

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

LOUISE LAWRENCE)	
Claimant)	
VS.)	
)	Docket No. 265,089
TRI-KO, INC.)	
Respondent)	
AND)	
)	
CGU HAWKEYE SECURITY INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Claimant appeals the June 25, 2001, Preliminary Decision of Administrative Law Judge Robert H. Foerschler. Claimant was denied benefits after the Administrative Law Judge found claimant had failed to prove that she suffered accidental injury arising out of and in the course of her employment. That is the only issue for consideration before the Board.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Claimant, on February 6, 2001, was taking her scheduled paid break in the employer's break room on the employer's premises. As she arose from the break table, claimant felt a sudden pain in her left leg with pain running both up and down from the knee.

The occurrence is undisputed as there were several witnesses to the incident.

Claimant's history is significant in that she had been earlier diagnosed with osteoarthritis of the knee and had been seen limping on more than one occasion. In fact, claimant was limping the morning of the accident prior to her break.

Medical examinations prior to the date of accident confirmed claimant's osteoarthritis in her knees. However, those medical records indicated that claimant's ligaments were intact.

After the incident on February 6, 2001, medical records, including an MRI, confirmed claimant had suffered a tear in her left lateral meniscus.

The issue before the Board is whether claimant's injury suffered while on break constitutes an accidental injury arising out of and in the course of her employment.

In workers compensation litigation, the burden of proof is upon claimant to establish her right to an award of compensation by proving the various conditions upon which that right depends by a preponderance of the credible evidence. See K.S.A. 44-501 and K.S.A. 44-508(g).

In order for a claimant to collect workers compensation benefits, she must suffer an injury arising both out of and in the course of her employment. See K.S.A. 44-501.

The phrase "in the course of" employment relates to the time, place and circumstances under which the accident occurred, and means the injury happened while the workman was at work in his employer's service. Hormann v. New Hampshire Ins. Co., 236 Kan. 190, 689 P.2d 837 (1984).

It is not disputed that claimant was in the course of her employment when the accident occurred. The issue in this instance centers around whether claimant suffered accidental injury arising "out of" her employment.

The phrase "out of" the employment points to the cause or origin of the accident and requires some causal connection between the accidental injury and the employment. An injury arises "out of" the 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 required to be 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. Newman v. Bennett, 212 Kan. 562, 512 P.2d 497 (1973).

The evidence is undisputed that claimant suffered accidental injury while rising from a chair on break. In this instance, claimant's injury occurred while she was at the break table in the staff break room. This room is set aside for employees as a specific area to be utilized during company-authorized breaks.

The use of a break room supplied by the respondent is an activity which would be considered a portion of the employment benefit provided to the claimant and the other employees, and would generally fall under the personal comfort doctrine so as to be

compensable. Larson's Workers' Compensation Law, § 21.10 (1996). See Riley v. Graphics Systems, Inc., WCAB Docket No. 237,773 (December 1998).

The Appeals Board finds, in applying the personal comfort doctrine, that claimant did suffer accidental injury arising out of and in the course of her employment with respondent. Therefore, the order of the Administrative Law Judge should be reversed and this matter remanded back to the Administrative Law Judge for proceedings consistent with this opinion.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Decision of Administrative Law Judge Robert H. Foerschler, dated June 25, 2001, should be, and is hereby, reversed, and the matter remanded back to the Administrative Law Judge for further proceedings consistent with these findings.

IT IS SO ORDERED.

Dated this ____ day of October, 2001.

BOARD MEMBER

c: D. Scott Brown, Attorney for Claimant
Gary R. Terrill, Attorney for Respondent
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director