

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

PEGGY A. RINKE)	
Claimant)	
VS.)	
)	Docket No. 265,920
BANK OF AMERICA, N.A.)	
Respondent)	
AND)	
)	
ROYAL & SUN ALLIANCE INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier appealed the preliminary hearing Order dated August 17, 2001 entered by Administrative Law Judge John D. Clark.

ISSUES

This is a claim for a March 5, 2001 accident. Claimant slipped and fell as she was leaving work and walking to her vehicle in a parking lot adjacent to the building where respondent maintains an office. The issue before the Board is whether claimant's accident arose out of and in the course of her employment with respondent.

FINDINGS OF FACT

After reviewing the record compiled to date, the Appeals Board finds:

1. Peggy Rinke worked for the Telephone Banking Department of the Bank of America, N.A., (Bank) in an office located at 901 George Washington Boulevard in Wichita, Kansas.
2. At approximately 3:10 p.m. on March 5, 2001, Ms. Rinke was injured when she slipped and fell as she was walking in an icy parking lot on her way to her vehicle.
3. The Bank leased space in the building adjacent to the parking lot where claimant fell. The Bank neither owned nor maintained the parking lot. Its lease agreement specifically provided for the lessor to maintain the parking lot.
4. There was another tenant in the building but the employees of the other tenant did not use the portion of the parking lot where claimant fell. According to the lease

agreement, the lessor also designated the area of the parking lot where visitors were to park. This suggests that the remainder of the lot was the area of the parking lot where the employees of the Bank were to park.

5. The lease agreement suggests that some portion of the parking lot was designated for employees of the other tenant and some portion was designated for visitors. It is unclear, however, whether visitors used the same or a different portion of the parking lot from that designated for use by the employees of the Bank.

Q. Both Bank of America and Wesley employees are allowed to use the adjacent parking lot where you fell, true?

A. That is true, but Wesley uses the front row.

Q. There are certain designated spots for the Wesley employees, true?

A. Correct.

Q. But there are no designated spots for Bank of America employees?

A. Correct.

Q. Is the general public allowed to use the parking lot?

A. As far as I know, but the general public wouldn't have any reason to be in our building unless they actually went into Wesley because they wouldn't be allowed in any part of Bank of America. It is a secured building.

Q. Do you know, are patients seen in the Wesley Medical Center area of the building?

A. Yes.

Q. Would it be safe to say that you have the capability of parking anywhere in that parking lot except in the designated spots for Wesley?

A. Yes.¹

6. The record fails to establish that the area of the parking lot where claimant fell was not used by visitors of the other tenant or by the public for dealings other than with the Bank.

CONCLUSIONS OF LAW

1. The preliminary hearing Order should be reversed.

¹ July 10, 2001 Tr. of Prel. H. at 17-18.

2. Accidents occurring while employees are on their way to or from work are generally not compensable. But accidents that occur either on an employer's premises or on the only available route to work may be compensable depending upon the facts.

The words "arising out of and in the course of employment" as used in the workers compensation act shall not be construed to include injuries to the employee occurring while the employee is on the way to assume the duties of employment or after leaving such duties, the proximate cause of which injury is not the employer's negligence. **An employee shall not be construed as being on the way to assume the duties of employment or having left such duties at a time when the worker is on the premises of the employer or on the only available route to or from work which is a route involving a special risk or hazard and which is a route not used by the public except in dealings with the employer.**² (Emphasis added.)

3. The above statute is a codification of Kansas' "going and coming" rule.³ The statute permits two exceptions to that rule - a "premises" exception and a "special hazard" exception.⁴

4. Kansas narrowly construes "premises" to be a place either controlled by the employer or where a worker may reasonably be when performing his or her job duties.⁵

5. Because of that narrow construction, the Board concludes that the parking lot was not a part of the Bank's premises. The lot was neither owned nor maintained by the Bank. Even though the Bank leased over 90 percent of the building, portions of the parking lot were used by at least one other tenant. By designating where its employees should park, the Bank did not exercise such control over the parking lot so as to render it part of its premises. The Office Lease Agreement suggests that the "premises" leased by the Bank included a share of the grounds, common areas and parking lot. But paying a share of the cost of maintaining the parking lot, likewise, did not constitute such control where the lease agreement otherwise specifically provides that the lessor is responsible for the maintenance of the parking lot, including the removal of snow and ice therefrom.

6. Before the "special hazard" exception will apply, the accident (1) must occur on the only route available to or from work, (2) the route must possess a special risk or hazard,

² K.S.A. 44-508(f).

³ See Madison v. Key Work Clothes, 182 Kan. 186, 318 P.2d 991 (1957).

⁴ Thompson v. Law Offices of Alan Joseph, 256 Kan. 36, 883 P.2d 768 (1994).

⁵ Thompson, Syl. ¶ 1.

and (3) the route must be used by the public, if at all, only to deal with the employer. The claimant must prove all three elements.⁶

7. The Board concludes that Ms. Rinke has failed to prove the three requirements of the "special hazard" exception.

WHEREFORE, the Appeals Board finds that the preliminary hearing Order dated August 17, 2001, entered by Administrative Law Judge John D. Clark, should be, and is hereby, reversed.

IT IS SO ORDERED.

Dated this ____ day of November 2001.

BOARD MEMBER

c: Randy S. Stalcup, Attorney for Claimant
Terry J. Torline, Attorney for Respondent
John D. Clark, Administrative Law Judge
Philip S. Harness, Workers Compensation Director

⁶ Chapman v. Beech Aircraft Corp., 258 Kan. 653, 907 P.2d 828 (1995).