

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

KRISTINA PARKER)	
Claimant)	
V.)	
)	AP-00-0480-596
UNIFIED SCHOOL DISTRICT #500 W)	CS-00-0479-774
Self-Insured Respondent)	

ORDER

Respondent appeals the December 28, 2023, preliminary hearing Order entered by Administrative Law Judge (ALJ) Kenneth J. Hursh.

APPEARANCES

Andrew Schendel appeared for Claimant. Frederick J. Greenbaum appeared for Self-Insured Respondent.

RECORD AND STIPULATIONS

The Board adopted the same stipulations and considered the same record as the ALJ, consisting of the transcript of Preliminary Hearing from December 27, 2023, with exhibits attached, the documents of record filed with the Division and the parties' briefs.

ISSUE

Did Claimant sustain injury by accident arising out of and in the course of her employment?

FINDINGS OF FACT

Claimant works for Respondent as a library assistant. Her job duties include checking books in and out to students, performing duties assigned by the librarian, and picking up and shelving books. Picking up books requires Claimant to walk throughout the school picking up books from different classrooms. Claimant assists with special events at the school. Claimant works 30 hours per week.

On October 31, 2023, around 1:00 p.m., Claimant was walking in the library to join a meeting. As Claimant was walking through the library, she felt like she flew forward and landed on the ground. Claimant felt she might have tripped on something. There are

carpet squares covering the floor in the library and some of the squares have raised edges. Claimant understood the school was looking into replacing the carpet due to safety concerns. Claimant is not certain she tripped on a carpet square with a raised edge.

Claimant did not lose consciousness, even though she hit her head and cut her lip. Claimant does not have a history of loss of consciousness, is not diabetic or narcoleptic, and does not have any other medical condition causing her to lose consciousness. Claimant also injured both upper extremities due to her fall.

Claimant was taken by ambulance to the emergency room at the University of Kansas hospital. Claimant was diagnosed with fracture of the right wrist and left elbow fracture. Claimant received surgery on both upper extremities on November 1, 2023.

Since her surgery Claimant has received hand therapy. The hand therapist told Claimant not to lift over 2 pounds with either upper extremity. Claimant has not worked since October 31, 2023. Presently, Claimant is unable to perform all of her job duties as a library assistant. The school librarian was told Claimant is unable to perform all of her job duties.

Claimant is using her sick leave since she has been off work. All Claimant's medical expenses were submitted through her personal health insurance. Claimant was informed by Respondent the claim was being denied under K.S.A. 44-508(f)(3)(A)(iv), which prohibits compensation for an injury or accident "that arose either directly or indirectly from idiopathic causes."

At the preliminary hearing the ALJ found a causal connection between Claimant's work conditions and the resulting accident. Claimant's job duties required a lot of walking and more walking than a typical work place, thus increasing Claimant's risk of injury. The ALJ found Claimant's injuries arose out of and in the course of her employment. The ALJ authorized Dr. Brubaker to provide any additional treatment for Claimant. The Court had insufficient information to determine Claimant's entitlement to temporary total benefits.

PRINCIPLES OF LAW AND ANALYSIS

Respondent does not dispute Claimant was in the course of her employment at the time of her accident occurred, but does dispute whether the accident arose out of her employment. Respondent contends walking is an activity of day-to-day living, which is not compensable under the statute. Respondent contends the evidence shows Claimant was wearing normal shoes, walking at a normal pace and not carrying anything in her hands when she tripped. Claimant does not recall any obstacles in her path. Respondent argues this accident could have happened anywhere outside the school. There is no particular hazard or characteristic of her employment causing Claimant to fall and injure herself. Therefore the ALJ's Order should be reversed.

Claimant argues Respondent did not argue this claim is not compensable because the Claimant was engaged in normal activities of daily living at the time of her injury at the preliminary hearing, and therefore, this argument was not reserved for appeal. Claimant argues shortly after her injury, Respondent informed her the claim was being denied under the "idiopathic cause" exclusion. Nonetheless, there is no evidence to support Respondent's argument and the ALJ Order should be affirmed.

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.

An injury is compensable only if arises out and in the course of employment.¹ An accident is deemed to arise out of employment only if there is causal connection between the conditions of work required to be performed and the resulting accident and the accident is the prevailing factor causing the injury, medical condition and resulting disability and impairment.²

K.S.A. 44-508(f)(3)(A) states:

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 which occurred as a result of the natural aging process or by the normal activities of day-to-day living;
- (ii) accident or injury which arose out of a neutral risk with no particular employment or personal character;
- (iii) accident or injury which arose out of a risk personal to the worker; or
- (iv) accident or injury which arose either directly or indirectly from idiopathic causes.

¹ See K.S.A. 44-508(f)(2).

² See K.S.A. 44-508(f)(2)(A)(i) (ii).

*Bryant v. Midwest Staff Solutions, Inc.*³ states:

Even though no bright-line test for whether an injury arises out of employment is possible, the focus of inquiry should be on the whether the activity that results in injury is connected to, or is inherent in, the performance of the job. The statutory scheme does not reduce the analysis to an isolated movement—bending, twisting, lifting, walking, or other body motions—but looks to the overall context of what the worker was doing—welding, reaching for tools, getting in or out of a vehicle, or engaging in other work-related activities.⁴

The Kansas Supreme Court in *Bryant* found a claim compensable when the claimant twisted his back when he stooped to grab a tool out of his bag. Stooping and reaching is an activity of daily living. However, the claimant was not engaged in normal activities of daily living when the claimant stooped and reached for a tool.⁵

In following *Bryant*, the Kansas Court of Appeals found a claim compensable when the claimant experienced a sudden pain in his knee when walking. The Court noted *Bryant* required them to consider whether walking was connected or inherent in performing the job. It was held the claimant's walking was part of his job duties and claimant was injured when performing those job duties.⁶

Claimant was injured when she was walking across the library, where she worked to attend a meeting when she tripped, fell and injured herself. Claimant's job duties involved a lot of walking. Claimant was required to go throughout the school and pick up books and then walk throughout the library returning the books to the shelves and perform other duties required of her by the librarian. Walking was clearly an activity which was required to perform her job.

Claimant speculated the fall could have been due to a loose carpet square but she did not recall any specific reason for her fall. Numerous cases by the appellate courts and the Appeals Board found facts similar to this case have constituted a compensable claim.⁷

³ *Bryant v. Midwest Staff Solutions Inc.* 292 Kan. 585,596 257 P.3d 255 (2011).

⁴ *Id.* at 596.

⁵ *Id.* at 596.

⁶ *Moore v. Venture Corp.* 51 Kan. App. 2d 132, 140, 343 P.3d 114 (2015).

⁷ See *Estate of Graber v. Dillon Companies*, 309 Kan. 509, 439 P.3d 291 (2019); *Johnson v. Stormont Vail Healthcare, Inc.* 57 Kan. App. 2d 44, 445 P.3d 1183 (2019) *rev. denied* 311 Kan.1046 (2011); *Richter v. State*, No. 1,084,362, 2018 WL 5794062 (Kan. WCAB Oct. 2, 2018); *Ramierz v. Casa Alvarez*, No. AP-00-0441-382, 2019 WL 2412874 (Kan. WCAB May 13, 2019); *Richie v. General Motors Corp.*, No. AP-00-0440-103, 2019 WL1595640 (Kan. WCAB Mar. 7, 2019).

Claimant's job required walking more walking than can be classified as a normal day-to-day activity. Claimant's accidental injuries occurred when Claimant was walking in order to perform her job duties. Claimant's accidental injuries arose out of and in the course of her employment.

Claimant argues Respondent should be barred from raising the argument this claim is not compensable because Claimant was engaged in normal activities of daily living was an argument not raised at the preliminary hearing.

K.S.A. 44-523(a) states: "The director, administrative law judge or board shall not be bound by technical rules of procedure, but shall give the parties reasonable opportunity to be heard and to present evidence, ensure the employee and the employer an expeditious hearing and act reasonably without partiality."

The ALJ found the claim compensable citing the general statute of requiring a injury by accident to arise out of employment. No further citations were made by the ALJ. The normal activities of day-to-day living provision is contained within the same section of the law as cited by the ALJ. Claimant was on notice any of the provisions contained in K.S.A 44-508 relating to compensability were encompassed in the ALJ's decision. Respondent advised Claimant compensability was an issue. Respondent is not barred from raising the activities of normal day-to-day living argument. Claimant was not harmed when Respondent raised on appeal the compensability issue.

DECISION

WHEREFORE, it is the finding, decision and order of the undersigned Board Member the Order of ALJ Kenneth J. Hursh, dated December 28, 2023, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of March, 2024.

REBECCA SANDERS
BOARD MEMBER

c: Via OSCAR

Andrew Schendel, Attorney for Claimant
Frederick J. Greenbaum, Attorney for Self-Insured Respondent
Hon. Kenneth J. Hursh, Administrative Law Judge