

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

KATESSA CLARK)	
Claimant)	
V.)	
)	AP-00-0472-165
EMPIRE CANDLE CO., LLC)	CS-00-0468-922
Respondent)	
AND)	
)	
ACCIDENT FUND INS. CO. OF AMERICA)	
Insurance Carrier)	

ORDER

Claimant requested review of the November 4, 2022, preliminary hearing Order entered by Administrative Law Judge (ALJ) Julie A.N. Sample.

APPEARANCES

John G. O'Connor appeared for Claimant. Kelsey E. Allison appeared for Respondent and its insurance carrier (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 November 2, 2022, with exhibits attached, and the documents of record filed with the Division.

ISSUE

Did Claimant suffer an injury by accident arising out of and in the course of her employment on June 30, 2022?

FINDINGS OF FACT

Claimant worked for Respondent in the Label Room for a few years before becoming Label Room Lead in 2021. As lead, Claimant oversaw the Label Room department and supervised one employee, Maria Gomez Cruz. Claimant's department served the manufacturing side of Respondent's business, unloading stock from pallets,

fulfilling orders, and creating labels and UPC codes. Remaining materials are returned to the Label Room, where they are inventoried. Included in the materials are circular spools of wick, which are picked from inventory and placed on racks four feet above the floor. Claimant testified Respondent began using larger spools in approximately May 2022 which weighed 50 pounds apiece, while the previous spools weighed 40 pounds each.

Prior to becoming Label Room Lead, Claimant was a Label Room associate for approximately 2 years. Her job duties at that time included daily repetitive lifting of 40 pounds. When Claimant became Label Room Lead, Ms. Cruz became the new associate. Claimant testified her duties as lead required lifting 50-pound wick spools 1-2 times per week. However, Claimant agreed to perform more lifting prior to June 30, 2022, because Ms. Cruz was pregnant.

On June 30, 2022, Claimant was lifting the second of two wick spools onto a cart, when she strained to lift and lost her vision. Claimant described grabbing onto the cart when her vision went black. She recalled sweating and experiencing a rapid heartbeat associated with the event. Her vision returned peripherally at first. She recalled being weak and dizzy. Claimant called her boyfriend and asked to be taken to the emergency room. Claimant then sent a text to her supervisor, James Berg, indicating she had vision problems and needed to see a doctor.

Claimant went to the University of Kansas Health System emergency department with left-hand numbness and blurry vision. Her symptoms resolved while in the hospital. Hospital records indicate Claimant:

. . . stated that she normally is able to perform this daily work task without any difficulty, and does not remember anything in particular today that was different that lead to this symptoms [*sic*]. She states that she has felt like this once before one month ago, but at that time she was sitting on her couch relaxing when it happened.¹

Claimant was diagnosed with a vertebral artery dissection, which is a tear of the inner lining of the vertebral artery. She underwent additional treatment and testing. Dr. Sabreena Slavin provided restrictions in a letter dated August 24, 2022, in which she limited Claimant to no lifting more than 25 pounds, no lifting overhead more than 15 pounds, and no engaging in activities that cause a risk of significant head or neck injury. Dr. Slavin did not provide a prevailing factor opinion. These restrictions are continued through August 24, 2023. Claimant testified she was unable to work under these restrictions.

¹ P.H. Trans., Cl. Ex. 3.

On April 25, 2021, a year prior to the incident, Claimant was seen at Providence Medical Center with complaints of numbness and tingling in her left hand, blurry vision, and headache.

Dr. Daniel Zimmerman examined Claimant at her counsel's request on October 19, 2022. Dr. Zimmerman reviewed Claimant's history and available medical records, including the note from 2021. He noted Claimant was diagnosed with a left V2 dissection with stenosis without occlusion while at the hospital in June 2022. Dr. Zimmerman conducted a physical examination and concluded:

[Claimant] prevalingly developed cerebrovascular mediated symptoms as a consequence of an incident that occurred on June 30, 2022 when carrying out job tasks in her employment at [Respondent].

[Claimant] had as a consequence of that date of injury a cerebrovascular insult best characterized as a transient ischemic attack.

The prevailing factor for the cerebrovascular insult best characterized as a transient ischemic attack is the incident that occurred on June 30, 2022 that has been attributed to the vertebral artery dissection.²

Dr. Zimmerman noted Claimant did not require additional medical testing, and the use of the medication provided by her physician was appropriate. Dr. Zimmerman further agreed with the restrictions imposed by Dr. Slavin.

Claimant was terminated from Respondent in September 2022. She testified Dr. Slavin recommended another CT scan, but Claimant cannot afford more testing due to the loss of her health insurance. Claimant has not worked since June 30, 2022.

The ALJ denied Claimant's request for benefits, finding the vertebral dissection did not arise out of and in the course of her employment. The ALJ determined Claimant was performing her usual work at the time of the event, and further, the evidence indicates Claimant suffered similar symptoms on at least two prior occasions not related to her work.

PRINCIPLES OF LAW AND ANALYSIS

Claimant argues the vertebral artery dissection arose out of and in the course of her employment, as she was performing exertion more than her usual work at the time of the event. Claimant notes Dr. Zimmerman's opinion is uncontroverted and consistent with her testimony regarding Dr. Slavin. Claimant requests the Board reverse the ALJ's decision

² P.H. Trans., Cl. Ex. 1 at 6.

and order Respondent to provide authorized medical care and temporary total disability benefits.

Respondent maintains the ALJ's Order should be affirmed. Respondent argues Claimant failed to sustain her burden of proof.

K.S.A. 44-501b(c) states:

The burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends. In determining whether the claimant has satisfied this burden of proof, the trier of fact shall consider the whole record.

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(d) states:

"Accident" means an undesigned, sudden and unexpected traumatic event, usually of an afflictive or unfortunate nature and often, but not necessarily, accompanied by a manifestation of force. An accident shall be identifiable by time and place of occurrence, produce at the time symptoms of an injury, and occur during a single work shift. The accident must be the prevailing factor in causing the injury. "Accident" shall in no case be construed to include repetitive trauma in any form.

K.S.A. 44-508(f)(1) states:

"Personal injury" and "injury" mean any lesion or change in the physical structure of the body, causing damage or harm thereto. Personal injury or injury may occur only by accident, repetitive trauma or occupational disease as those terms are defined.

K.S.A. 44-501(c)(1) states:

Except as provided in paragraph (2), compensation shall not be paid in case of coronary or coronary artery disease or cerebrovascular injury unless it is shown that the exertion of the work necessary to precipitate the disability was more than the employee's usual work in the course of the employee's regular employment.

Dr. Zimmerman identified Claimant's injury as a cerebrovascular insult, or transient ischemic attack. Such a diagnosis triggers the application of K.S.A. 44-501(c). Claimant testified after she became a lead and started overseeing more of the forklift duties she lifted 50-pound spools once or twice a week. She also testified she was performing the task more often because she was covering for a pregnant employee. The lifting was still a part of her usual job. The undersigned finds Claimant was performing her usual work duties when the accident causing her symptoms occurred.

Claimant failed to prove the exertion of the work causing the condition was more than her usual work in the course of her regular employment, as required by K.S.A. 44-501(c).

DECISION

WHEREFORE, it is the finding, decision and order of the undersigned Board Member the Order of ALJ Julie A.N. Sample, dated November 4, 2022, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of January, 2023.

SETH G. VALERIUS
BOARD MEMBER

c: Via OSCAR

John G. O'Connor, Attorney for Claimant
Kelsey E. Allison, Attorney for Respondent and its Insurance Carrier
Hon. Julie A.N. Sample, Administrative Law Judge