BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

EMILLIE ACEVEDO PEREZ	)	
Claimant	)	
V.	)	
	)	AP-00-0493-518
TYSON FRESH MEATS, INC.	)	CS-00-0473-405
Self-Insured Respondent	)	

ORDER

Respondent and Claimant appealed the December 1, 2025, Award by Administrative Law Judge (ALJ) Larry Gurney. The Board heard oral argument on May 7, 2026.

APPEARANCES

Phillip B. Slape appeared for Claimant. Thomas G. Munsell appeared for Self-insured Respondent.

RECORD AND STIPULATIONS

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

1. Transcript of Preliminary Hearing held October 10, 2023, with exhibits;

2. Transcript of Regular Hearing held April 30, 2025;

3. Deposition of Dr. Pat Do taken on March 31, 2025, with exhibits;

4. Transcript of Continuation of Regular Hearing taken March 31, 2025, with exhibits;

5. Deposition of Anielka Castro taken on May 9, 2025;

6. Deposition of Paul Hardin taken on May 12, 2025, with exhibits;

7. Deposition of Dr. Pedro Murati taken on May 21, 2025, with exhibits;

8. Deposition of Steve Benjamin taken on June 23, 2025, with exhibits;

9. Deposition of Dr. Vito Carabetta taken on June 26, 2025, with exhibits;

10. Deposition of Ashley Bayer taken on July 28, 2025, with exhibits;

11. Stipulated Medical Records of Dr. Anusha Reddy Karra, admitted September 4, 2025;

The Board also considered the documents of record filed with the Division and the parties' briefs.

ISSUES

1. What is the nature and extent of Claimant's disability?

2. Is Claimant entitled to work disability, specifically was Claimant terminated for cause?

3. Is Respondent entitled to a credit for temporary total disability paid following Claimant's termination?

4. Is Claimant entitled to future medical treatment?

FINDINGS OF FACT

Claimant began working for Respondent on July 20, 2022, as a meat cutter in the production area. Claimant testified after her training, the pace of the work got faster and by August she began to have problems, such as pain, weakness and heaviness in her arms and hands. These problems began all of a sudden and got worse little by little. Claimant reported her complaints to Respondent and an accident report was completed on September 7, 2022. Claimant's hands were treated with heat and ice by Respondent's nurse. She was sent back to work.

Prior to her employment with Respondent, Claimant was diagnosed with Raynaud's Syndrome on or about September 2021. Respondent received a note from Dr. Karra who was treating the Raynaud's Syndrome, which stated Claimant should not work in an environment colder than 68 degrees and no repetitive motion with her hands. Claimant believed the repetitive use of her hands was just a recommendation and not a restriction. On September 23, 2022, Claimant's job was changed to inspect "head meat", and the area where she worked was 68 degrees or warmer.

Ashley Bayer, the area HR partner for Respondent, testified she spoke with Claimant about her options for her personal and work-related restrictions and

accommodations for child care. Claimant was no longer able to work B shift which was 3:00 p.m. to midnight. She was moved to A shift which was 5:45-6:00 a.m. to 2:30 p.m. for two weeks and still could not obtain child care. Claimant was given a two week leave of absence so that she could arrange for child care. She was still unable to arrange for child care.

On November 4, 2022, Claimant's job was changed to box large intestines. The job required Claimant to take pretrimmed sections of intestine, package them, put them in a box and send to the shipping area. Claimant performed this job for a brief period of time. Claimant did not like this job because of the smell and Claimant believed the temperature in the area was 60 degrees. She asked to be put in another position.

When Claimant requested a change from the boxing large intestines job, she was shown a couple of jobs she would be able to perform within her restrictions, but Claimant did not want to do those jobs because it was not the shift she wanted. There was no other open position meeting all of Claimant's restrictions, so Claimant was taken off work at her request. She was placed in Respondent's "interactive process". Norma Fraire, human resources manager for Respondent, went over the interactive process at the plant for those with restrictions with Claimant. This is a process to assist an employee in finding a suitable position with Respondent. In this process open positions in Respondent's facility located in Holcomb, Kansas are posted every Friday. Claimant was then to come to the facility every Monday to view the new positions available and to determine if any of the open positions met her restrictions. Claimant's leave of absence and participation in the "interactive process" started November 15. Claimant was given 30 days to find a new position meeting her restrictions.

According to Claimant, she traveled to Holcomb every week and signed in with Respondent in the hopes of a job within her restrictions. Claimant has no documentation of signing in. Once Claimant tried to take a picture of her signing in but was told by her employer to the delete the photo. Claimant testified that she had to find someone to watch her children when she had to make these trips. She took her children with her when she couldn't find child care and had the children wait in the car. She testified new postings were on Fridays and she had Monday to Thursday to apply. One friend testified she went with Claimant to the plant once and waited in the car with Claimant's children. She did not know why Claimant was at the plant.

According to Respondent's witnesses, there was not a record of Claimant going to the plant to apply for accommodated positions. Norma Fraire testified she tried contacting Claimant by telephone a couple of times and left messages for Claimant to call her back. Claimant did not return any of her telephone calls.

Ms. Fraire could not say if there were any jobs available for Claimant within her restrictions, but Claimant never came in to check the list to find out either. There has been no communication with Claimant since November 17, 2022. Ms. Fraire testified Respondent would have tried to modify a job for Claimant within her restrictions, but Claimant never came to the plant to go over the listings.

Claimant's employment was terminated on December 29, 2022, because Claimant was on a leave of absence and did not come back to work as scheduled. Since being terminated by Respondent, Claimant worked at Wendy's for a month, three days a week at $12 an hour. She also worked at TJ Maxx on two different occasions (May 2024 for three weeks and August 2024), three days a week at $12 an hour. She also helped her husband make Door Dash runs on occasion, making the household $200 a week and when the weather was bad, she could bring in $400 a week.

After being initially treated by Respondent's nurse, Claimant was referred to Dr. Do for medical treatment.

Claimant first met with Dr. Pat Do on October 25, 2022. Her chief complaint was bilateral hand pain which Claimant attributed to repetitive work activities. Dr. Do noted a September 7, 2022, workers compensation injury for overuse and repetitive stress. Claimant rated her pain at 6 out of 10. She described it as dull, aching, continuous, annoying, and pinching. She reported the pain increased with cold, activity and carrying. The pain decreased with heat and rest. The pain progressed throughout the day and affected her sleep.

Dr. Do's examination showed Claimant had decreased strength and sensation in thumb, ring and small fingers on the right with a positive Tinel's and Phalen's tests. Dr. Do's impression of Claimant's condition was right wrist pain, left forearm pain, possible carpal tunnel and/or cubital tunnel syndrome and bilateral hand pain. Dr. Do noted a history of Raynaud's Syndrome which was not work-related. Dr. Do recommended NCT/EMG testing of bilateral upper extremities. Dr. Do imposed temporary work restrictions of "no use of tools bilateral hands."[1]

On November 16, 2022, Claimant had a telemedicine visit and was told the results of the NCT/EMG tests showing left carpal tunnel syndrome. Physical therapy was recommended. On January 12, 2023, bilateral carpal tunnel corticosteroid injections were administered.

On February 24, 2023, Dr. Do performed right elbow ulnar release surgery and right carpal tunnel release surgery. On June 5, 2023, Dr. Do performed the same surgeries on

[1] Do Depo., Ex. 2 at Oct. 22, 2002, office note at 4.

Claimant's left upper extremity. On December 7, 2023, Claimant was released at maximum medical improvement. Claimant continued to have diffuse numbness to both hands, all of her fingers and both wrists and pain and motion restrictions in both shoulders.

At Respondent's request, Dr. Do sent a letter dated January 2, 2024, providing his opinion on permanent impairment, the need for future medical treatment and work restrictions. Dr. Do found Claimant has a 4 percent body as a whole impairment for Claimant's bilateral upper extremity injuries. Dr. Do utilized the *American Medical Association Guides to the Evaluation of Permanent Impairment, 6th Edition* (*The Guides)*. Dr. Do opined Claimant did not need permanent work restrictions and "it is within a reasonable degree of medical probability that there is no future medical treatment for the work related injury.[2] Dr. Do did not see Claimant at the time he issued these opinions.

Claimant was evaluated by Dr. Pedro Murati at the request of her attorney on March 18, 2024. Claimant presented with chief complaints of: shooting pain from bilateral fingers up to shoulders, bilateral hand and fingers cramp up, numbness and tingling in bilateral upper extremities, bilateral shoulder weakness, neck pain radiating down to the fingers, and difficulty sleeping secondary to pain.

Dr. Murati noted Claimant's job duties for Respondent entailed bending, lifting, pushing, pulling, standing, grasping, sitting, writing, crouching, walking and climbing stairs. She lifted 10 pounds occasionally and 5 pounds frequently.

Upon examination, Dr. Murati diagnosed:

> 1. S/p, "1. Right elbow ulnar nerve release. 2. Right wrist carpal tunnel release." Dr. Do 02-24-23 at MMI.
> 2. S/p, "1. Left elbow ulnar nerve release. 2. Left wrist carpal tunnel release." Dr. Do 06-05-23 at MMI.
> 3. Right medial and lateral epicondylitis.
> 4. Left medial epicondylitis.
> 5. Bilateral rotator cuff tear versus sprain with probable labral involvement.
> 6. Myofascial pain syndrome of the left shoulder girdle extending into the cervical and thoracic paraspinals.
> 7. Occipital neuralgia with headaches.[3]

There was hypothenar and thenar eminence atrophy on the left only, positive impingement of the left shoulder, and full range of motion of the shoulders. He found no

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[2] *Id.*, Ex 2 at 5.

[3] *Id.*, Ex 2 at 4.

evidence of Raynaud's during his examination and testified he would not have been able to complete his examination if it had been present at that time.

Dr. Murati issued temporary restrictions based on an 8 hour work day of: no climbing ladders; no crawling; no repetitive grasping/grabbing with the right or left no heavy grasping more than 40 kg with the right or left; no above shoulder work with the right or left; no lifting, carrying, pushing or pulling more than 20 pounds, 20 pounds occasionally, 10 pounds frequently, 5 pounds constantly; occasional repetitive hand controls with the right or left; no work more than 24 inches from the body; avoid awkward positions of the neck; avoid truck twist; no use of hooks or knives with the right; no keyboarding; no use of vibratory tools with the right.

Dr. Murati made following treatment recommendations: For the occipital neuralgia with headaches, a series of occipital blocks and Botox injections. For the right and left medial and lateral epicondylitis, appropriate physical therapy with iontophoresis and cortisone injections and anti-inflammatory and pain medications as needed. A tennis elbow splint (or golfers splint for medial epicondylitis) should be worn at all waking hours. If conservative care fails then a referral to an upper extremity orthopedic specialist.

For the rotator cuff sprain versus tear, cortisone subacromial joint injections and an MRI of the shoulder to rule out rotator cuff tear and appropriate physical therapy and anti-inflammatory and pain medications. If no improvement with conservative treatment, then a surgical consultation may be warranted. For the myofascial pain syndrome, appropriate physical therapy with myofascial pain release techniques and cortisone trigger point injections and anti-inflammatory medications and pain medications as needed, as well as Zanaflex or other antispasmodics to reduce muscle spasms. Dr. Murati noted these recommendations are in addition to any treatment already received.

Dr. Murati opined Claimant sustained multiple repetitive traumas at work which resulted in bilateral upper extremity and neck complaints. He found there were no significant preexisting injuries related to the diagnosis. He found under all reasonable medical certainty and probability the prevailing factor in the development of Claimant's conditions is multiple repetitive traumas at work and her employment exposed her to an increased risk she would not have had if unemployed.

In a letter dated April 1, 2025, Dr. Murati wrote upon review of Dr. Carabetta's October 9, 2024, report, he opined it is beyond reasonable medical certainty Claimant will require further medical treatment as a result of this work-related injury. He recommended at least yearly follow ups on her hands, wrists, elbows, neck and upper back in case of any complications that may ensue. This may include but is not limited to the appropriate physical therapy, chiropractic treatment, injections, radiological studies, anti-inflammatory and pain medication(s) and possible need for surgical intervention as a result of the injury

occurring on November 29, 2022. Dr. Murati went on to recommend Celebrex for pain and inflammation because it has a much lower side effect profile which is desirable in any case of lifetime need.

Dr. Murati assigned a 30 percent body as a whole impairment rating which included ratings for bilateral upper extremities impairment, myofascial pain syndrome affecting the thoracic paraspinals, myofascial pain syndrome affecting the cervical parapsinals and occipital neuralgia. Dr. Murati used *The Guides* as a starting point, but deviated using competent medical evidence, including but not limited to the impact Claimant's injuries had in her activities of daily living and rating all injuries.

Dr. Murati assigned permanent restrictions based on an 8 hour work day of: no climbing ladders; no crawling; no repetitive grasping/grabbing with the right or left no heavy grasping more than 40 kg with the right or left; no above shoulder work with the right or left; no reaching more than 24 inches from the chest on the right or left; no lifting, carrying, pushing or pulling more than 35 pounds, 35 pounds occasionally, 20 pounds frequently, 10 pounds constantly; no work more than 24 inches from the body; no use of hooks or knives with the right or left; no keyboarding; no use of vibratory tools with the right or left. Dr. Murati was not aware of Dr. Karra's restrictions.

In response to Dr. Murati's evaluation Respondent asked Dr. Do to examine Claimant again. Dr. Do performed a limited physical examination of Claimant on July 24, 2024. Claimant's complaints were the same as she reported to Dr. Murati; shooting pain from bilateral finger tips to shoulders, bilateral hand and fingers cramp up, numbness and tingling in bilateral upper extremities, bilateral shoulder weakness, neck pain radiating down into the fingers and difficulty sleeping secondary to pain. Claimant reported to Dr. Do the pain goes all the way up into her elbows, her shoulders, her neck, occipital area and to her temporomandibular joint. She has difficulty sleeping due to pain and bilateral leg spasms.

Dr. Do opined he believed all of Claimant's pain complaints were real. However within a reasonable degree of medical probability with prevailing factor being the primary factor, her described work injury to her bilateral hands and elbows is the not causative factor for her current need for treatment. Dr. Do recommended Claimant find a rheumatologist or doctor who can evaluate as to the root causes of what appears to be inflammatory or autoimmune condition unrelated to Claimant's work injuries.

Dr. Vito J. Carabetta examined Claimant on October 9, 2024, at the request of the Court. Claimant presented with a chief complaint of bilateral upper extremity distal paresthesias, with a burning sensation constant but variable in intensity from the elbows to the fingertips. These symptoms are aggravated by any activity and are worse at night.

Claimant associated these complaints from her work with Respondent from June 2022 to end of November 2022.

Upon examination of Claimant, Dr. Carabetta opined Claimant was status-post bilateral carpal tunnel release procedures and status-post bilateral cubital tunnel release procedures. The Raynaud's was not work-related and was being treated by Claimant's primary care physician. He found the prevailing factor for Claimant's complaints is the firm and/or repetitive grasping or gripping work activities Claimant was doing at a faster pace

In rating Claimant's impairments, Dr. Carabetta started with *The Guides* and assigned a 22 percent body as a whole impairment. Dr. Carabetta opined the 2 percent rating in *The Guides* for the carpal tunnel and cubital tunnel impairments was inadequate. He opined 10 percent impairment for the cubital tunnel and carpal tunnel conditions is a better indicator of Claimant's permanent impairment. Dr. Carabetta based this opinion on competent medical evidence and his medical training and expertise. The 10 percent ratings convert to 6 percent body as a whole ratings resulting in the 22 percent impairment to the body as a whole.

Dr. Carabetta opined there is no need for additional medical treatment as it would likely not result in any meaningful improvement. Dr. Carabetta believed there should be permanent restrictions of no firm or repetitive grasping or gripping with either hand, and no working in temperatures colder than 68 degrees, due to Claimant's preexisting Raynaud's.

According to Claimant, her current symptoms as related to her work-related accident are weakness, tiredness, pain, throbbing pain and heaviness. She testified it feels like it's weakness in both of her arms extending into the shoulders. She stated that the surgeries to her arms did not help at all. She indicated her symptoms are not quite as bad now as when she was working.[4]

On December 27, 2024, via telephone, Paul S. Hardin interviewed Claimant for a vocational assessment, at the request of her attorney. Mr. Hardin identified 15 tasks Claimant had performed in the 5 years preceding her work accident. Mr. Hardin determined under the opinions of Dr. Murati and Carabetta, Claimant is essentially and realistically unemployable and Claimant's wage loss is 100 percent.

Mr. Hardin testified given the information Claimant has moved back to Puerto Rico, his opinion would be Claimant is able to find substantial and gainful employment. Living in Puerto Rico takes away the language barrier and the colder temperatures problem which kept Claimant from finding work in Kansas. He opined in Puerto Rico Claimant would be able to $380 a week, which constitutes a 74 percent wage loss.

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[4] Cont. of R.H. at 27-28.

On January 30, 2025, via telephone, Claimant was interviewed by Steve Benjamin for a vocational assessment at Respondent's request. Mr. Benjamin found Claimant had performed 13 tasks in the 5 years preceding Claimant's accident. Mr. Benjamin noted Claimant was earning $877.63 a week with Respondent at the time of the injury and found Claimant could now earn $405.87 in the open labor market under the restrictions of Dr. Carabetta. This would constitute a 53.8 percent wage loss. Under the opinion of Dr. Do, he found Claimant would have a 2.1 percent wage loss should Claimant be able to return to work in a similar position with no restrictions with Respondent or somewhere else earning $858.80 as an average weekly wage.

Dr. Do reviewed the task list of Steve Benjamin and opined Claimant can perform all the tasks and therefore there is no task loss. Dr. Murati reviewed the task assessment report of Paul Hardin and determined Claimant could no longer perform 9 out of 15 tasks for a 60 percent task loss. Dr. Carabetta reviewed the task list of Steven Benjamin and opined Claimant could no longer perform 3 out of 13 tasks for a 23 percent task loss. He reviewed the task list of Paul Hardin and opined Claimant could no longer perform 5 out of 14 tasks for a 35.7 percent task loss.

At an October 10, 2023, preliminary hearing to determine if Claimant was entitled to temporary total benefits, the parties agreed Claimant was entitled to maximum weekly rate of $765.00. After hearing testimony from Respondent's human resources manager Norma Fraire, and reviewing several exhibits ALJ Jones awarded temporary total benefits finding:

> The Claimant was taken off work by the Respondent because she could not do her regular job with her temporary restrictions. After that, the Respondent required the Claimant to report in weekly and check to see if a job within her restrictions was available. If such job became available, the Claimant could then apply for that job. The Claimant did not report in as Respondent required. So Respondent then terminated Claimant for job abandonment.
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> In this case, the provisions of K.S.A. 44-510c(b)(2)(B) do not prevent the Claimant from receiving TTD. The evidence did not show that the Respondent ever made an offer of accommodated work to the Claimant within the Claimant's temporary restrictions. The Claimant did not refuse an offer of accommodated work from Respondent. The Claimant not coming in to see of there was a job that she could apply for is not the same as refusing an offer of accommodated work.
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> . . .
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> The Claimant did not come to the Respondent's office on a weekly basis as the Respondent required, and she was terminated. The Court makes no finding as to

> whether this constitutes terminated for cause. Such a finding is not necessary since the Respondent did not establish that it could have accommodated the Claimant's restrictions per K.S.A. 44-510c(b)(2)(C).[5]

ALJ Gurney found Claimant is entitled to a 22 percent whole person permanent partial functional impairment rating based the opinion of the Dr. Carabetta the court-ordered examiner. ALJ Gurney concluded Claimant's termination was for cause as Claimant did not want to perform the job boxing intestines and chose to leave that position and attempt to find a different job. ALJ Gurney found Respondent did not create any roadblocks to Claimant's search for another position. He found neither party acted in bad faith. Respondent was not entitled to credit for temporary total disability benefits paid. Future medical was denied as Claimant has not received any treatment since she was released by Dr. Do on December 12, 2023. Based upon the entirety of the record, ALJ Gurney determined Claimant failed to prove entitlement to an award of future medical treatment.

PRINCIPLES OF LAW AND ANALYSIS

Respondent argues the Board should find Claimant sustained 4 percent whole person impairment based on the opinion of Dr. Do. Respondent also argues it is entitled to a credit against temporary total disability benefits that were paid following the preliminary hearing due to Claimant's termination for cause. Respondent argues the evidence is clear Claimant was never entitled to temporary total disability benefits as she refused available work and was therefore terminated for cause.

Claimant argues she is entitled to a 26 percent functional impairment (an average of Murati and Carabetta's ratings), a 52 percent work disability, payment of medical expenses, payment of temporary total disability benefits, and to future medical benefits. Claimant contends the medical evidence supports a need for ongoing medical care to reasonably cure the effects of the work-related injury. Claimant submits she was not terminated for just cause and is therefore entitled to a work disability award. In support of this, Claimant asserts that Tyson never offered an accommodated position for her very substantial limitations. Claimant also contends Respondent is not entitled to a temporary total disability benefits credit because it was not able to accommodate her.

> "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

[5] ALJ Jones Order (Oct. 11, 2023) at 1-2.

> 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.[6]
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> 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 which the claimant's right depends. In determining whether the claimant has satisfied his burden of proof, the trier of fact shall consider the whole record.[7]
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> It is the intent of the legislature that the workers compensation act shall be liberally construed only for the purpose of bringing employers and employees within the provisions of the act. The provisions of the workers compensation act shall be applied impartially to both employers and employees in cases arising thereunder.[8]

1. The nature of and extent of Claimant's functional impairment is 22 percent to the body as a whole.

Three doctors testified as to the nature and extent of Claimant's functional impairment. Dr. Do who performed bilateral carpal tunnel release and cubital tunnel release surgeries for Claimant, opined Claimant has 4 percent body as a whole impairment. This rating opinion was rendered in January 2024 after Claimant was released at maximum medical improvement in December 2023 and without further examination of Claimant. Dr. Do's rating was based strictly on *The Guides* without any analysis why competent medical evidence showed strict adherence to *The Guides* was sufficient.

Dr. Carabetta was retained by the Court to render his opinion. He found Claimant's functional impairment is 22 percent to the body as a whole. Dr. Carabetta used *The Guides* a starting point, but deviated from *The Guides* using competent medical evidence because *The Guides*' rating for Claimant's injuries was insufficient.

Dr. Murati assigned a rating of 30 percent body as a whole for Claimant's functional impairment. Dr. Murati's ratings for Claimant's bilateral cubital tunnel and carpal tunnel injuries were similar to Dr. Carabetta's. However Dr. Murati rated conditions such as bilateral shoulder impingement syndrome myofascial pain syndrome, bilateral medial epicondylitis and occipital neuralgia, conditions only Dr. Murati found.

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[6] K.S.A. 44-508(h).

[7] K.S.A. 44-501b(c).

[8] K.S.A. 44-501b(a).

The Kansas Supreme Court has instructed physicians in providing impairment ratings, they are to use *The Guides* as a starting point and consider other competent medical evidence in arriving at their impairment rating.[9]

Dr. Carabetta's rating of 22 percent to the body as a whole rating is the most credible. He followed the methodology set out in *Johnson* in arriving at the rating and Dr. Do did not. Dr. Murati rated complaints and conditions not treated and diagnosed by the other two doctors rendering his rating of 30 percent to the body as a whole is not persuasive. Dr. Carabetta was the neutral physician retained by Court, which at the least indicates less or no bias in his opinion.

2. Claimant is not entitled to work disability because she was terminated for cause

Claimant's functional impairment met the threshold for entitlement to work disability and a post-injury wage loss of at least 10 percent or greater.[10]

After Claimant reported her injury, Respondent attempted to accommodate her restrictions, some of which were related to her preexisting Raynaud's diagnosis. Respondent also attempted to assist Claimant with her child care problems by adjusting her schedule and giving her time off to make child care arrangements. The last job Claimant held with Respondent was a job accommodating all of her restrictions. However, Claimant did not like the job and wanted a different job. Respondent did not have a job accommodating Claimant's restrictions at that time.

As a result Claimant was placed in the interactive process beginning November 15, 2022. Through this process Claimant was given 30 days to find a new position accommodating her restrictions. Claimant's responsibility in this process was to come into the Holcomb plant on Mondays and review available jobs meeting her restrictions. Any jobs meeting restrictions, Claimant could apply for. Claimant was to do this every week.

Claimant testified she did this every week as instructed. A witness for Claimant testified she came one time with Claimant to the plant during this process and stayed with her children in the car while Claimant went into the plant. She did not know what Claimant did in the plant.

However, Respondent testifies Claimant did not comply with her responsibilities in the interactive process. There is no record of Claimant checking job postings. Respondent

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[9] *See Johnson v. U.S. Foods*, 312 Kan. 597, 478 P. 3d 776 (2021).

[10] K.S.A. 44-510e(2)(C).

attempted to call Claimant but Claimant did not respond. Claimant was terminated on December 29, 2022. Ths issue becomes whether this termination was for cause.

ALJ Gurney opined:

> "[T]he proper inquiry to make when examining whether good cause existed for a termination in a workers compensation case is whether the termination was reasonable, given all of the circumstances. Included within these circumstances to consider would be whether the claimant made a good faith effort to maintain his or her employment. Whether the employer exercised good faith would also be a consideration. **In that regard, the primary focus should be to determine whether the employer's reason for termination is actually a subterfuge to avoid work disability payments." Morales-Chavarin v. National Beef Packing Co., No.** 95,261, 2006 WL 2265205, at *5 (Kan. App. 2006) (unpublished opinion)
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> Mitchell v. CNH Industrial America LLC, 2025 WL 432161 (Kan.Work.Comp.App.Bd.)(emphasis added) See also, Dirshe v. Cargill Meat Solutions Corp., 53 Kan. App. 2d 118,123,382 P.3d 484 (2016) approving this standard. There is nothing in the evidentiary record suggesting Respondent's termination was a subterfuge to avoid work disability payments. To the contrary, Respondent appears to have worked rather diligently to accommodate Claimant's non-work related restrictions.[11]

The Board agrees with the ALJ Claimant was terminated for cause. Claimant held a job which accommodated her restrictions, but Claimant did not like the job. Respondent gave Claimant an opportunity for 30 days to find another job accommodating her restrictions. However the process required some responsibility on Claimant's part by coming into the plant once a week to review available job postings. Claimant testified she did that. However, her testimony is not persuasive she did comply because there is no record of Claimant coming into the plant to check job postings. Attempts were made by Respondent to obtain Claimant's compliance but to no avail. It should be noted Claimant had a job accommodating her restrictions but chose not to continue in the job. For these reasons, it is found and concluded Claimant was terminated for cause and denied work disability benefits.

3. Respondent is not entitled to a credit for temporary total disability benefits following Claimant's termination.

Claimant is entitled to temporary total benefits if on account of injury has been rendered completely and temporarily incapable of engaging in any type of substantial and

[11] ALJ Award (Dec. 1, 2025) at 17.

gainful employment or if the employer cannot offer employment accommodating Claimant's temporary restrictions of if Claimant has voluntarily resigns or is terminated for cause.[12]

ALJ Gary Jones awarded Claimant temporary total benefits because Respondent did not prove at the preliminary hearing Claimant was offered work that she refused or was terminated for cause. Respondent could have accommodated her restrictions. ALJ Jones made a decision based on the evidence presented to him.

This decision was not appealed nor was a request made for a second preliminary hearing to present additional evidence. ALJ Gurney ruled based upon the evidence in record at the time ALJ Jones was correct awarding temporary total benefits and Respondent is not entitled to a credit.

The Board affirms the award of temporary total benefits because it was a correct decision based on the evidence presented at the time.

4. Claimant is not entitled to future medical treatment.

K.S.A. 44-510h(e) created a rebuttable presumption against future medical treatment once an injured worker reaches maximum medical improvement. However, the presumption may be overcome with medical evidence that it is more probably true than not that additional medical treatment will be necessary after such time as the employee reaches maximum medical improvement. K.S.A. 2022 Supp 44-525(a) states that "no award shall include a right to future medical treatment, unless it is proved by claimant that is more probable than not future medical treatment . . . will be required as a result of the work-related injury."

Dr. Do opined no future medical treatment would be needed. Dr. Carabetta stated "Unfortunately, conservative efforts with medications, therapy, and injections failed, and even operative intervention did not bring about any subjective improvement whatsoever. It is highly doubtful that pursuing any of these once again would result in any meaningful improvement. Consequently, additional treatment is ill-advised under the circumstances."[13]

Dr. Murati recommended follow-ups, testing and treatment such as injections possible chiropractic treatment, physical therapy and medications if follow-up appointments showed such treatment was needed. These recommendations were not definitive and did not address any particular medical conditions related to Claimant's injury. These

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[12] *See* K.S.A. 44-510c(2)(A)(B)(C).

[13] Carabetta Depo., Ex. 2 at 4 (Oct.9, 2024, report).

recommendations are not effective rebuttal to the presumption requiring medical evidence more probably true than not additional medical treatment will be necessary.

Claimant has not received any medical treatment since she was released by Dr. Do on December 12, 2023. The Board finds Claimant has failed to prove entitlement to future medical treatment.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of ALJ Larry Gurney dated December 1, 2025, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of June, 2026.

_____
BOARD MEMBER

_____
BOARD MEMBER

_____
BOARD MEMBER

c: (Via OSCAR)

Phillip B. Slape, Attorney for Claimant
Thomas G. Munsell, Attorney for Self-Insured Respondent
Hon. Larry Gurney, Administrative Law Judge