

**BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD**

<b>SAMANTHA EKBERG</b>	)	
Claimant	)	
V.	)	
	)	
<b>SAINT FRANCIS COMMUNITY SERVICES INC.</b>	)	AP-00-0461-606
Respondent	)	CS-00-0459-285
AND	)	
	)	
<b>UNITED WISCONSIN INS. CO.</b>	)	
Insurance Carrier	)	

**ORDER**

The respondent and its insurance carrier (respondent), through Matthew Schaefer, requested review of Administrative Law Judge (ALJ) Bruce Moore’s preliminary hearing Order dated October 5, 2021. Jeff Cooper appeared for the claimant.

**RECORD AND STIPULATIONS**

The Board adopted the same stipulations and considered the same record as the ALJ, consisting of the preliminary hearing transcript dated October 5, 2021, with exhibits; and the documents of record filed with the Division.

**ISSUE**

Did the claimant’s injuries by accident arise out of her employment?

**FINDINGS OF FACT**

The respondent provides help to children and families in need, and maintains a residential unit (a qualified residential treatment facility) for high-risk youths dealing with mental health and behavioral issues.

The claimant began working as a behavioral health technician for the respondent on June 21, 2021. She interacted with youths, taking them to and from school and other activities, and monitored them.

The claimant went through a two-week training process, consisting of online training, de-escalation training and “shadowing” a coworker. She received the respondent’s AWOL procedure, which states staff must encourage youths to return to the premises and follow youths for supervision and safety. Further, staff members are instructed to notify the respondent’s Director if staff is unable to safely follow youths. The claimant also received a 12-page handout regarding various emergency procedures, including dealing with missing youths, which stated staff should follow such youths and encourage them to return to the building and grounds.

On July 12, 2021, the claimant discovered two juvenile girls in her care were missing. She was outside informing a coworker when she saw the two juveniles running toward her car. The claimant had been instructed to park her car in the respondent’s parking lot and leave her keys in a locked office while working. The juveniles had stolen the claimant’s car keys. The claimant testified:

[A]s I saw them running I took off to my car and got there like a second too late to open the door. And as they had pulled out, I got in front and was asking them to stop and get out. And they charged with the car, I grabbed on to the hood and we went off.<sup>1</sup>

The claimant acknowledged she jumped on the hood of her car because she did not want her car stolen. The claimant testified she asked the juveniles to stop “[m]ultiple times.”<sup>2</sup> At some point, the car began “fishtailing” and the claimant was thrown from the vehicle. The car ran over the claimant’s left leg. The claimant sustained a laceration of her left elbow, multiple abrasions and contusions, and a nondisplaced fracture of her left proximal fibular head.

The claimant was taken by ambulance to the emergency room and admitted overnight. She was treated conservatively. Medical records state the claimant jumped on the hood of her car to prevent the youths from stealing the car. Further, the vehicle, which was being driven up to 60 miles per hour on a dirt road, suddenly stopped, causing the claimant to hit the ground. The medical record also stated the claimant was run over with the car thereafter. On July 29, 2021, the claimant underwent debridement of her left thigh by Dr. Justin Klaassen. On August 11, 2021, the claimant was released to light duty.

Kasie Smith is the respondent’s HR specialist, and she started working for the respondent the same day the claimant started working. Ms. Smith testified it is not possible to train employees on every conceivable situation. She testified there is no

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<sup>1</sup> *Id.* at 15.

<sup>2</sup> *Id.*

training on how to specifically deal with juveniles who steal cars and drive away from the respondent's facility. Consistent with the respondent's written procedures, Ms. Smith testified employees are instructed to pursue juveniles who flee on foot, and thereafter attempt to de-escalate the situation. While Ms. Smith did not witness the accident, she believed the claimant jumped on the hood of her car. Ms. Smith testified it was inappropriate and dangerous for the claimant to jump on the hood of the car, which is something the respondent does not teach employees to do.

In his Order, the ALJ stated:

Claimant suffered personal injuries when she attempted to prevent two juvenile clients from departing without authority from the Saint Francis residential center where they had been placed. The juvenile clients had stolen the keys to Claimant's car and were attempting to steal that car to effect their escape. Claimant chased the juveniles to her car, blocked the car from leaving using her body, and attempted to de-escalate the situation and talk the juveniles into abandoning their efforts to leave. When those efforts were unsuccessful, and the car started to move, Claimant jumped on the hood of the car, again in an effort to prevent the vehicle's departure. Claimant continued to talk with the juveniles, even as they drove off in the car with her on the hood. Ultimately, the juveniles stopped the car suddenly, throwing the claimant onto the roadway. The juveniles then struck Claimant with her own car, causing significant injuries, and continued their efforts to escape.

Respondent disputes Claimant's entitlement to workers' compensation benefits, contending that she had abandoned her service to her employer, and was solely engaged in protecting her personal property at the time of her injuries. The court disagrees. Claimant had two weeks of training before suffering her injuries. None of the training addressed what to do if a juvenile was stealing a personal vehicle. Consistent with her training and responsibilities, Claimant followed the juveniles to her car, talked to them, and tried to dissuade them from leaving. The act of jumping on the car to prevent its theft and use in an escape was a reflexive response to a fast-moving scenario, and demonstrates a concurrence between Claimant's duties to her employer and her desire to protect her personal property. There is no clear abandonment of service to her employer. Claimant's injuries arose out of performance of duties to her employer, and in the course of performing those duties. Claimant is entitled to benefits.

**Claimant is entitled to medical care.** Dr. Justin Klaassen remains designated as the authorized treating physician.

**TTD is Ordered** paid at the rate of \$497.28 per week for the period from July 13, 2021 until August 11, 2021.<sup>3</sup>

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<sup>3</sup> ALJ's Order (Oct. 5, 2021) at 1-2 (bold in original).

The respondent argues the claimant's accident did not arise out of her employment. The respondent asserts the claimant abandoned her job duties when she made the choice to run across the parking lot, stand in front of her car and jump on the hood in an attempt to prevent her car from being stolen. The respondent contends the claimant should have contacted her supervisor and used her radio to get help. The claimant maintains the Order should be affirmed because she was trying to keep the juveniles from leaving the facility when the accident occurred.

### PRINCIPLES OF LAW AND ANALYSIS

An employer is liable to pay compensation to an employee incurring personal injury by occupational disease arising out of and in the course of employment.<sup>4</sup> A claimant must prove his or her right to an award based on the whole record under a "more probably true than not true" standard.<sup>5</sup>

K.S.A. 44-508 states, in part:

(f)(2)(B) An injury by accident shall be deemed to arise out of employment only if:

(i) There is a causal connection between the conditions under which the work is required to be performed and the resulting accident; and

...

(3)(A) The words "arising out of and in the course of employment" as used in the workers compensation act shall not be construed to include:

(i) Injury that occurred as a result of the natural aging process or by the normal activities of day-to-day living;

(ii) accident or injury that arose out of a neutral risk with no particular employment or personal character;

(iii) accident or injury that arose out of a risk personal to the worker; or

(iv) accident or injury that arose either directly or indirectly from idiopathic causes.

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<sup>4</sup> See K.S.A. 44-501b(b).

<sup>5</sup> See K.S.A. 44-501b(c) and K.S.A. 44-508(h).

A causal connection exists between the claimant's accidental injury and her employment. The claimant was required to park her car on the respondent's premises and have her keys in the respondent's office. These requirements placed the claimant's car at a higher risk of being stolen than outside of work. The claimant's accident would not have occurred absent her employment.

Moreover, the claimant did not abandon her employment when she went to her car. While the claimant did not want the juveniles to steal her car, she nevertheless was trying to prevent the juveniles from leaving the respondent's premises, which undoubtedly was part of her job. The claimant implored the youths to not leave, both before and after she got on the hood of the car after the car lunged at her. As the ALJ explained, this was a reflexive situation in which the claimant took immediate action to keep the juveniles on premises and prevent her vehicle from being stolen. The singular fact the claimant did not want her vehicle stolen does not mean she abandoned her employment. The claimant's accidental injuries arose out of her employment. To the extent job abandonment is asserted, the claimant's accidental injuries also occurred in the course of her employment.

**WHEREFORE**, the undersigned Board Member affirms the October 5, 2021, Order.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of December, 2021.

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JOHN F. CARPINELLI  
BOARD MEMBER

c: (via OSCAR)  
Jeff Cooper  
Matthew Schaefer  
Hon. Bruce Moore