

**BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD**

<b>LORI JACKSON</b>	)	
Claimant	)	
V.	)	
	)	AP-00-0462-214
<b>KANSAS STAR CASINO, LLC</b>	)	CS-00-0459-456
Respondent	)	
AND	)	
	)	
<b>ACE AMERICAN INSURANCE CO.</b>	)	
Insurance Carrier	)	

**ORDER**

Respondent appeals the November 12, 2021, preliminary hearing Order issued by Administrative Law Judge (ALJ) Gary K. Jones.

**APPEARANCES**

David H. Farris appeared for Claimant. Timothy A. Emerson appeared for Respondent and its insurance carrier.

**RECORD AND STIPULATIONS**

The Board adopted the same stipulations and considered the same record as the ALJ, consisting of the Evidentiary Deposition of Matthew Mizak from October 6, 2021, with exhibits attached; and the transcript of Preliminary Hearing from November 8, 2021, with exhibits attached, including Claimant’s Discovery Deposition dated September 23, 2021; and the documents of record filed with the Division.

**ISSUES**

1. Did Claimant provide proper notice of a work-related injury pursuant to K.S.A. 44-520?
2. Did Claimant’s injury arise out of and in the course of Claimant’s employment?

**FINDINGS OF FACT**

The ALJ ruled Claimant gave proper notice of the accidental injury to the Respondent regarding her fall in the employee dining room. Claimant's request for benefits was granted, and Respondent was ordered to provide the Claimant with a list of two qualified physicians to treat the Claimant's bilateral hip and bilateral knee injuries. That doctor would be designated as Claimant's authorized treating physician and treatment, tests and referrals would be authorized. Respondent was ordered to pay Claimant temporary total disability at the rate of \$542.11 per week if Claimant is taken off work by the authorized treating physician.

Claimant was employed as a dealer of blackjack, roulette, and carnival games with Respondent.

On May 19, 2021, Claimant went on a 20 minute break between 6:00 p.m. and 6:20 p.m. For breaks, employees are required to go to the employee dining room. The flooring in the employee dining room is either linoleum or tile. Claimant carried her food tray. As she was going to a table, she slipped on water on the dining room floor. Claimant rolled her left ankle, went down on her left knee and extended her right leg out. Claimant heard a pop in her left knee along with discomfort in her knees.

Claimant sat a minute to collect herself and then reported what happened to Mike, one of her supervisors. Security dispatch was contacted and Claimant was sent to the security office.

When Claimant went to security, alone, she talked to an Stephanie Salazar and Matthew Mizak, the security supervisor. Claimant was at the security office about five minutes. According to Mr. Mizak, Claimant reported she slipped and fell in the employee dining room. Claimant reported to him "her left knee had just gone out on her."<sup>1</sup>

While Claimant was at security, she was offered emergency services, which she declined. Claimant was given an ice pack. Claimant returned to work, which according to Respondent, was her choice.

Mr. Mizak classified Claimant's accident as an employee illness and not a work accident for two reasons. First, the accident occurred while Claimant was on a break and not performing a work activity. Claimant is paid while on break. Second, Claimant reported to him her left knee simply went out on her.

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<sup>1</sup> Mizak Depo., Ex. 2 at 2.

Mr. Mizak believed Claimant was aware the incident was classified an employee illness because he noted it on a report and he contacted surveillance by telephone in Claimant's presence and reported the incident as an employee illness. If the incident would have been classified as a work accident, surveillance would have been contacted to clip and save the tape of the incident for further investigation.

Mr. Mizak testified he submitted an incident report to corporate for Claimant. This report included the statement provided to security officer Stephanie Salazar and the statement Claimant gave to Mr. Mizak. The report stated Claimant slipped and fell in the employee dining room and caught herself on her right knee, but the left knee hit the ground and she heard a pop and experienced discomfort. It was noted this was reported to the security officer Stephanie Salazar at 6:37 p.m. and then to Mr. Mizak at 6:40 p.m. It was also noted Claimant was not escorted by a supervisor, she was alone. Mr. Mizak submitted the report on May 20, 2021, which was the day after the incident.

Mr. Mizak testified there was no mention of Claimant slipping on water in the report to corporate because Claimant did not mention any water. Mr. Mizak testified he does not believe Claimant informed her supervisor, Mike, about her slip and fall. Standard procedure is a supervisor is supposed to escort the employee to dispatch, which did not happen with Claimant. Therefore, Mr. Mizak did not believe Claimant reported the incident to her supervisor. He did not know who notified dispatch about the accident. According to page one of the incident report, Claimant reported to Stephanie Salazar she slipped and fell in the employee dining room and heard a pop in her left knee causing discomfort.

Claimant was provided an employer created form to complete titled "employee statement" and was instructed to return it to security. Claimant went back to work and on her next break at around 7:40 p.m., she completed the "employee statement" and returned it to security.

In her employee statement dated May 19, 2021, Claimant wrote:

I had just gotten my dinner and was walking to the tables when I slipped on some water on the floor. My left ankle rolled and I went down on my left knee and extended my right leg out to catch my balance when I heard a pop in my knee and felt discomfort in both knees.<sup>2</sup>

Claimant took a screen shot of her employee statement and saved it to her phone. Claimant does not know to whom she gave the report to security on May 19, 2021.

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<sup>2</sup> P.H. Trans., Cl. Ex. 1.

Respondent had no record of Claimant's May 19, 2021, employee statement until July 28, 2021. According to Mr. Mizak, had the employee statement been received, it would have been scanned and immediately emailed to him or dispatch and added as an amendment to the incident report.

Claimant did not feel she needed medical treatment at the time of the accident and continued working into July 2021. The pain in her knees and right hip got worse. Claimant must stand her entire shift.

Claimant tried to get medical treatment on her own on July 21, 2021. When Claimant contacted the doctor's office to make an appointment and reported it was due to a work injury, she was told she could not be seen. Claimant then contacted her employer.

Claimant contacted Miranda in the HR department about getting medical treatment on July 28, 2021. Miranda told Claimant there was no record of the incident of May 19, 2021. Claimant sent her an email with a copy of the employee statement saved in her phone. Miranda contacted Claimant on July 29, 2021, and said Claimant's injury was not a workers compensation issue and Claimant should see her own doctor.

Claimant believes she followed proper procedure by notifying her supervisor of her accident, going to security as instructed, and completing the appropriate paperwork.

On August 16, 2021, Claimant was seen at Haysville Family MedCenter by a nurse practitioner for left knee pain, a work-related injury, occurring on May 19, 2021. Claimant reported her pain as moderate and radiating into her calf, and are exacerbated by weight-bearing and relieved with rest. Claimant reported her pain has worsened. Claimant was prescribed meloxicam and Voltaren. The nurse found Claimant was in need of medical treatment for the bilateral knees, hip and low back, and the May 19, 2021, slip and fall at work was the prevailing factor for the complaints and need for medical treatment.

Claimant had an MRI of her left knee on August 31, 2021, which revealed a tear of the medial meniscus, specifically, a multidirectional tear of the posterior horn of the medial meniscus, which extended down to the tibial surface, and a tear of the anterior horn of the medial meniscus. There was mild loss of cartilage within the medial and lateral joint spaces, mild loss of cartilage over the patella and a small joint effusion.

#### **PRINCIPLES OF LAW AND ANALYSIS**

Respondent appeals, arguing Claimant failed to provide proper notice of injury, and the injuries arose from an idiopathic cause under K.S.A. 44-508(f)(3)(a)(iv). Therefore compensation should be denied and the ALJ's Order, reversed.

Claimant argues the ALJ's Order should be affirmed, as her injury arose out of and in the course of her employment and she provided proper notice of the injury to Respondent.

K.S.A. 44-508(h) states:

"Burden of proof" means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record unless a higher burden of proof is specifically required by this act.

K.S.A. 44-520 states:

(a)(1) Proceedings for compensation under the workers compensation act shall not be maintainable unless notice of injury by accident or repetitive trauma is given to the employer by the earliest of the following dates:

(A) 20 calendar days from the date of accident or the date of injury by repetitive trauma;

(B) if the employee is working for the employer against whom benefits are being sought and such employee seeks medical treatment for any injury by accident or repetitive trauma, 20 calendar days from the date such medical treatment is sought; or

(C) if the employee no longer works for the employer against whom benefits are being sought, 10 calendar days after the employee's last day of actual work for the employer.

Notice may be given orally or in writing.

(2) Where notice is provided orally, if the employer has designated an individual or department to whom notice must be given and such designation has been communicated in writing to the employee, notice to any other individual or department shall be insufficient under this section. If the employer has not designated an individual or department to whom notice must be given, notice must be provided to a supervisor or manager.

(3) Where notice is provided in writing, notice must be sent to a supervisor or manager at the employee's principal location of employment. The burden shall be on the employee to prove that such notice was actually received by the employer.

(4) The notice, whether provided orally or in writing, shall include the time, date, place, person injured and particulars of such injury. It must be apparent from the

content of the notice that the employee is claiming benefits under the workers compensation act or has suffered a work-related injury.

(b) The notice required by subsection (a) shall be waived if the employee proves that: (1) the employer or the employer’s duly authorized agent had actual knowledge of the injury; (2) the employer or the employer’s duly authorized agent was unavailable to receive such notice within the applicable period as provided in paragraph (1) of subsection (a); or (3) the employee was physically unable to give such notice.

(c) For the purposes of calculating the notice period proscribed in subsection (a), weekends shall be included.

Respondent had proper notice of the accident. Claimant told her supervisor immediately after the accident, providing specifics of where and how. Claimant told security personnel about the accident providing specifics of how and where. Claimant then completed an employee statement on the day of accident. It is immaterial if Respondent chose to classify Claimant’s accident as personal illness. It is found and concluded Claimant gave proper notice.

K.S.A. 44-508(f)(2) states:

(2) An injury is compensable only if it arises out of and in the course of employment

...

...

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

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

(ii) the accident is the prevailing factor causing the injury, medical condition, and resulting disability and impairment.

The preponderance of the evidence establishes Claimant slipped and fell in the employee dining room while on a paid authorized break. Respondent tries to discredit Claimant’s testimony she slipped and fell on water in the employee break room with security personnel testimony stating Claimant didn’t say anything about water on the dining room floor and her knee just gave out. However such statements are not as credible as Claimant’s consistent testimony corroborated by a contemporaneous written statement. Claimant slipped on water in the employee dining room, resulting in injury. Respondent speculated since a statement was made in her presence, her incident was classified as an employee illness, Claimant embellished or changed her story about how she was injured

in order to obtain workers compensation benefits. This is not believable. It is found and concluded Claimant had accidental injury arising out and in the course of employment.

There is no evidence as to the cause of Claimant's injuries other than the May 19, 2021, accident and Claimant continuing to work after the accident before she sought medical treatment. It is found and concluded Claimant's May 19, 2021, accident was the prevailing factor for her injuries and need for medical treatment.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.<sup>3</sup> Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2020 Supp. 44-551(I)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

### **DECISION**

**WHEREFORE**, it is the finding, decision and order of the undersigned Board Member the Order of Administrative Law Judge Gary K. Jones, dated November 12, 2021, is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of January, 2022.

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HONORABLE REBECCA SANDERS  
BOARD MEMBER

c: Via OSCAR

David H. Farris, Attorney for Claimant  
Timothy A. Emerson, Attorney for Respondent and its Insurance Carrier  
Gary K. Jones, Administrative Law Judge

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<sup>3</sup> K.S.A. 2020 Supp. 44-534a.