

**BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD**

<b>MARIA MARTINEZ</b>	)	
Claimant	)	
V.	)	
	)	
<b>MARTIN TRAINING &amp; STAFFING SOLUTIONS LLC</b>	)	AP-00-0484-265
Respondent	)	CS-00-0482-838
AND	)	
	)	
<b>HARTFORD FIRE INSURANCE COMPANY</b>	)	
Insurance Carrier	)	

**ORDER**

Respondent appeals the July 16, 2024, preliminary hearing Order entered by Administrative Law Judge (ALJ) Gary K. Jones.

**APPEARANCES**

Jordan Cooper appeared for Claimant. John M. Graham, Jr. 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 transcript of Preliminary Hearing from July 9, 2024, with exhibits attached, the documents of record filed with the Division and the parties' briefs.

**ISSUE**

Whether the Claimant's accident and injuries arose out of and in the course of Claimant's employment under the provisions of K.S.A. 44-508(f)(3)(A) and are specifically excluded by subsections (i), (ii), (iii), and (iv)?

**FINDINGS OF FACT**

Claimant began working for Respondent on March 20, 2023. Claimant worked in the welding department connecting wires with staples for harnesses. On April 24, 2024, Claimant was required to attend a staff meeting in an area away from her workstation.

When the meeting ended Claimant walked back to her workstation. On the way back to her workstation, she slipped and fell. Claimant was wearing a CAM boot on her left foot at the time for pain on the side of her foot. This was a personal medical condition. She had worn the boot for about 3 weeks before her fall. Claimant testified she felt like she stepped on something on the floor when she slipped. Claimant did not see what she stepped on but it is common for small pieces of zip ties and wire to be on the floor. At the time of the accident, Claimant was not in a hurry and was not carrying anything. There was nothing in Claimant's path and the surface was flat. Claimant's job is primarily a sit down job.

Claimant was taken by ambulance to Wesley Medical Center. Claimant fractured her left wrist and left femur in the fall and had complaints of left hip pain. Diagnostic testing showed left proximal third femur fracture and a comminuted intra-articular left distal radius fracture. There was concern of an open fracture of the left femur. Claimant had surgery on her left femur and left wrist.

Claimant reported at the hospital slipping and falling onto her left side while at work. She was wearing a walking boot on her left foot due to recently diagnosed stress fracture. According to the medical records, Claimant told the doctor at the hospital she believed the boot caused her to trip and fall. Claimant does not recall reporting any cause for her slip and fall. She does not recall being asked about the cause.

Claimant met with Dr. Chad Corrigan on June 19, 2024, for follow-up for a repaired displaced oblique fracture of the shaft of the left femur subsequent to open fracture type I or II with routine healing. Claimant showed improvement and was instructed to continue with medication and physical therapy.

Claimant has not returned to work since the accident and has not had any communication with Respondent. When Claimant gets up after sitting for a while she has pain in her leg, knees and hip. She cannot lift her arm very much because of pain in her shoulder and arm. She walks with a cane because she does not feel her leg is stable. Claimant has not gone to the recommended physical therapy because it has not been authorized and she cannot afford to pay for it on its own.

Aaron Dewlen is the Chief Human Resources Officer for Respondent. When he first heard about Claimant's fall, he went to check on Claimant and called 911 to take her to the emergency room. He did an immediate investigation into what happened and the area where the accident occurred. Mr. Dewlen found no liquid or foreign debris on the floor in the area where Claimant fell. He talked with workers who reported they did not see Claimant slip on anything on the floor. Mr. Dewlen reviewed video footage of the area which showed what happened after the fall. He admitted there was debris on the floor, zip ties wire pieces, tape and some wads of paper. He was aware of Claimant wearing a walking boot and never told her she could not wear it or had to do something different.

The video footage is an exhibit. A review of the footage does not show Claimant before the fall and what caused the fall. It simply shows Claimant going down and hitting the floor on her left side. Video footage of the area shows a wad of paper and debris in the area but not in the exact spot where Claimant fell. The video footage shows a pile of what appears to be nylon rope just laying in the middle of the floor where employees were walking.

The ALJ found Claimant's fall arose out of and in the course of her employment. The ALJ determined she was at work walking from a mandatory meeting back to her workstation, and that walking was a part of Claimant's job duties and is not considered an activity of daily living under well-established case law. The claim was found compensable and the request for medical treatment was granted. Dr. Corrigan was named the authorized treating physician and medical bills were ordered paid or reimbursed as authorized medical expenses.

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

Respondent argues Claimant's fall was caused by a CAM boot Claimant was wearing as the result of a personal medical condition causing the fall and injury. Respondent argues this fall was not in the course of employment, but rather an activity of daily living and due to a personal medical condition. Respondent argues the ALJ's Order should be reversed.

Claimant argues she was performing a work task and therefore the claim is compensable, and the Order should be affirmed. Claimant argues Respondent has not offered any definitive evidence her CAM boot was the cause of her fall, and even if it did, the fall is compensable under *Weese* because Respondent was aware Claimant was wearing a boot and walking was required on the day of the accident.

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. 44-508(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.

Claimant was injured when she slipped and fell at work. Claimant was injured when she was walking back to her workstation after attending a mandatory work meeting. At the time of her fall, Claimant was wearing a CAM boot on her left foot due to a personal medical condition. Claimant testified under oath she believes she stepped on something when she fell. It was reported in emergency room records Claimant thought her CAM boot caused the fall. Claimant does not recall saying this or even being asked about the cause of her fall at the emergency room. Testimony under oath is more credible than hearsay statements made to medical personnel after a traumatic event.

There are several cases about walking at work and being injured as result of falling at work.

*Weese v. State of Kansas*<sup>1</sup> is similar. The claimant in *Weese* was wearing a CAM boot, with the knowledge and permission of her employer when she fell. The claimant believed there could have been water on the floor when she fell. The employer denies water was on the floor after it was investigated after the claimant's fall. It was held the claimant's accident arose out and in the course of the claimant's employment. As stated in *Weese*, "Undoubtedly there are many possible scenarios that might explain why *Weese* fell. The simplest explanation is that she slipped and fell while performing her work, which required walking."

Such is the case at bar; Claimant fell because she had to leave her work area to attend a mandatory meeting and was returning to her workstation when she fell. Again as in *Weese* there are many possible explanations like stepping on something laying on the floor or her feet getting tangled with her CAM boot. Nevertheless, Claimant fell and was injured when she was walking to perform job duties. Claimant's injury was not due to a personal or neutral risk but was work-related and due to Claimant performing her work. Her accidental injury arose out and in the course of her employment.

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<sup>1</sup> *Weese v. State of Kansas*, No. CS-00-0225-005, AP-00-0441-436, 2019 WL 2412875 (Kan. WCAB May 14, 2019).

This conclusion is supported by Board cases and appellate Court cases. In *Bryant v. Midwest Staff Solutions Inc.*<sup>2</sup> the Kansas Supreme Court states that whether an injury arises out of employment depends on what a worker was doing when injured.

The proper approach is to focus on whether the injury occurred as a consequence of the broad spectrum of life's ongoing daily activities, such as chewing or breathing or walking in ways that were not peculiar to the job, or as consequence of an event or continuing events specific to the requirements of performing ones job. The right to compensation depends on one simple test: Was there a work connected injury?<sup>3</sup>

In the case of *Moore v. Venture Corp.*<sup>4</sup> The Kansas Court of Appeals held “stepping down from and walking around the backhoe was part of the work required to operate the backhoe.”<sup>5</sup> The Court goes on to say “We have been instructed not to look at isolated movements but instead look at the overall context of what the worker was doing.”<sup>6</sup>

This Board has frequently held walking to perform a work task is compensable and some of those decisions have been affirmed by the Kansas Court of Appeals.<sup>7</sup>

It is found and concluded Claimant's accidental injury was due to falling at work and arose out of and in the course of her employment.

### **DECISION**

**WHEREFORE**, it is the finding, decision and order of the undersigned Board Member the Order of ALJ Gary K. Jones dated July 16, 2024, is affirmed.

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<sup>2</sup> *Bryant v. Midwest Staff Solutions Inc.*, 292 Kan. 585, 257 P.3d 255 (2011).

<sup>3</sup> *Id.* at 595-596.

<sup>4</sup> *Moore v. Venture Corp.*, 51 Kan. App. 2d 132, 133, 343 P.3d 114 (2015).

<sup>5</sup> *Id.* at 132.

<sup>6</sup> *Id.* at 139.

<sup>7</sup> See *Valles v. Cargill Meat Solutions Corp.*, No. 1,081,879, 2018 WL 6587515 (Kan. WCAB Nov. 27, 2018), *rev. dismissed* Jan. 28, 2019; *Munoz v. Southwest Medical Center*, No. 121,024, 2020 WL 131794 (2020) (Unpublished Court of Appeals Opinion filed March 20, 2020), *rev. denied* Sept. 30, 2021; *Johnson v. Stormont Vail* 57. Kan. App. 2d. 44, 445 P.3d 1183 (2019), *rev. denied* Feb. 25, 2020.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of September, 2024.

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REBECCA SANDERS  
BOARD MEMBER

c: Via OSCAR

Jordan Cooper, Attorney for Claimant  
John M. Graham, Jr., Attorney for Respondent and its Insurance Carrier  
Hon. Gary K. Jones, Administrative Law Judge