BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

TERRY GREER	)	
Claimant	)	
V.	)	
	)	AP-00-0490-162
LIFEPOINT HEALTH, INC.	)	CS-00-0486-007
Respondent	)	
AND	)	
	)	
SAFETY NATIONAL CASUALTY CORP.	)	
Insurance Carrier	)	

ORDER

Respondent and its insurance carrier (Respondent) request review of the May 12, 2025, preliminary hearing Order entered by Administrative Law Judge (ALJ) Brian Brown.

APPEARANCES

Brianne Thomas appeared for Claimant. P. Kelly Donley and Pamela C. Parker appeared for Respondent.

RECORD AND STIPULATIONS

The Board adopted the same stipulations and considered the same record as the ALJ, consisting of the transcript of the Preliminary Hearing held April 21, 2025, with exhibits attached, the documents of record filed with the Division, and the briefs filed by the parties.

ISSUE

Did Claimant meet with personal injury by accident arising out of and in the course of his employment on July 9, 2024?

FINDINGS OF FACT

Respondent is an inpatient rehabilitation facility located inside Mercy Hospital in Pittsburg, Kansas. In his position as a clinical liaison for Respondent, Claimant traveled to medical providers' offices to market rehabilitation services and generate referrals.

Claimant worked full-time, spending over half of his work-week visiting referral sources in the field. Claimant spent the rest of the time working in the office.

Claimant has an office in Pittsburg and an office at his home in Galena, Kansas. Respondent provided Claimant with a laptop and Wi-Fi connection for his home office. Respondent did not provide a company car, but it paid Claimant's mileage for travel. Most of the patients referred to Respondent arose directly from Claimant's marketing efforts to various hospitals.

On July 9, 2024, Claimant worked at his office in Pittsburg until around noon. Claimant then drove to Joplin, Missouri, for a marketing call. The next call on Claimant's schedule was at Mercy Hospital in Galena, located on Highway 66 approximately three miles from Claimant's home. Claimant planned to stop briefly at his home before going to the hospital. Claimant explained, "I needed to go to the restroom, and I hadn't ate [*sic*] that day so I was going to grab some food just to head on my way."[1] Claimant intended to eat his food while driving to Mercy Hospital.

Claimant drove west on Highway 66 from Joplin to Galena. Claimant's home is west of Mercy Hospital and a block south of Highway 66. Claimant was approximately two blocks from his home when his vehicle was rear-ended by another driver. Claimant sustained injuries to his cervical spine as a result. He reported the incident to his direct supervisor and informed her he would seek care at Mercy Hospital Carthage, approximately 25 miles from his home. Claimant's supervisor did not direct him to obtain treatment somewhere else and did not tell him not to go to Carthage for treatment. Claimant explained his wife works in health care and suggested the Carthage hospital due to it having the shortest wait time. Claimant's daughter drove him to Mercy Hospital Carthage for treatment.

Claimant's ongoing care has been through his personal medical insurance. Claimant testified he has kept his supervisor informed about his treatment and progress.

After a preliminary hearing to determine the compensability of the claim, the ALJ found Claimant's July 9, 2024, accident arose out of and in the course of his employment with Respondent. The ALJ explained:

> Claimant spent the first hours of his workday in Pittsburg, then drove to Joplin, and then to Galena. He had not eaten all day. It was certainly not unreasonable for him to go home to take care of personal needs before continuing his work nearby at Galena Mercy. Based on his credible and uncontroverted testimony, the Court finds Claimant did not intend to temporarily abandon his job. His intent was to drive

[1] P.H. Trans., Cl. Ex. 1 at 17.

> home, use the restroom, "grab some food," and then drive the short distance back to Galena Mercy. His choice, moreover, to drive a short distance out of the way was not so unusual and unreasonable that his conduct could not be considered an incident of his employment.[2]

PRINCIPLES OF LAW AND ANALYSIS

Respondent argues Claimant temporarily abandoned his job duties and was on his authorized lunch break when the accident occurred. Respondent maintains Claimant's errand was personal, and he had substantially deviated from Respondent's business purposes. Respondent argues the ALJ's Order should be reversed.

Claimant contends the ALJ's Order should be affirmed. Claimant argues he was traveling to a temporary job site as directed by Respondent, and his brief stop did not constitute a substantial deviation. Further, Claimant argues he was actively engaged in furthering Respondent's business interests when the accident occurred.

Did Claimant meet with personal injury by accident arising out of and in the course of his employment on July 9, 2024?

An injury is compensable only if it arises out of and in the course of employment.[3] The two phrases "arising out of" and "in the course of" have two separate and distinct meanings; they are conjunctive and each condition must exist before compensation is allowable. The phrase "in the course of" employment relates to the time, place and circumstances under which the accident occurred and means the injury happened while the worker was at work in his employer's service. The phrase "arising out of" the employment points to the cause or origin of the accident and requires some causal connection between the accidental injury and the employment. An injury arises out of employment if it arises out of the nature, conditions, obligations, and incidents of the employment.[4]

To receive workers compensation benefits, a claimant must prove by the preponderance of the evidence the accidental injury occurred while working. The evidence must include specifics as to time the accident occurred and under what circumstances the accidental injury occurred.

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[2] ALJ Order (May 12, 2025) at 4-5.

[3] K.S.A. 44-508(f)(2).

[4] See *Hormann v. New Hampshire Ins. Co*., 236 Kan. 190,197-98, 689 P.2d. 837 (1984); *citing Newman v. Bennett*, 212 Kan. 562, 512 P.2d. 497 (1973).

In *Roath v. ASR International Corporation*, the Board found compensable a case where the employee was injured while taking a short break to retrieve her purse from her automobile in a parking lot used by the employer's employees, but not owned by the employer. Ms. Roath fell and was injured as she was returning to the building where she worked. The Board found the injury arose out of and in the course of her employment, stating:

> Generally, injuries that occur during short breaks on the premises of the employer are considered compensable.[5] Breaks benefit both the employer and employee.[6] In circumstances where the employee is taking a break in an area designated or permitted by the employer for such purposes, even if it is not on the employer's premises, there is also a degree of control sufficient to find the accident compensable.[7]
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> Larson's Workers' Compensation Law § 13.05(4) (2006) states in part:
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> > The operative principle which should be used to draw the line here is this: If the employer, in all the circumstances, including duration, shortness of the off-premises distance, and limitations on off-premises activity during the interval can be deemed to have retained authority over the employee, the off-premises injury may be found to be within the course of employment.
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> Larson's Workers' Compensation Law, Ch. 21 states:
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> > Employees who, within the time and space limits of their employment, engage in acts which minister to personal comfort do not thereby leave the course of employment, unless the extent of the departure is so great that an intent to abandon the job temporarily may be inferred, or unless, in some jurisdictions, the method chosen is so unusual and unreasonable that the conduct cannot be considered an incident of the employment.[8]

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[5] See *Larson's Workers' Compensation Law* § 13.05(4) (2006); *Wallace v. Sitel of North America*, No. 242,034, 1999 WL 1008023 (Kan. WCAB Oct. 28, 1999).

[6] See *id.; Jay v. Cessna Aircraft Co.*, No. 1,016,400, 2005 WL 3665488 (Kan. WCAB Dec. 14, 2005); *Vaughn v. City of Wichita*, No. 184,562, 1998 WL 100158 (Kan. WCAB Feb. 17, 1998): and *Longoria v. Wesley Rehabilitation Hospital*, No. 220,24, 1997 WL 377961 (Kan. WCAB June 9, 1997).

[7] See *Larson's Workers' Compensation Law* § 21.02 (2006); *Riley v. Graphics Systems, Inc.*, No. 237,773, 1998 WL 921346 (Kan. WCAB Dec. 31, 1998).

[8] *Roath v. ASR International Corporation*, No. 1,032,944, 2008 WL 651675 (Kan. WCAB Feb. 18, 2008).

A Board Member, in *Roman v. Floyd Construction Corp.*, addressed this issue and wrote:

> K.S.A. 44-508(f)(3)(B), also known as the "going and coming rule", provides:
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> 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 owned or under the exclusive control of the employer or on the only available route to or from work which is a route involving a special risk or hazard connected with the nature of the employment that is not a risk or hazard to which the general public is exposed and which is a route not used by the public except in dealings with the employer. An employee shall not be construed as being on the way to assume the duties of employment, if the employee is a provider of emergency services responding to an emergency.
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> The Kansas Court of Appeals, in *Atkins v. Webcon*, No. 113,117, 2016 WL 299084, at *4 (Kan. Ct. App. Jan. 22, 2016) noted that the rationale for the going and coming rule "is that during an employee's commute to and from work, he or she is exposed only to the same risks or hazards as the general public. As such, those risks are not causally related to employment."
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> The going and coming rule does not apply when travel is an intrinsic part of the employment. *Phifer,* 2022 WL 16725766, at *4 (citing *Atkins v. Webcon*, 308 Kan. 92, 98 (2018) & *Halford v. Nowak Constr. Co.*, 39 Kan. App. 2d 935, 941 (2008), *rev. denied* 287 Kan. 765 (Nov. 4, 2008)). The Kansas Court of Appeals, in *Craig v. Val Energy, Inc*., 47 Kan. App. 2d 164, 168 (2012) (*rev. denied* May 20, 2013), discussed the application of the intrinsic travel rule, stating:
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> > In other words, while many of the cases from our appellate courts discuss inherent travel as an exception to the going-and-coming rule, it appears the analysis is really whether travel has become a required part of the job such that the employee actually assumes the duties of employment from the moment he or she leaves the house and continues to fulfill the duties of employment until he or she arrives home at the end of the workday.
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> *Craig v. Val Energy, Inc.*, 47 Kan. App. 2d 164, 168 (2012) (*rev. denied* May 20, 2013). In *Scott v. Hughes*, 294 Kan. 403, 414 (2012), the Court identified examples of workers who would fall within the intrinsic travel rule, including "an oil well driller

> who customarily drove to assemble his crew, an auto mechanic who traveled annually to an examination, and a salesman who traveled to call on customers."[9]

The undersigned adopts by reference the analysis of the intrinsic travel rule contained in *Roman.* Travel was intrinsic to Claimant's employment with Respondent. Claimant spent over half of his work-week visiting referral sources in the field. Claimant had an office at his home, for which Respondent provided Claimant a laptop and Wi-Fi connection. Claimant had not eaten that day and dropped by his home office to grab something to eat.

"[T]ending to personal comfort is an incident of employment, and activities which are incidents of employment also 'arise out of' employment."[10] Since the Court of Appeals' decision in *Gould*,[11] the Board has consistently applied the personal comfort doctrine to injuries occurring when an employee is engaging in work breaks.

Claimant stopped by his home office to grab a bite to eat on the way to his next customer. The undersigned finds, under the personal comfort doctrine and the intrinsic travel doctrine, Claimant's motor vehicle accident and subsequent injuries arose out of and in the course of his employment with Respondent.

DECISION

WHEREFORE, it is the finding, decision and order of the undersigned Board Member the Order of ALJ Brian Brown dated May 12, 2025, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of September, 2025.

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SETH G. VALERIUS
BOARD MEMBER

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[9] *Roman v. Floyd Construction Corp.*, No. AP-00-0489-990, 2025 WL 2247566 (Kan. WCAB July 17, 2025).

[10] *Gould v. Wright Tree Serv., Inc.,* No. 114,482, 2016 WL 2811983 (Kansas Court of Appeals unpublished opinion filed May 13, 2016), *rev. denied* 306 Kan. 1317 (2017).

[11] *Gould, supra.*

c: Via OSCAR

Brianne Thomas, Attorney for Claimant
P. Kelly Donley, Attorney for Respondent and its Insurance Carrier
Pamela C. Parker, Attorney for Respondent and its Insurance Carrier
Hon. Brian Brown, Administrative Law Judge