regarding the occurrence of an accident at work on September 22, 2000.

Based on the evidence compiled thus far, the claimant has failed to meet his burden of proof that he sustained a work-related injury on September 22, 2000. Therefore the order of the Administrative Law Judge finding this injury to have arisen out of and in the course of claimant's employment is reversed.

As provided by the Act, preliminary hearing findings are not binding but subject to modification upon a full hearing of the claim.

**AWARD**

**WHEREFORE**, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Brad E. Avery dated December 11, 2000, should be and is hereby reversed.

**IT IS SO ORDERED.**

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

\_\_\_\_\_  
BOARD MEMBER

**Copies to:**

Bruce A. Brumley, Attorney for Claimant  
Wade A. Dorothy, Attorney for Respondent  
Brad E. Avery, Administrative Law Judge  
Philip S. Harness, Workers Compensation Director