

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

TINA HAMMOND)	
Claimant)	
V.)	
)	AP-00-0474-462
CREEKSTONE FARMS PREMIUM BEEF)	CS-00-0469-977
Respondent)	
AND)	
)	
SOMPO AMERICA INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Respondent appealed the March 9, 2023, preliminary hearing Order entered by Administrative Law Judge (ALJ) Gary K. Jones.

APPEARANCES

Randy Stalcup appeared for Claimant. Clayton Fielder 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 March 8, 2023, with exhibits attached and the documents of record filed with the Division. The parties' briefs were considered.

ISSUE

Did Claimant's right knee injury arise out of and in the course of her employment?

FINDINGS OF FACT

Claimant began working for Respondent in April 2022. She was hired in floor production and her job was to remove plastic and metal from boxes. This required standing the entire shift.

On August 9, 2022, Claimant was going up two flights of stairs to take her 30 minute

lunch break on the employer's premises. The employer provides a cafeteria at the end of the stairs, where employees eat and take their breaks. As Claimant climbed the stairs, she stepped the wrong way, causing her to twist her right knee and to lock up. Claimant had to remain on the stairs for a period of time until she could move again. She climbed the rest of the stairs. Claimant reported the incident to Respondent's health department, and to her supervisor, Travis Jackson. Claimant completed an accident report.

Claimant had a phone conversation with Angela McGowan, a representative of Respondent's insurance carrier, on August 11, 2022, and was told no claim could be opened because Claimant did not file a workers compensation claim.

Claimant sought medical treatment for her right knee with Dr. Ansari on her own. Claimant had an x-ray of the right knee on August 10, 2022, which showed tricompartmental degenerative changes, with no acute fracture or dislocation. Claimant was taken off work until August 16, 2022, when she saw the doctor again. Claimant was off work until September 2, 2022, when she could return to work with limitations of her no stair climbing for 2 weeks.

Claimant had an MRI of the left knee on September 7, 2022, which revealed a radial tear involving the posterior horn of the medial meniscus near the root ligament attachment. There was edema about the posterior oblique ligament with a low-grade strain; cartilage loss in the medial femoralotibial and patellofemoral compartments with associated subchondral cysts; small right knee joint effusion with superior plica; and trace amount of fluid in the pes anserine and tibial collateral bursae and bursitis.

When Claimant was seen by Dr. Ansari on October 18, 2022, Claimant was not allowed to bend squat, kneel or climb stairs. The doctor was awaiting approval for surgery.

On October 24, 2022, Respondent terminated Claimant's employment because Claimant had been on medical leave for 60 days and could not return to work with her restrictions. Claimant's last day of work was October 9, 2022.

Claimant had a left ankle injury in 2013 that left her with metal screws in her ankle, which makes it difficult for her to walk, work or stand at times. This injury was not work-related. Claimant testified the only problem she had with her right knee was working in the cold. Claimant wore a knee brace on the right knee to protect it from the cold. Claimant had not sought medical treatment for her right knee prior to August 10, 2022.

Dr. Daniel Zimmerman examined Claimant on November 8, 2022, at her attorney's request. Claimant reported right knee pain from an August 9, 2022, injury. Dr. Zimmerman opined Claimant had pain and discomfort affecting the right knee. He diagnosed a right knee radial tear involving the posterior horn of the medial meniscus near the root ligament. He did not feel Claimant was at maximum medical improvement and recommended anti-

inflammatory medication, steroid injections and viscosupplementation for the right knee. He opined Claimant may need right knee arthroscopy based on the MRI findings. Dr. Zimmerman found Claimant incapable of performing her work tasks for Respondent as the knee injury precludes her from being able to stand and work on a production line during a regular work shift.

The ALJ found Respondent did not meet its burden to show Claimant's injuries arose out of a personal risk, but rather the injury occurred while the Claimant was performing a task necessary to her employment. He found Claimant had not seen a doctor for any right knee condition before this accident, and the only doctor to comment on prevailing factor was Dr. Daniel Zimmerman, who opined the work injury of August 9, 2022, was the prevailing factor for Claimant's right knee meniscus tear. Therefore, Claimant's request for workers compensation benefits was granted. Dr. Suhail Ansari was designated the authorized treating physician, and all treatment, tests and referrals regarding the Claimant's right knee were authorized. The ALJ also ordered medical bills from South Central Kansas Specialty Clinic and from Winfield Medical Arts related to the Claimant's right knee to be paid as authorized medical. Claimant was awarded temporary total disability benefits beginning August 19, 2022, at the rate of \$623.13 per week, and continuing to the present and thereafter until the Claimant is released from temporary restrictions, is offered accommodated work within her restrictions or reached maximum medical improvement.

PRINCIPLES OF LAW AND ANALYSIS

Respondent argues Claimant's right knee injury arose out of the neutral risk of walking up stairs and Claimant's employment did not expose her to any greater risk of this injury happening than her normal day-to-day non-employment activities. Respondent argues the testimony regarding Claimant wearing a knee brace prior to the date of injury is also evidence of a personal condition and not related to her employment. Respondent contends the Order should be reversed as the prevailing factor for the Claimant's alleged injury was not her employment. Respondent denies compensability of this claim as Claimant had prior right knee conditions and the work incident was not a work-related incident, but the act or injury was a neutral risk due to conditions personal to the Claimant and there was nothing specific about her employment that caused or contributed to cause her medical condition.

Claimant 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.

K.S.A. 44-508(f)(2)(B)states:

An injury by accident shall be deemed to arise out of and in the course of employment only if:

- (i) There is a causal connection between the conditions under which the work is required to be performed and the resulting accident; and
- (ii) the accident is the prevailing factor causing the injury, medical condition, and resulting disability or impairment.

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 that occurred as a result of the natural aging process or by the normal activities of day-to-day living;
- (ii) accident or injury that arose out of a neutral risk with no particular employment or personal character;
- (iii) accident or injury that arose out of a risk personal to the worker; or
- (iv) accident or injury that arose either directly or indirectly from idiopathic causes.

In *Gould v. Wright Tree Services*,¹ the Kansas Court of Appeals held:

The standard for "arising out of" only requires a causal connection between the conditions of the work and the injury—it does not require that the injury occur at the exact moment an employee is performing a certain job task. The standard for "in the course of" requires an employee to be at work and performing job-related acts.²

When Claimant injured her right knee she was on a employer-sanctioned break going to an employer-sanctioned area on employer's premises to take a 30 minute lunch break. Claimant's accident arose from conditions peculiar to her employment with Respondent.

Since the Court of Appeals decision in *Gould*, the Board has consistently applied the personal comfort doctrine to injuries occurring when an employee is engaging in work

¹ *Gould v. Wright Tree Service*, No. 114,482, 2016 WL2811983 (Kansas Court of Appeals Unpublished opinion May 13, 2016, *rev. denied* 306 Kan. 1317 (2017)).

² *Id.* at *5.

breaks. In *Richie v. General Motors*,³ the Board held “Taking a work break is part of employment, so Richie’s fall had a causal connection to her required work. Because taking a break is inherent to and causally connected to Richie’s job, it is not a neutral risk without any particular employment character.”

Claimant was injured while taking an employer-sanctioned break. Taking a break was inherent to her job and her injury was not due to a neutral or personal risk.

Respondent argued Claimant’s work was not the prevailing factor for her injury. Claimant had not sought medical treatment for her right knee prior to her August 9, 2022, accident. The wearing of a knee brace is not a strong indicator of a knee injury. The only medical opinion on prevailing factor was from Dr. Zimmerman, who opined Claimant’s work accident of August 9, 2022, was the prevailing factor for Claimant’s right knee injury.

It is found and concluded Claimant’s injury arose out and in the course of employment. Her claim is compensable. The ALJ’s Order is affirmed.

DECISION

WHEREFORE, it is the finding, decision and order of the undersigned Board Member that the Order of ALJ Gary K. Jones, dated March 9, 2023, is affirmed.

IT IS SO ORDERED

Dated this _____ day of May, 2023.

REBECCA SANDERS
BOARD MEMBER

c: Via OSCAR

Randy Stalcup, Attorney for Claimant
Clayton Fielder, Attorney for Respondent and its Insurance Carrier
Hon. Gary K. Jones, Administrative Law Judge

³ *Richie v. General Motors Corp.*, No. AP-00-0440-103, 2019 WL 1595640, at *3 (Kan. WCAB Mar. 7, 2019).