

**BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD**

<b>BEVERLY JONSON</b>	)	
Claimant	)	
	)	
V.	)	
	)	
<b>HOSPITAL LINEN SERVICES, INC.</b>	)	CS-00-0452-820
Respondent	)	AP-00-0456-648
	)	
AND	)	
	)	
<b>CINCINNATI INSURANCE CO.</b>	)	
Insurance Carrier	)	

**ORDER**

**STATEMENT OF THE CASE**

Beverly Jonson requested review of the February 19, 2021, preliminary hearing Order entered by Administrative Law Judge (ALJ) Julie A.N. Sample. Michael W. Downing appeared for Ms. Jonson. Christopher J. McCurdy and Rachel A. Rioux appeared for respondent and its insurance carrier (respondent).

The ALJ found Ms. Jonson's fall did not arise out of and in the course of her employment, but rather from a personal risk.

The record on appeal is the same as considered by the ALJ and consists of the transcript of the December 2, 2020, Preliminary Hearing and the exhibits; the transcript of the February 2, 2021, video conference Preliminary Hearing testimony of Beverly A. Jonson; and the transcript of the February 2, 2021, video conference Preliminary Hearing testimony of Gabriela Rodriguez and the exhibits, together with the pleadings contained in the administrative file.

**ISSUES**

Ms. Jonson argues the ALJ's Order should be reversed. Ms. Jonson contends her fall arose out of and in the course of her employment, and the ALJ had insufficient evidence to conclude Ms. Jonson fell due to a personal risk. Ms. Jonson argues she was carrying out her job duties when she sustained an injury by accident.

Respondent maintains the ALJ's Order should be affirmed. Alternatively, respondent argues Ms. Jonson's fall occurred as a result of a neutral risk with no particular

employment or personal character, and it arose either directly or indirectly from an idiopathic cause.

The issue for the Board's review is: did Ms. Jonson sustain an injury from an accident arising out of and in the course of her employment?

### FINDINGS OF FACT

Ms. Jonson began working for respondent on February 2, 1976. She was a customer representative and human resources contact. Ms. Jonson is 78 years old and walks with a cane. Ms. Jonson denied she had balance issues and denied a physician recommended the cane. Ms. Jonson indicated she began using a cane about one year prior to the accident. She was previously diagnosed with osteoarthritis in both knees. Ms. Jonson stated she used a rolling chair to scoot around the office, instead of walking, and she kept a wheelchair in her car for traveling long distances. Ms. Jonson denied any falls prior to the accident.

On July 22, 2020, at 4:00 p.m., Ms. Jonson finished her work, gathered her purse and cane, and began walking to the front office door. Gabriela Rodriguez, respondent's secretary/receptionist, opened the door for Ms. Jonson, as was their typical end-of-day routine. Ms. Rodriguez stated she regularly held the door for Ms. Jonson when they were leaving because Ms. Jonson had a cane in one hand and a purse in the other. This way, Ms. Jonson would not have to struggle with the door. Ms. Rodriguez indicated a maintenance worker also helped Ms. Jonson inside from the parking area each morning.

The front office had three black rectangular mats on the floor to catch lint from the production area. Ms. Jonson said she did not see the state of the mats on the date of the accident because she was not looking at the floor. Ms. Jonson testified she tripped on a mat in the middle of the front office while walking toward the door, falling and striking her head on the glass window. Ms. Jonson explained:

I tripped and fell because my knees did not give way or anything like that. I just flattened straight out. Nothing happened. I just tripped and fell, and I stretched out to the window.<sup>1</sup>

Ms. Rodriguez, who witnessed the incident, testified there was no defect in the mat, and the mat was not ripped, torn, bunched up, or curled at the edges.

Ms. Rodriguez stated Ms. Jonson had difficulties walking and issues with her right leg prior to the July 2020 fall. Ms. Rodriguez testified:

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<sup>1</sup> Jonson Depo. at 20.

Q. Did you notice difficulty which Ms. Jonson had walking before the accident?

A. Yes.

Q. Can you describe that?

A. She would – she would be walking slower than usual. Every time she took a step, I could kind of see pain in her face, to where it hurt her.

Q. So this wasn't the entire time that you worked with her; just more – more frequent as it got closer to the date of accident?

A. Yes.

. . .

A. About two or three weeks before the accident.<sup>2</sup>

Ms. Jonson showed Ms. Rodriguez her right leg two or three weeks prior to the fall, and it was very swollen. Ms. Jonson agreed she had swelling in her legs before the accident. Ms. Rodriguez testified she had not witnessed Ms. Jonson fall before the July 22, 2020, incident.

An ambulance was dispatched to the scene after Ms. Jonson fell. Ms. Jonson told the paramedics she thought she tripped on a mat. She was taken to North Kansas City Hospital where she was admitted for two weeks. Hospital notes indicate:

Patient to the emergency room states she was walking out of work and tripped on a door mat and fell into a wall. Patient states her head was extended and she took most of the impact to her forehead and left arm. Patient states she was dazed but denies any definite loss of consciousness. Patient states her neck just feels a little bit sore. Patient is having some pain in her left arm is the biggest source of her pain. Patient denies any back pain. Patient states she has chronic knee pain and there is no new lower extremity pain today.<sup>3</sup>

Ms. Jonson was diagnosed with a head injury and fracture dislocation of the left shoulder/humerus as a result of the fall. Ms. Jonson underwent surgery on her left shoulder on July 22, 2020, with Dr. Charles Orth. Dr. Orth found Ms. Jonson's shoulder was chronically dislocated. He reported Ms. Jonson had an injury several years prior and

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<sup>2</sup> Rodriguez Depo. at 10.

<sup>3</sup> P.H. Trans., Cl. Ex. 1 at 8.

had since had pain in her shoulder with decreased motion.<sup>4</sup> Ms. Jonson did not recall how she previously injured her shoulder.

Radiologic examinations of both knees indicated findings consistent with advanced osteoarthritis. Postoperative progress notes reported Ms. Jonson had difficulty with ambulation due to chronic severe degenerative joint disease of her knees.<sup>5</sup>

Dr. Orth referred Ms. Jonson to his partner, Dr. James Kesl, for operative care of her fractured humerus. On July 28, 2020, Dr. Kesl performed a left humeral shaft open reduction internal fixation procedure, resulting in placement of hardware in Ms. Jonson's left arm. Following surgery, Dr. Kesl recommended Ms. Jonson undergo physical therapy, range of motion exercises, and continued prescription pain medication.

Ms. Jonson attended physical therapy while in the hospital. It was determined Ms. Jonson was a fall risk due to mobility issues. She was provided a gait belt and cane. Post acute inpatient occupational therapy was recommended at discharge, and it was decided Ms. Jonson would be discharged to a skilled nursing facility, Sharon Lane Health and Rehabilitation, when she was released from the hospital on August 5, 2020. Ms. Jonson's plan of care indicated physical therapy was necessary to improve strength, endurance, standing balance, and gait to reduce her fall risk.<sup>6</sup>

Ms. Jonson testified she was moved to another assisted living facility because she had difficulty with the steps at her home. Ms. Jonson stated she was told by Dr. Kesl at her last appointment, in either December 2020 or January 2021, nothing more could be done for her shoulder. Ms. Jonson described ongoing issues with her left arm, including inability to lift her left arm above shoulder level.

Ms. Jonson has not worked since her fall. Ms. Jonson stated she does not feel capable of returning to respondent because of her knees, although her new physician has not provided any restrictions. She testified:

Q. All right. But you're not – you don't have any limitations. That's just what you feel, you're not ready to go back to work. Is that a fair statement?

A. Yes, yes. He told me that – what the new doctor told me is that for me to come back in a month and then we'd look at it and he would decide.<sup>7</sup>

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<sup>4</sup> See P.H. Trans., Cl. Ex. 3 at 4.

<sup>5</sup> See P.H. Trans., Cl. Ex. 1 at 53.

<sup>6</sup> See P.H. Trans., Cl. Ex. 3 at 25.

<sup>7</sup> Jonson Depo. at 34-35.

Ms. Jonson explained she will not have treatment recommendations for her knees until she returns to her new physician, Dr. Paul. Dr. Paul's notes are not in evidence.

**PRINCIPLES OF LAW**

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) states, in part:

(1) "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.

(2) An injury is compensable only if it arises out of and in the course of employment. An injury is not compensable because work was a triggering or precipitating factor. An injury is not compensable solely because it aggravates, accelerates or exacerbates a preexisting condition or renders a preexisting condition symptomatic.

. . .

(B) An injury by accident shall be deemed to arise out 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.

(3)(A) 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 which occurred as a result of the natural aging process or by the normal activities of day-to-day living;

(ii) accident or injury which arose out of a neutral risk with no particular employment or personal character;

(iii) accident or injury which arose out of a risk personal to the worker; or

(iv) accident or injury which arose either directly or indirectly from idiopathic causes.

By statute, preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.<sup>8</sup> Moreover, this review of a preliminary hearing order is determined by only one Board Member, as permitted by K.S.A. 2019 Supp. 44-551(l)(2)(A), as opposed to being determined by the entire Board when the appeal is from a final order.<sup>9</sup>

### ANALYSIS

Respondent argues Ms. Jonson's injury arose from a personal risk due to preexisting osteoarthritis in both knees and associated symptoms. It is respondent's burden to prove the existence of a personal or neutral risk that would deny a finding of a compensable injury.<sup>10</sup>

Whether an accident arises out of and in the course of the worker's employment depends on the facts of the particular case.<sup>11</sup> Ms. Jonson testified she tripped on a carpet mat. The pictures, included in the ALJ's Order, show three rectangular floor mats leading to the office exit door. The pictures show the placement of the carpet mats create surface

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<sup>8</sup> K.S.A. 44-534a; see *Quandt v. IBP*, 38 Kan. App. 2d 874, 173 P.3d 1149, rev. denied 286 Kan. 1179 (2008); *Butera v. Fluor Daniel Constr. Corp.*, 28 Kan. App. 2d 542, 18 P.3d 278, rev. denied 271 Kan. 1035 (2001).

<sup>9</sup> K.S.A. 2019 Supp. 44-555c(j).

<sup>10</sup> *Johnson v. Stormont Vail Healthcare Inc.*, 57 Kan. App. 2d 44, 55, 445 P.3d 1183, 1190 (2019), review denied (Feb. 25, 2020); *Smalley v. Skyy Drilling*, No. 111,988, 2015 WL 4366531 (Kansas Court of Appeals unpublished opinion filed June 26, 2015); see also *Hanson v. Logan U.S.D.* 326, 28 Kan. App. 2d 92, 96, 11 P.3d 1184 (2000), rev. denied 270 Kan. 898 (2001).

<sup>11</sup> See *Kindel v. Ferco Rental, Inc.*, 258 Kan. 272, 278, 899 P.2d 1058 (1995).

height and composition changes. There is no evidence Ms. Jonson's testimony was not accurate or truthful. The undersigned finds the accident occurred as described by Ms. Jonson.

This case is similar to *Hallbauer v. Combined Insurance Company*.<sup>12</sup> In *Hallbauer*, the claimant stumbled on carpet and was knocked unconscious. He could not pinpoint the cause of his fall, other than saying something "caught" his foot. The claimant did not know how the accident occurred. The only eyewitness testified the claimant caught his foot on the carpet and stumbled, and the carpet was softer where the claimant fell. The claimant suffered from preexisting type 2 diabetes and had prior balance problems related to numbness in his feet. No medical evidence was presented supporting the claimant's diabetes caused the fall. The Board concluded "the evidence was insufficient to prove, more probably than not, that claimant's fall was the result of his personal and preexisting diabetic condition."<sup>13</sup>

Ms. Jonson's accidental injury arose out of and in the course of her employment. Ms. Jonson's employment required her to traverse the three carpet mats, which resulted in her accidental injury. There was a causal connection between the conditions under which the work was required to be performed and the resulting accident. Respondent did not prove Ms. Jonson's fall was caused by a neutral risk with no employment-related character. Ms. Jonson was injured as a result of her employment. The accident was also the prevailing factor causing Ms. Jonson's injury and need for medical treatment. Thus, Ms. Jonson proved the requirements under K.S.A. 44-508(f)(2)(B).

### CONCLUSION

Ms. Jonson proved she suffered an accident arising out of and in the course of her employment, which is the prevailing factor causing her left upper extremity injury and resulting medical treatment. Respondent failed to prove it is more probable than not the injury arose out of a personal risk, with no employment-related character.

### ORDER

**WHEREFORE**, it is the finding, decision and order of this Board Member the Order of Administrative Law Judge Julie A.N. Sample dated February 19, 2021, is reversed and remanded to the ALJ to make findings related to claimant's request for temporary total disability, medical treatment, and payment of medical expenses.

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<sup>12</sup> *Hallbauer v. Combined Insurance Company*, No. 1,066,323, 2015 WL 3642458 (Kan. WCAB May 12, 2015).

<sup>13</sup> *Id* at 6.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of May, 2021.

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HONORABLE SETH G. VALERIUS  
BOARD MEMBER

c: Michael W. Downing, Attorney for Ms. Jonson  
Christopher J. McCurdy, Attorney for Respondent and its Insurance Carrier  
Hon. Julie A.N. Sample, Administrative Law Judge