

**BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD**

<b>JUAN RENTERIA</b>	)	
Claimant	)	
V.	)	
	)	AP-00-0480-716
<b>EVERGREEN PALLET, LLC,</b>	)	CS-00-0475-517
Respondent	)	
AND	)	
	)	
<b>ACCIDENT FUND INS. CO. OF AMERICA</b>	)	
Insurance Carrier	)	

**ORDER**

Claimant appeals the January 9, 2024, preliminary hearing Order entered by Administrative Law Judge (ALJ) Gary K. Jones. Robert R. Lee II appeared for Claimant. Matthew J. Schaefer appeared for Respondent and its insurance carrier.

**RECORD AND STIPULATIONS**

The Board adopted the same stipulations and considered the same record as the ALJ, the documents of record filed with the Division, and the following:

1. Claimant’s Discovery Deposition, taken July 10, 2023;
2. Claimant’s Evidentiary Deposition, taken October 26, 2023, with exhibits;
3. Evidentiary Deposition of Haydn Thompson, taken October 26, 2023;
4. Evidentiary Deposition of Christopher Hatfield, taken October 26, 2023; and
5. Transcript of Preliminary Hearing, held January 9, 2024, with exhibits.

**ISSUE**

Did Claimant sustain personal injury by accident arising out of and in the course of his employment?

**FINDINGS OF FACT**

Claimant is fifty years of age. He worked for Respondent for 23 years as a pallet builder until he and a co-worker were terminated on June 14, 2023, for failing to properly use a nail gun after they were moved to a new station. Claimant has not worked since his

termination. Claimant used an air gun to assemble pallets from pre-cut pieces of used wood, which were delivered to him. Claimant was required to wear safety glasses at all times while performing his job. Claimant does not speak English. Claimant testified three times—July 10, 2023, October 26, 2023 and at the preliminary hearing on January 9, 2024.

Claimant initially testified the injury occurred on December 7, 2022:

Q. Based on the paperwork filed, you are alleging an accident on December 7, 2022; is that correct?

A. Yes.

MR. GURNEY: Let me interrupt just a second. We attempted to put in approximately December 7th. We're not exactly sure of the date. The system, OSCAR won't allow you to put an approximate date any longer.

BY MR. SCHAEFER:

Q. Based on that clarification, do you remember the specific day that this accident happened?

A. I don't remember very well.<sup>1</sup>

Claimant testified around 1:00 p.m., while assembling a pallet, a nail shot from the nail gun, hit the head of an old nail, causing the nail from the nail gun to bounce up under his glasses. The small piece of wire attached to the nail of the gun, stuck in his right eye and had to be pulled out. Claimant testified he immediately reported the injury to Eric Mesa, his supervisor, who speaks Spanish. Three co-workers witnessed the accident. Claimant requested treatment from Mr. Mesa, but Mr. Mesa sent him home. Claimant could not remember if he clocked out on the date of his injury. He did not work the day after the accident. Claimant was certain the accident occurred in December 2022, but he could recall the date or which day of the week it occurred.

Claimant testified he noticed blurriness approximately one to two months following the injury to his right eye. He discussed his symptoms with Mr. Mesa and asked if he could see a doctor. Claimant testified, on more than one occasion, he discussed his injury and need for medical treatment with Mr. Mesa and his eye problems were work-related. At his own expense, Claimant sought treatment at the Guadalupe Clinic, who referred him to Cheryl McGuire, O.D. She examined Claimant on March 15, 2023. Her notes reflect Claimant denied ever having an eye exam and described the injury as "Ocular trauma: OD

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<sup>1</sup> Claimant's Depo. (July 10, 2023) at 12.

- Blunt force trauma to OD Nail bounced of eye did not see any doctors for issue (summer 2022)".<sup>2</sup>

Dr. McGuire referred Claimant to Vitreo-Retinal Consultants and Surgeons (VRC) where he was examined by William T.K. Stevenson, M.D., on March 22, 2023. Dr. Stevenson's note reflects "Duration of Problem: about one year" and described the injury as follows:

"Approximately one year ago in 2022 patient was at work where he assembles wooden pallets. He was using a nail gun to assemble them when a nail ricocheted and hit him directly in the eye. VA loss was not immediate but rather slow and gradual over time afterwards."<sup>3</sup>

Dr. Stevenson diagnosed a near total retinal detachment of the right eye and recommended surgery to repair the traumatic retinal detachment, multiple tears and removal of the metallic foreign body. He recommended Claimant follow-up with Paul D. Weishaar, M.D., also with VRC.

Dr. Weishaar performed surgery on May 3, 2023 to repair a complex retinal detachment and to remove a foreign body. Claimant saw Dr. Weishaar on May 4 for follow-up. Claimant was advised he needed to be off work for two weeks or more to allow for healing and asked him to return in one week. On May 11, Dr. Weishaar gave Claimant a note advising he could return to work, without restrictions, on June 5, 2023. Claimant returned to work on June 6, 2023. Claimant treated with Dr. Weishaar through July 13, 2023.

On October 26, 2023, Claimant testified for the second time. He was asked if he had identified the day the accident occurred. Claimant replied, "No, I don't remember very well."<sup>4</sup> He testified he believed his injury occurred on Friday, December 16, 2022, because he didn't return to work until Monday. While describing his accidental injury, Claimant testified he did not know he had a piece of metal in his eye, but felt pain and "started seeing blurry."<sup>5</sup> He reported his injury to Mr. Mesa immediately following the accidental injury. Mr. Mesa asked him to give it some time, but if the symptoms continued, he could go home. Claimant testified he clocked out and went home. He did not work the next day because of the problems with his eye.

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<sup>2</sup> Respondent's Ex. #3.

<sup>3</sup> Respondent's Ex. #5.

<sup>4</sup> Claimant's Depo. (October 26, 2023) at 18.

<sup>5</sup> *Id.* at 7.

Claimant testified he told Mr. Mesa he was going to have surgery prior to the surgery on May 3, 2023. Specifically, Claimant told Mr. Mesa three days and one day prior to May 3. Mr. Mesa asked Claimant to bring his paperwork to him and he would turn it into the office. Mr. Mesa was not at work when Claimant brought the paperwork, so he gave it to Christopher Hatfield, and the following day he gave the rest of the paperwork to Hadyn Thompson. It is unclear if this occurred before May 3 or after.

Upon cross-examination, Claimant acknowledged around the December 16 time frame, Respondent was sending their employees home around 2:00 p.m. on Fridays and he was not scheduled to work Saturday, December 17. Claimant sought treatment in March 2023 because of blurry vision and was seeing something black. He did not talk with Christopher Hatfield or Haydn Thompson about his accidental injury to his right eye until he brought them medical bills after his surgery. Claimant testified he did not tell these two about his injury because they never listened to him and because he trusted Mr. Mesa had communicated to them what was going on. Claimant testified, twice, before his injury, he complained to the owner because Mr. Thompson would not listen to him regarding other issues. Claimant did not call the owner regarding his eye problem. He testified Mr. Mesa was the only person who knew about his accidental injury between the date of his accident and his surgery. No one from Respondent authorized medical treatment.

Claimant further testified his daughter attended all of his medical appointments. When asked to explain why Dr. Weishaar and Dr. McGuire's medical notes reflect Claimant's injury occurred in the summer of 2022, he testified they were wrong and misunderstood him. He currently has swelling and redness in his eye in the mornings and blurry vision.

Claimant testified briefly at the preliminary hearing on January 9, 2024. When asked when he was hurt and did he and his co-workers get off work at 2:00 p.m. on Fridays in December 2022, he replied "I don't remember very well."<sup>6</sup> Claimant testified Mr. Mesa did not send him to a doctor and did not notify the office he suffered a work-related injury and needed medical treatment. His told his daughter the day he hurt his eye and she had accompanied him to work on prior occasions to interpret for him regarding other issues.

Christopher Hatfield has been the plant manager for Respondent for two years. He was Mr. Mesa's supervisor. Mr Hatfield knew Claimant and saw him daily. Mr. Hatfield testified he was unaware Claimant injured himself at work or was receiving medical treatment until after Claimant had eye surgery. After Claimant's surgery, he and his daughter went to Mr. Hatfield's office, handed him a bill and asked Respondent to pay the bill because Claimant had been injured at work. This was the first time Mr. Hatfield became aware Claimant was alleging a work-related injury and needed treatment. He asked

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<sup>6</sup> P.H. Trans. at 27.

Claimant's daughter to bring any paperwork they had regarding the injury and he would review it with Mr. Thompson and get back with them. Claimant did not present any paperwork to Mr. Hatfield.

Mr. Hatfield testified Mr. Mesa did not report Claimant's alleged injury to him. Had Mr. Mesa reported Claimant's injury, Mr. Hatfield would have followed company protocol and Claimant would have completed paperwork, including an accident report, been referred to a physician and submitted to a UA. Mr. Hatfield did not discuss this matter with Mr. Mesa. Mr. Hatfield testified as of July 2023, Mr. Mesa does not work for Respondent. He was terminated due to personal issues which were affecting his job performance and because he was not doing what he was supposed to be doing at work.

Haydn Thompson has been the operations manager for Respondent for approximately three years. He reports to the owner, Jeff Ralls. The plant manager, Christopher Hatfield reports to Mr. Thompson. Claimant's immediate supervisor was Eric Mesa. Mr. Thompson testified there was a protocol in place to report accidental injuries. Injured workers were instructed to report their injuries to their immediate supervisors, who was supposed to help the worker complete accident forms. If a supervisor was unavailable or ignoring the reported accidental injury, the worker could report the injury to Mr. Thompson. There are designated interpreters available to assist non-English speaking workers in the shop.

Mr. Thompson was unaware Claimant was alleging a work-related injury to his eye, had received medical treatment and was seeking payment of his medical bills until he returned from vacation on May 9 or 10, 2023. Claimant had surgery on his right eye on May 3, 2023. On May 9 or 10, Claimant and his daughter delivered medical bills to Mr. Thompson and reported the injury to his right eye was work-related and the bills needed to be paid. Claimant's daughter was angry and kept saying essentially, this happened here, you need to pay the bills and Claimant told "your guy"<sup>7</sup>, who Mr. Thompson believed was Mr. Mesa. Mr. Thompson advised he knew nothing about the injury and instructed Claimant and his daughter to gather any documentation they had and bring it to him so he could investigate the injury. He never received any documentation from Claimant or his daughter.

After the discussion with Claimant and his daughter, Mr. Thompson testified he discussed the reported injury with Mr. Mesa and Mr. Hatfield. Like Mr. Thompson, they were unaware Claimant was alleging a work-related injury, had received medical treatment or was seeking payment of medical bills until Claimant and his daughter approached them after surgery was performed on May 3. According to Mr. Thompson, Mr. Mesa's employment with Respondent ended sometime in July 2023 due to a lack of production requirements expected.

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<sup>7</sup> Thompson Depo. at 11.

Mr. Thompson testified Claimant could have reported his injury to him if Mr. Mesa was not following protocol after he reported his injury. He has had discussions with Claimant and his daughter regarding other issues of concern to Claimant. Mr. Thompson testified, on previous occasions, Claimant's daughter had contacted the owner, Mr. Ralls, and arranged meetings between him, Mr. Ralls, Claimant and Claimant's daughter to discuss issues Claimant was experiencing.

Mr. Thompson acknowledged Claimant was not required to report his injury to anyone other than his immediate supervisor, Mr. Mesa, and Mr. Mesa had the authority to allow Claimant to seek medical treatment. He testified to the best of his knowledge, Mr. Mesa had not failed to report any injuries from Claimant or other employees to him. Mr. Thompson stated he never had an employee come to him and report an injury because Mr. Mesa was ignoring the reported injury. He testified:

Eric was always pretty good about reporting anything. I mean, reporting somebody getting a splinter, somebody getting their hand, I guess, smashed between a pallet. Any kind of little incident Eric was always good about reporting to me. And not only Eric, if anybody went to Chris, Chris obviously went to me.<sup>8</sup>

The ALJ denied Claimant's request for benefits, finding he had not met his burden of proving he suffered an accidental injury on or about December 7 or 16, 2022. The ALJ found the only evidence presented by Claimant he suffered an accidental injury was his testimony, which was contradicted by the medical records of Dr. McGuire and Dr. Weishaar. In addition, the ALJ found the records indicated Claimant injured his eye at work, but they do not show the injury occurred in December 2022. Given these findings, the ALJ found the notice issue was moot.

Claimant argues he reported his work-related injury to his supervisor on the day it occurred. The ALJ erred in finding Claimant did not suffer a work-related injury on or about December 7 or 16, 2022. The Board should find Claimant sustained a work-related injury and gave timely notice. Accordingly, the Board should order payment of outstanding medical bills and temporary total disability benefits. Respondent maintains the order should be affirmed, but if it is reversed, this matter should be remanded to the ALJ for determination of notice and payment of outstanding medical bills.

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

The burden of proof shall be on the employee to establish the right to an award of compensation, based on the entire record under a "more probably true than not" standard

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<sup>8</sup> Thompson Depo. at 21.

and to prove the various conditions on which the right to compensation depends.<sup>9</sup> The Appeals Board possesses authority to review *de novo* all decisions, findings, orders and awards of compensation issued by administrative law judges.<sup>10</sup> A *de novo* hearing is a decision of the matter anew, giving no deference to findings and conclusions previously made by the administrative law judge.<sup>11</sup> Although the Board frequently gives some credence to an administrative law judge's credibility determination of witnesses who testify live,<sup>12</sup> the Board is not required to do so and may modify an award as it deems necessary.<sup>13</sup>

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>14</sup> The accident must be the prevailing factor causing the injury. Prevailing factor is defined as the primary factor compared to any other factor, based on consideration of all relevant evidence.<sup>15</sup>

**Claimant failed to meet his burden of proving he suffered personal injury by accident arising out of and in the course of his employment.**

The greater weight of the credible evidence does not establish Claimant injured his right eye in December 2022. Claimant was consistent in describing how he injured his right eye and it is certainly plausible he injured it while performing his job as a pallet builder. However, his testimony regarding the surrounding events of the alleged incident is inconsistent and lacks credibility. Claimant is unclear when, specifically, the event occurred in December 2022. After review of information from Respondent, Claimant determined his accident occurred on Friday, December 16 because he left work early and did not return to work until the following Monday because of problems with his eye. However, he acknowledged Respondent was letting workers off early on Friday afternoons during this time frame and he was not scheduled to work the day after the alleged accident. Claimant testified he had pain and blurriness when it happened. His later testimony and the medical

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<sup>9</sup> See K.S.A. 44-501b(c) and K.S.A. 44-508(h).

<sup>10</sup> See K.S.A. 44-555c(a).

<sup>11</sup> See *Rivera v. Beef Products, Inc.*, No. 1,062,361, 2017 WL 2991555 (Kan. WCAB June 22, 2017).

<sup>12</sup> See *Parker v. Deffenbaugh Industries, Inc.*, Nos. 1,069,143; 1,069,144; 1,069,145, 2014 WL 5798471 (Kan. WCAB Oct. 14, 2014).

<sup>13</sup> See *Samples v. City of Glasco*, No. 265,499, 2011 WL 2693241 (Kan. WCAB June 22, 2011).

<sup>14</sup> See K.S.A. 44-508(d).

<sup>15</sup> See K.S.A. 44-508(g).

records reflect he did not suffer symptoms until a month or two later, necessitating his pursuit of medical treatment. Claimant could not recall if he clocked out on the date of the accident. He later testified he did clock out. Regarding the notations contained in the medical records of two different physicians, two different physicians noted the injury occurred in the summer of 2022 and not December 2022, Claimant testified they must have misunderstood him. This is hard to reconcile with his testimony his daughter attended his medical appointments and he told her he injured his eye at work on the day it occurred.

An injury must produce symptoms at the time of the injury. Claimant gave conflicting testimony regarding his symptoms. Initially, he testified he left work early and did not work the following day due to symptoms in his eye. Later, he testified he did not experience symptoms for one to two months after the occurrence, necessitating his pursuit of medical treatment at his own expense.

Accordingly, the preliminary order finding Claimant failed to meet his burden of proving he suffered a work-related injury on December 7 or 16, 2022 is affirmed.<sup>16</sup>

### **DECISION**

**WHEREFORE**, it is the finding, decision and order of the undersigned Board Member the Order of Administrative Law Judge Gary K. Jones, dated January 9, 2024, is affirmed.

**IT IS SO ORDERED.**

Dated this day of March, 2024.

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CHRIS A. CLEMENTS  
BOARD MEMBER

c: Via OSCAR

Robert R. Lee II, Attorney for Claimant  
Matthew J. Schaefer, Attorney for Respondent and its Insurance Carrier  
Hon. Gary K. Jones, Administrative Law Judge

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<sup>16</sup> See K.S.A. 44-520(b).