

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

VEDRENE ELIAS)	
Claimant)	
V.)	
)	AP-00-0464-930
MOSIAC COFFEYVILLE)	CS-00-0463-630
Respondent)	
AND)	
)	
SENTRY INSURANCE A MUTUAL COMPANY)	
Insurance Carrier)	

ORDER

Claimant appealed the April 4, 2022, preliminary hearing Order entered by Administrative Law Judge (ALJ) Steven M. Roth.

APPEARANCES

Vedrene Elias appeared Pro Se. Joseph McMillan 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 Claimant's Discovery Deposition taken March 17, 2022; the transcript of Preliminary Hearing from March 25, 2022, with exhibits attached, and the documents of record filed with the Division.

ISSUE

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

FINDINGS OF FACT

Claimant's job for Respondent is taking care of mentally disabled people in a group home setting and taking care of three people off site in their homes doing welfare checks, which included taking temperatures, checking oxygen levels, dispensing medication and

checking blood pressure. Claimant worked on Saturdays and Sundays, two sixteen hour days.

After some indecision, Claimant testified she injured her left foot on January 9, 2022, while leaving a home visit and heading to her van parked in the client's driveway. Claimant twisted her left foot and it popped. According to Claimant, she was in a hurry to get back to the group home. Claimant returned to the group home and continued with her work duties. Claimant thought the pain in her left foot would go away.

Claimant knew work injuries were to be reported to the supervisor. Claimant called Janie Hugo, her supervisor, on January 9, 2022, and according to Claimant, told her she had injured her left foot at work. Claimant characterized her supervisor's response as "going over her supervisor's head."¹ Claimant did not request medical treatment when talking to Ms. Hugo.

Claimant did seek medical treatment on her own. On January 12, Claimant saw nurse practitioner Whitney Garretson at Community Health Center of Southeast Kansas. Claimant complained of left foot pain, which shoots up her left leg and back. Claimant thought the left foot pain began about a month ago. Claimant was diagnosed with plantar fasciitis. Claimant was prescribed medication and exercises. At Claimant's request, Claimant received an off work slip, which had Claimant off work until January 29, 2022.

On or around January 12, 2022, Claimant took the off work slip to her job. She gave the off work slip to Ben Aimes, Ms. Hugo's supervisor. According to Claimant, she told Mr. Aimes she hurt her left foot on the job. She did not tell him how and she did not request medical treatment.

On January 21, 2022, according to Janie Hugo, Claimant called and said her health insurance would not pay to treat her left foot and she had to turn it in as a workers compensation injury. Claimant was reminded work injuries should be reported as soon as they occur. When Claimant was asked for specifics as to how her injury occurred, she was unable to do so.

Claimant was asked by Respondent's Human Resources department to complete an incident report. Claimant completed two such reports on or about January 26, 2022. Claimant noted in the incident report she injured her left foot on January 9, 2022, because she was hurrying to return to the group home from a welfare check. Ms. Hugo noted one of the reports has an off-site location accident site and the other stated the accident

¹ P. H. Trans. at 33.

occurred at the group home.² According to Ms. Hugo, the employer records do not show Claimant doing off-site welfare checks on January 9, 2022.

Claimant returned to the Community Health Center of Southeast Kansas on January 25, 2022. An x-ray of Claimant's left foot showed a bone cyst. Plantar fasciitis continued to be the diagnosis of Claimant's left foot pain. She was prescribed medication and exercises. Claimant was referred to a podiatrist.

On March 7, 2022, Respondent sent Claimant to their workers compensation physician at Business and Industry Health Clinic. Claimant was diagnosed with plantar fasciitis, but no cause was given for this diagnosis. It was recommended Claimant see a podiatrist.

On March 18, 2022, Claimant saw Dr. Wessejawski who stated in his report as the history of Claimant's present illness being: "She relates being very busy on January 4. She was moving quickly down the hall and twisted her foot with a sharp pain of the left arch. She relates feeling that something popped in her foot. It appears she had a traumatic tear of plantar fascia."³

Claimant complains of back, neck and hip and foot pain since the accident. Her focus has been on her left foot. Claimant denies any problems prior to January 2022, with her left leg, hip, neck, back or ankle. Claimant rated her pain at an 8 while sitting and a 10 when walking.

Claimant has not been back to work since the injury in January 2022, because the amount of walking required causes her pain. She is unable to perform activities of daily living, and most of her leisure activities.

The ALJ denied Claimant's request for compensation upon finding Claimant failed to sustain her burden of proof she sustained a work-related accident, the alleged injuries arose out of and in the course of her employment, or the alleged work accident was the prevailing factor for her injuries and need for medical treatment.

PRINCIPLES OF LAW AND ANALYSIS

Claimant argues she was injured on her last day of work and it was her supervisor Janie Hugo who failed to report the injury because she did not believe Claimant fell. Claimant cannot explain why she twisted her foot, but since she was injured while

² *Id.*, Resp. Ex. 3.

³ *Id.*, Cl. Ex. 3.

performing her job duties, the accident arises out of and in the course of her employment.

Respondent argues the ALJ's 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 it arises out of and in the course of employment.⁴ The two phrases "arising out" 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 her 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.⁵

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.

Claimant failed to show by the preponderance of the evidence the injury to her left foot arose out of and in the course of her employment.

According to Claimant, she had a traumatic injury to her left foot. At a minimum, Claimant should be able to testify consistently as to the location and date when the trauma occurred. Claimant had difficulty, initially, deciding when the accident occurred, before settling on January 9, 2022. Claimant then completed two incident reports approximately three weeks after the alleged trauma. One report had the accident occurring at the group home on January 9, 2022, and the other incident report stated the accident occurring at a client's home after Claimant had completed a welfare check. In her report as to how left foot injury occurred, Claimant told the podiatrist the injury occurred on January 4, 2022,

⁴ K.S.A 44-508(f)(2).

⁵ See *Hormann v. New Hampshire Ins. Co.*, 236 Kan. 190,197-98, 689 P.2d. 837 (1984);citing *Newman v. Bennett*, 212 Kan. 562, ¶1, 512 P.2d. 497 (1973).

while walking down a hallway. According to the employer's records, Claimant did not see any clients outside of the group home on January 9, 2022. Claimant also told her medical provider at Community Health Center of Southeast Kansas on January 12, 2022, her left foot began hurting about a month before her alleged accident.

Claimant's inability to testify consistently on the most basic facts of her accidental injury, causes this Board Member to conclude Claimant's left foot injury did not arise out and in the course of her employment. Claimant's request for workers compensation benefits is denied.

By statute, the above preliminary hearing findings and conclusions are not final as they may be modified upon a full hearing of the claim.⁶ 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 that the Order of Administrative Law Judge Steven M. Roth dated April 4, 2022, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of June, 2022.

REBECCA SANDERS
BOARD MEMBER

c: Via OSCAR

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Joseph McMillan, Attorney for Respondent and its Insurance Carrier
Hon. Steven M. Roth, Administrative Law Judge

⁶ K.S.A. 2020 Supp. 44-534a.