

**BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD**

<b>AMANDA CRUZ</b>	)	
Claimant	)	
V.	)	
	)	AP-00-0468-332
<b>SALAS PLUMBING &amp; REMODELING, LLC</b>	)	CS-00-0458-965
Respondent	)	
AND	)	
	)	
<b>TRAVELERS PROPERTY CASUALTY CO.</b>	)	
<b>OF AMERICA</b>	)	
Insurance Carrier	)	

**ORDER**

Respondent and its insurance carrier (Respondent) requested review of the June 14, 2022, preliminary hearing Order entered by Administrative Law Judge (ALJ) Thomas Klein.

**APPEARANCES**

Jeff K. Cooper appeared for Claimant. Vince Burnett appeared for Respondent.

**RECORD AND STIPULATIONS**

The Board adopted the same stipulations and considered the same record as the ALJ, consisting of:

1. transcript of the Preliminary Hearing held September 7, 2021, with exhibits attached;
2. transcript of the Preliminary Hearing by Deposition of Maria Diaz from September 21, 2021;
3. transcript of the Preliminary Hearing by Deposition of Mayra Cervantes Diaz from September 21, 2021; and
4. the documents of record filed with the Division.

ISSUE

Did Claimant meet with personal injury by accident arising out of and in the course of her employment on June 10, 2021?

FINDINGS OF FACT

Claimant was employed by Respondent as an office secretary. Claimant's general duties were taking appointments and generating invoices and estimates. In addition, Claimant ran errands and delivered materials to job sites when directed to do so. Approximately once a month, Claimant drove Maria Diaz (owner's wife) to complete her errands. Claimant was paid her regular wages while completing errands, including transporting Ms. Diaz. Claimant drove her personal vehicle to conduct Respondent's errands, including those of Ms. Diaz. Claimant testified the air conditioning in her vehicle was not working, and she added Freon when necessary.

Respondent is a family owned business. The family members include Jose Salas, the father and respondent's owner, Maria Diaz, Myra Cervantes Diaz, and Jose Salas, Jr. All are Claimant's supervisors. Respondent's business is located in the basement of the Salas home residence in Kechi.

On June 10, 2021, Ms. Diaz asked Claimant to take her to Central National Bank to make Respondent's deposits. Claimant and Ms. Diaz traveled from Respondent's location in Kechi to Interstate 235, exited on Central Avenue, and proceeded east a short distance to the bank. The bank was not yet open, so Ms. Diaz and Claimant went to a consignment store down the street to pass the time. They returned to the bank for Ms. Diaz to make the deposit. After leaving the bank, Claimant asked if she could stop at O'Reilly Auto Parts (O'Reilly) to obtain Freon for her vehicle. Ms. Diaz allowed the stop. O'Reilly is located approximately seven blocks east from the bank, in the opposite direction of Interstate 235.

Ms. Diaz waited in the vehicle while Claimant entered O'Reilly. Claimant was inside less than 10 minutes when she emerged, carrying Freon and her wallet. On the way back to her vehicle, Claimant fell and fractured both ankles. Claimant's left ankle fractured in three places and required surgery. She wore a compression boot on her right ankle for six weeks. Claimant was off work until her return to work on August 23, 2021. Respondent did not provide medical treatment or wages for the period Claimant was off work.

Claimant testified on June 10, 2021, Ms. Diaz gave her permission to stop at O'Reilly; the accident occurred at approximately 10:30; it was already 90 degrees; the vehicle was blowing hot air; and they had more stops to make. Claimant testified Ms. Diaz wanted to go to A-OK Pawn Shop after the bank to shop for jewelry as a present for the

mother at a Quinceañera in Houston. O'Reilly was located on the way to the pawn shop. After the pawn shop, Claimant was to take Ms. Diaz to her hair appointment.

Ms. Diaz disputed Claimant's testimony, stating the only errand she instructed Claimant to perform was to take her to the bank. Ms. Diaz testified, "I never go to a pawn shop."<sup>1</sup>

Mayra Cervantes Diaz, Ms. Diaz' daughter, is responsible for Respondent's accounting and other administrative duties. Ms. Cervantes Diaz holds two additional jobs and is not at Respondent's office every day. She agreed Claimant periodically ran errands for both Respondent and Ms. Diaz. Claimant was paid her regular wages during those times. She testified Claimant would be expected to perform any requested duties while on the clock.

The ALJ found Claimant had permission to stop at O'Reilly. Therefore, Claimant's accident arose out of and in the course of her employment. The ALJ awarded temporary total disability benefits from June 11, 2021, through August 23, 2021, and ordered Respondent to provide a list of two physicians from which Claimant may choose an authorized treating physician.

Respondent argues Claimant failed to prove her accident arose out of and in the course of her employment because she abandoned any employment purpose when she deviated from her work route.

Claimant contends the ALJ's Order should be affirmed. Claimant argues the errand was directed by her supervisor and the stop was permitted. Alternatively, Claimant maintains the deviation from her employer-directed errand was minor, and her accident arose out of and in the course of her employment.

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

#### **Claimant's accidental injury arose out of and in the course of her employment on June 10, 2021.**

To be compensable, an accident must be identifiable by time and place of occurrence, produce at the time symptoms of an injury and occur during a single work shift.<sup>2</sup>

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<sup>1</sup> Diaz Depo. at 10.

<sup>2</sup> See K.S.A. 44-508(d).

Both parties cite *Sumner v. Meier's Ready Mix, Inc.*<sup>3</sup> in support of their positions. *Sumner* sets forth the following principles:

- When an employee takes a clearly identifiable side-trip, thereby deviating from the business route, the employee steps beyond the course of employment and toward his/her personal objectives.
- Accidental injuries which occur on dual purpose excursions, benefitting the employer and employee, are generally compensable.
- The deviation must be so substantial the employee is deemed to have abandoned any business purpose.
- The longer the deviation exists in time or the greater it varies from the normal business route or in purpose from the normal business objectives, the more likely the deviation will be characterized as major.

The parties agree with the relevant facts until the bank deposit was made. It is undisputed Claimant traveled to O'Reilly to purchase Freon for her automobile, which she was using to transport her employer, Ms. Diaz. O'Reilly is seven blocks east of the bank and a minor deviation from the travel route back to Respondent's office, if no further errands were to be completed. Claimant was at O'Reilly with the knowledge and consent of Ms. Diaz. Claimant fell, injuring both ankles in the parking lot of O'Reilly, after purchasing Freon for her car. It is the events following the bank deposit where the parties' versions of the events go in different directions.

This Board Member finds the trip to O'Reilly to purchase Freon was not a major deviation from the business route or objective. The trip from the bank to O'Reilly was short in distance (7 blocks) and time (10 minutes). Claimant was on the clock, traveling in her automobile with her employer to complete an errand or errands for Respondent. Whether one believes Ms. Diaz' version or Claimant's, following the Freon purchase, the parties were either returning to the office or continuing with Ms. Diaz' errands. The purchase of Freon was a minor deviation. Claimant had not abandoned any business purpose.

**WHEREFORE**, it is the finding, decision and order of the undersigned Board Member the Order of Administrative Law Judge Thomas Klein dated June 14, 2022, is affirmed.

**IT IS SO ORDERED.**

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<sup>3</sup> *Sumner v. Meier's Ready Mix, Inc.*, 282 Kan. 283, 144 P.3d 668 (2006).

**AMANDA CRUZ**

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

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**CHRIS A. CLEMENTS**  
**BOARD MEMBER**

c: Via OSCAR

Jeff K. Cooper, Attorney for Claimant  
Vince Burnett, Attorney for Respondent and its Insurance Carrier  
Hon. Thomas Klein, Administrative Law Judge