

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

<b>KENNETH GRAY</b>	)	
Claimant	)	
	)	
VS.	)	
	)	
<b>STATE OF KANSAS</b>	)	
Respondent	)	Docket No. 261,483
	)	
AND	)	
	)	
<b>STATE SELF-INSURANCE FUND</b>	)	
Insurance Carrier	)	

**ORDER**

Claimant appealed Administrative Law Judge Julie A.N. Sample's Award dated October 9, 2002. The Board heard oral argument on June 20, 2003. Stacy Parkinson was appointed Board Member Pro Tem to participate in this proceeding.

**APPEARANCES**

Luis Mata of Shawnee, Kansas, appeared for the claimant. Marcia Yates of Topeka, Kansas appeared for the self-insured respondent.

**RECORD AND STIPULATIONS**

The Board has considered the record and adopted the stipulations listed in the Award.

**ISSUES**

It is undisputed the claimant fainted, fell and suffered a shoulder injury while at work. The Administrative Law Judge (ALJ) found claimant's injuries did not arise out of his employment because the fainting episode was due to a personal condition with no causal connection or additional risk due to his work.

The claimant raised the following issues on review: (1) Whether he suffered accidental injury arising out of his employment; (2) the nature and extent of disability; (3) entitlement to temporary total disability compensation as well as unauthorized and future medical benefits.

Claimant argues the heat in his office was a factor which contributed to his fainting episode. And since the heat caused or contributed to his fainting, claimant argues the episode was caused by his work. Consequently, claimant argues the accident arose out of his employment and is compensable.

The respondent argues the heat in claimant's office was not excessive; claimant had a history of fainting episodes; and Dr. Steven D. Obermueller's opinion that the syncope episode was not caused by heat all support the ALJ's denial that the accident arose out of employment. Consequently, respondent requests the ALJ's decision denying compensability be affirmed.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board affirms the ALJ's decision denying the accident arose out of claimant's employment.

The Board finds the ALJ's findings and conclusions are detailed, accurate and supported by the law and the facts contained in the record. It is not necessary to repeat those findings and conclusions in this Order. The Board approves those findings and conclusions and adopts them as its own.

Claimant must establish personal injury by accident arising out of and in the course of employment.<sup>1</sup> For a claim to arise "out of" employment, its cause or origin must develop out of the nature, conditions, obligations and incidents of employment.<sup>2</sup>

Claimant contends that the heat he experienced from working in his enclosed office without air conditioning caused his fainting episode. It is significant that claimant had prior fainting episodes which occurred not only when claimant was in a hot environment but also when claimant was not exposed to a hot environment. And the claimant noted he experienced the same symptoms during each episode which included feeling hot and sweaty regardless of the temperature.

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<sup>1</sup> K.S.A. 44-501(a).

<sup>2</sup> *Kindel v. Ferco Rental, Inc.*, 258 Kan. 272, 899 P.2d 1058 (1995); *Hormann v. New Hampshire Ins. Co.*, 236 Kan. 190, 197, 689 P.2d 837 (1984).

Dr. Obermueller concluded claimant suffered from recurring episodes of syncope, often called vasovagal or neurocardiogenic syncope. The doctor testified that claimant's episodes of syncope were not associated with heat. The ALJ noted the doctor's opinion and the claimant's history of fainting episodes combined to persuade her that claimant failed to establish a causal connection between work and the fainting episode. The Board agrees.

The Board finds a nexus between claimant's feeling hot and sweaty and his fainting spell. Rather than being an unexplained fall, this would be a personal condition of the employee.<sup>3</sup> Where an employment injury is clearly attributable to a personal condition of the employee, and no other factors intervene or operate to cause or contribute to the injury, no award is granted. But where an injury results from the concurrence of some preexisting personal condition and some hazard of employment, compensation is generally allowed.<sup>4</sup>

In *Bennett*, the claimant's personal epileptic condition caused him to black out. But it was the fact that he was driving the employer's vehicle that subjected him to an additional risk. Professor Larson agrees that the effects of a fall can become compensable if conditions of employment place the employee in a position to increase the effects of the fall, such as in a moving vehicle.<sup>5</sup>

Here, we have a personal condition of the claimant with no additional risk from his employment. Claimant was simply walking across the grounds when he fainted, falling to the ground, injuring his shoulder. The Board finds the fall experienced by claimant on July 12, 2000, was caused by the employee's personal condition. Therefore, the Board finds that injury did not arise out of claimant's employment with respondent and the award denying claimant benefits in this matter should be affirmed.

### AWARD

**WHEREFORE**, it is the finding of the Board that the Award of Administrative Law Judge Julie A.N. Sample dated October 9, 2002, is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of June 2003.

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<sup>3</sup> See 1 *Larson's Workers' Compensation Law* § 9.01[2].

<sup>4</sup> *Bennett v. Wichita Fence Co.*, 16 Kan. App. 2d 458, 824 P.2d 1001, *rev. denied* 250 Kan. 804 (1992).

<sup>5</sup> 1 *Larson's Workers' Compensation Law* § 9.01[1].

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BOARD MEMBER

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c: Luis Mata, Attorney for Claimant  
Marcia Yates, Attorney for Respondent  
Julie A.N. Sample, Administrative Law Judge  
Director, Division of Workers Compensation