

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

OSCAR ZELAYA)	
Claimant)	
V.)	
)	AP-00-0481-781
SUMMIT ROOFING AND REMODELING LLC, LUIS SORIA, and JESUS GARCIA)	CS-00-0460-886
Respondent)	
AND)	
Uninsured Respondents)	
AND)	
)	
KANSAS WORKERS COMPENSATION FUND)	

ORDER

The Kansas Workers Compensation Fund ("Fund") appealed the March 5, 2024 Award issued by Administrative Law Judge Gary K. Jones (ALJ) . The Board heard oral argument on July 11, 2024. Randy Stalcup appeared for Claimant. Terry Torline appeared for the Fund. Summit Roofing and Remodeling LLC, Luis Soria and Jesus Garcia are Pro Se Respondents and did not appear.

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. Transcript of Deposition of Oscar Zelaya with exhibits, taken October 1, 2021;
2. Transcript of Deposition of Luis Soria, taken October 12, 2021;
3. Transcript of Deposition of Shane Estell, taken October 12, 2021;
4. Transcript of the scheduled Deposition of Jesus Garcia, taken January 18, 2022, Garcia did not appear;
5. Independent Medical Examination report of Dr. Pat Do, dated July 25, 2022;
6. Transcript of Deposition of Jesus Garcia, taken January 6, 2023;
7. Transcript of Deposition of Oscar Zelaya, taken July 17, 2023;
8. Transcript of Deposition of Laura Arnold, Advanced Orthopaedics Associates, with exhibits, taken July 27, 2023;

9. Transcript of Deposition of Carol Hemphill, Sedgwick County EMS, with exhibits, taken July 27, 2023;
10. Transcript of Deposition of Dr. Daniel Zimmerman with exhibits, taken August 2, 2023;
11. Transcript of Deposition of Michael Flaherty, Via Christy St. Francis, with exhibits, taken August 15, 2023;
12. Transcript of Regular Hearing with exhibits, held August 16, 2023;
13. Transcript of Regular and Motion Hearing, held November 22, 2023;
14. Transcript of Motion Hearing, held January 10, 2024; and
15. Transcript of Motion Hearing with exhibit, held February 7, 2024.

ISSUES

1. Did Claimant's injury arise out of and in the course of his employment with Respondent?
2. Did the relationship of employer and employee exist on the date of the injury?
3. What is Claimant's average weekly wage?
4. Is Claimant entitled to TTD?
5. What is the nature and extent of Claimant's functional impairment?
6. Is Claimant entitled to future medical benefits?
7. Payment of Claimant's outstanding medical bills.
8. Is the Fund responsible for payment of Claimant's benefits?

FINDINGS OF FACT

Claimant is an undocumented worker who arrived in the United States from El Salvador in the summer of 2021. Approximately one month after he arrived, he began work as a roofer in Wichita. Claimant asked Jesus Garcia (Garcia) for a job because he knew Garcia was working with a roofing crew. He began working on Garcia's crew. Claimant believed Garcia was working for Luis Soria (Soria), who ran two roofing groups. Claimant initially testified he was paid by the day at the rate of \$100-200 per day and worked 3-5 days per week (\$300-1,000 per week), depending on the job. Claimant subsequently testified he was paid \$150-180 per day and worked 2-6 days per week (\$300-1,080 per week). Claimant received his wages from Garcia. It was Claimant's understanding Soria paid Garcia, who paid the Claimant and the other workers in the group. Claimant witnessed Soria paying Garcia to pay the workers in the group on one occasion. Claimant worked under this scenario for approximately six weeks.

On August 11, 2021, Claimant was putting a second layer of paper on a very steep roof located at 1424 S. Main Street in Wichita. He slipped and fell onto concrete on the ground, landing on his right side. Claimant was transported by ambulance (Sedgwick County EMS) to St. Francis Hospital in Wichita.

The EMS report notes they responded to the accident. It states the patient name as "Oscar Arias Zelaria" with a "10/08/1991" date of birth. The injury was an open fracture, which was bleeding. The bleeding was controlled with a pressure dressing. The note states:

"Pt noted to only speak Spanish along with the other co-workers on scene. On scene there is one gentleman that speaks some Spanish and translates that the pt fell from the roof he was working on. Pt denies any loss of consciousness, or head or neck pain. Roof is approximately 15 FT. Pt is noted to have landed on the right side and have a open fx to the right elbow area."¹

The EMS note also states while in transport, the patient's vitals remained stable and EMS personnel were unable to converse with the patient due to the language barrier.

The billing statement included with the EMS records reflects a charge of \$845 with a balance due of zero. The balance due was zero because the account was closed and forwarded to collections.

The medical note generated at St. Francis on the date of accident listed the patient name as "Oscar Arias Zelaria," with a date of birth of "10/08/91." Claimant reported injuries to his right arm, leg and ribs. X-rays revealed a severely comminuted and complete intraarticular fracture of the distal humerus. There was a split fracture between the humeral condyles which were completely separated from each other and the humeral shaft.

Surgery to repair the elbow was performed by Bradley Dart, M.D., from Advanced Orthopaedic Associates on August 12. He performed open reduction and internal fixation of the intraarticular distal humeral fracture, an olecranon osteotomy with a repair and an irrigation and debridement of the distal humeral fracture. Claimant was hospitalized through August 16.

The billing statement from St. Francis records reflected an outstanding balance of of \$88,165.25.

Claimant began follow-up care with Dr. Dart on August 31, 2021. The medical note generated on this date lists the patient name as "Oscar Arias Zelaria," with a date of birth of "10/08/91." Dr. Dart gave Claimant a work note, a therapy note and prescription medication. He asked Claimant to return in four weeks. Claimant returned to Dr. Dart on September 28, 2021. He ordered physical therapy for the right elbow, 2-3 times per week for eight weeks and recommended a home stretching program. Claimant was given temporary work restrictions of no pushing, pulling or lifting over 5 pounds with the right arm and no driving.

¹ Hemphill Depo. Ex. 1 at 3.

Claimant saw Dr. Dart on October 19, December 7 and January 18, 2022. On the October and December appointments, Claimant's conservative treatment regimen did not change. The December note reflects Claimant reported he was doing much better, but workers compensation would not pay for his physical therapy so he was doing it on his own at home. Dr. Dart discussed the possibility of hardware removal if needed due to pain. On January 18, 2022, Claimant reported he was doing well and had returned to work. Dr. Dart recommended Claimant continue his exercises and released him from treatment without restrictions. Dr. Dart again discussed the possibility of hardware removal.

The billing statement from Advanced Orthopedics records reflected an outstanding balance of charge of \$5,777.80.

How Claimant came to be working on a residential roof at 1424 S. Main Street in Wichita on August 11, 2021 is an interesting sequence of events. Claimant did not know the homeowner hired Shane Estell of Summit Roofing and Remodeling (Estell) to replace his roof. According to Estell, he could not do the work, so he asked Soria to do it. Soria could not do the reroof project, so he got Garcia to do it.

Jesus Garcia (Garcia), who is also known as Elmer Monroy, stated Claimant did not work for him because he has never had or hired any employees. He testified he does not have a crew of workers. Garcia was at the job site when Claimant fell. Garcia knows Luis Soria because he worked for him in 2021. Soria would give cash to Garcia with instructions on how much to pay each of the workers for the work they performed. In addition to working for Soria in 2021, Garcia worked for others. Garcia has some tools, but usually the person doing the job provided the tools and had someone in charge of the job.

Luis Soria (Soria) is the owner/operator of a roofing business in Wichita, which he has had for 6-7 years. Soria estimated his payroll for 2021 was \$45,000. Soria acknowledged Claimant was on the house at the time of the accident and he was at the house before Claimant fell. Soria testified Claimant was not working for him; Claimant was working for Garcia, who had his own business and who Soria hired to do the reroof.

After Claimant fell, Garcia called Soria requesting he call an ambulance. Soria called an ambulance and returned to the location where Claimant fell. Following Claimant's injury, Soria gave Garcia \$200 per week for three weeks to give to Claimant because Soria felt sorry for him and wanted to help.

Claimant stated Soria arrived at the job site after he fell and instructed Claimant not to give medical personnel his real name. Claimant gave EMS his real name. He also stated Soria was at the job site daily to oversee the project. Claimant believed the tools they used while working belonged to Soria. Claimant was provided transportation to the job site by a person from Soria's crew under the direction of Garcia. Claimant did not know Estell and

had not heard of Summit Roofing, but he identified Estell at his deposition and stated Estell was at the job site, helping him take up decking (plywood) on the day he fell.

Soria hired Garcia to do other roofing projects in 2021, but Garcia did not work on all of Soria's roofing projects. Soria did not have workers compensation insurance in August, 2021. He had liability insurance through Shelter Insurance in 2021, which he believed would cover injuries suffered by his workers. According to Soria, he was not paying Claimant's wages. He assumed Garcia was paying Claimant because he hired Claimant.

Shane Estell is the owner/operator of Summit Roofing and remodeling. He stopped doing roof repair in 2021. Estell currently limits his work to basic home repairs. He does not have employees, he hires independent contractors. Estell sends 1099 forms to the independent contractors.

In 2021, Estell had been in the roofing business for seven to eight years. He used Soria for roofing projects for approximately two years. Soria provided the workers, Estell paid Soria when the project was completed and Soria paid the workers. From January through October, 2021, Estell completed three roofing projects. Soria completed two of the three roofing projects for Estell. He estimated his gross payments to independent contractors in 2021 was \$10,000-15,000. Estell does not recall seeing Claimant prior to his October, 2021 deposition.

According to Estell, in August, 2021, he contacted Soria approximately one week prior to the reroof at 2124 S. Main and asked him to complete the reroof project. Soria accepted the offer and completed the reroof in two days. Estell paid Soria \$3,000 by check after the job was completed.

On October 1, 2021, Claimant testified his name was Oscar Arias Zeleya and his date of birth was October 18, 1992. On July 17, 2023, Claimant testified his name was Oscar Orlando Zelaya and his date of birth was October 18, 1991. It should be noted the interpreters used for the depositions were not the same person. Zelay stated:

Q. The paperwork from the EMS people say your name is Zelaria.

A. Zelaya.

Q. So the name Zelaria, that's not you; is that correct?

THE INTERPRETER: Can I see that?

MR. TORLINE: Sure.

A. No, they misspelled the last name, I told them Zelaya.

Q. So your name is not Zelaria, that is not your name; is that correct?

A. No, Zelaya.

Q. Did you tell Dr. Dart your real name?

A. Yes.

Q. His records have a name Zelaria, not Zelaya.

A. They misstate my last name, but I give them my real last name.²

Claimant did not work between his injury and the date he testified on October 1, 2021. He received approximately \$200 per week for two weeks picking up trash at various job sites, which was paid by coworkers at the site. Claimant was not advised by any physician he could not work, but he was given restrictions.

At his attorney's request, Claimant was evaluated by Daniel D. Zimmerman, M.D., on March 15, 2022. Using the American Medical Association's *Guides to the Evaluation of Permanent Impairment, 6th edition (Guides 6th ed.)*, and considering the *Johnson* decision, Dr. Zimmerman opined Claimant has 40% functional impairment to right upper extremity for the elbow and 10% functional impairment to the right lower extremity for the knee. Using the Combined Values Chart, Claimant had 27% functional impairment to the whole body. Dr. Zimmerman opined future medical treatment would be necessary, including medication and the possibility of hardware removal from his elbow.

Dr. Zimmerman opined his rating based on the *Guides 6th ed.* and competent medical evidence was more appropriate for multiple reasons:

The 27% impairment rating of the body as a whole more adequately represents the residuals of the injuries affecting the right elbow and right knee in that it gives more consideration to pain and discomfort, range of motion restrictions, and weakness as these factors impact on the ability to perform activities of daily living and work tasks.

...

It must be realized that Mr. Zelaya status post the date of injury event has taken on a different job and is not using the right upper extremity to perform his job tasks working as a grinder on granite slabs. He is doing the work activity with his

² Claimant Depo. (July 17, 2023) at 16.

nondominant left upper extremity and using his right upper extremity only for assistive purposes.³

Claimant was referred to Pat D. Do, M.D., for a Court-ordered independent medical evaluation on July 25, 2022. Dr. Do noted Claimant's knee pain had resolved. Using the *Guides 6th ed.*, Dr. Do opined Claimant had 12% functional impairment to the right upper extremity and 1% functional impairment to the right lower extremity. Using the Combined Values Chart, Claimant had 8% functional impairment to the whole body. He opined Claimant may need his hardware removed from his right elbow should it start to back out or cause difficulties.

The ALJ found Claimant's injuries arose out of and in the course of his employment and was not persuaded by the Fund's argument Claimant failed to establish his identity. "Although there are some discrepancies in the spelling of the Claimant's name and his date of birth, there is no indication the Claimant intentionally used a false name. The discrepancies are not so significant as to cause the Court to doubt the Claimant's identity."⁴

The ALJ further found Claimant was an employee and not an independent contractor; Claimant was an employee of Soria; Claimant's average weekly wage was \$630; and awarded Claimant 5.14 weeks of temporary total disability at the rate of \$420.02 for a total of \$2,158.90 (this represents the time period from August 12, 2021 through October 1, 2021, the date Claimant testified); Claimant's work accident on August 11, 2021 was the prevailing factor for Claimant's injury, medical condition and resulting impairment; awarded payment of outstanding medical bills; awarded Claimant 12% functional impairment to the right upper extremity and 1% to the right lower extremity based on the opinions of Dr. Do, the Court-ordered evaluator; awarded Claimant future medical benefits; and found the Fund responsible for all payments due under this award, noting there was no evidence of Soria's current ability to pay. These review proceedings follow.

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 and to prove the various conditions on which the right to compensation depends.⁵ The Appeals Board possesses authority to review *de novo* all decisions, findings, orders and

³ Zimmerman Depo. Ex. 2 at 8.

⁴ ALJ Award (March 5, 2024) at 8.

⁵ See K.S.A. 44-501b(c) and K.S.A. 44-508(h).

awards of compensation issued by administrative law judges.⁶ 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.⁷

An accident is 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. 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.⁸

1. Claimant's injury arose out of and in the course of his employment with Respondent (Soria). Claimant did not fail to prove his true identity as alleged by the Fund.

The Fund argues Claimant failed to establish his true identity and is ineligible to receive workers compensation benefits. In support of this argument, the Fund alleges Claimant intentionally gave false, inconsistent and contradictory testimony about his identity. The ALJ was not persuaded by the Fund's argument Claimant failed to establish his identity and neither is the Board. The minor discrepancies in the name and date of birth do not rise to the level of intentional deception. EMS personnel arrived at the scene of the accident to find a man lying on the ground, bleeding at the elbow. Neither he nor the people at the scene spoke English. The EMS note reflects they were unable to communicate with the patient while in transport because of the language barrier. The EMS note further reflects they wrote his name and date of birth. Claimant testified he gave them the correct name and EMS got it wrong. It is reasonable to assume St. Francis and Advanced Orthopedics simply transposed this misinformation into their medical records.

Further, the facts of Claimant's medical treatment can not be ignored. EMS transported a Hispanic male with a bleeding and broken right elbow to St. Francis where the Hispanic male was hospitalized, surgery performed and follow-up care provided by Dr. Dart to a Hispanic male with a broken right elbow.

The Fund's argument is considered and rejected. The ALJ's finding Claimant's injury arose out of and in the course of his employment is affirmed.

⁶ See K.S.A. 44-555c(a).

⁷ See *Rivera v. Beef Products, Inc.*, No. 1,062,361, 2017 WL 2991555 (Kan. WCAB June 22, 2017).

⁸ See K.S.A. 44-508(d).

2. The relationship of employer and employee existed on the date of the injury between Claimant and Soria. Claimant was an employee of Soria and not an independent contractor.

There is no absolute rule for determining whether an individual is an independent contractor or an employee.⁹ The relationship of the parties depends upon all the facts, and the label they chose to employ is only one of those facts. The terminology used by the parties is not binding when determining whether an individual is an employee or an independent contractor.¹⁰

The primary test to determine whether the employer/employee relationship exists is whether the employer had the right to control and supervision over the work of the alleged employee. It is not the actual interference or exercise of control by the employer, but the existence of the right or authority to interfere or control which renders one a servant, rather than an independent contractor.¹¹

Respondent argues there is a lack of credible evidence to establish who, if anyone, had the right to control Claimant and his work activities. The reroof project at 1424 S. Main was passed from Estell to Soria. Soria assigned the job to Garcia's crew. Soria paid Garcia's workers and instructed Garcia how much to pay each of the workers on Garcia's crew. Soria checked on the reroof project daily and provided the tools necessary to perform the work. Soria provided Claimant with transportation to the job sites and it was Soria who called the ambulance after Claimant fell. Soria's assertion he does not have employees is not credible. The weight of the evidence establishes Claimant was an employee of Respondent, not an independent contractor. The ALJ's finding in this regard is affirmed.

3. Claimant's average weekly wage is \$600.00.

Unless otherwise provided, the employee's average weekly wage shall be the wages the employee earned during the calendar weeks employed by the employer, up to twenty-six weeks immediately preceding the date of injury, divided by the number of calendar weeks the employee actually worked, or by twenty-six as the case may be.¹² If actually employed by the employer for less than one calendar week immediately preceding the accident or injury, the average weekly wage shall be determined by the ALJ based upon

⁹See *Wallis v. Secretary of Kansas Dept. of Human Resources*, 236 Kan. 97, 102, 689 P.2d 787 (1984).

¹⁰ See *Knoble v. National Carriers, Inc.*, 212 Kan. 331, 510 P.2d 1274 (1973).

¹¹ See *Wallis*, 236 Kan. at 102-03 (citing *Jones v. Dodge City*, 194 Kan. 777, 402 P.2d 108 (1965)).

¹² See K.S.A. 44-511(b)(1).

all of the evidence and circumstances, including the usual wage for similar services paid by the same employer, or if the employer has no employees performing similar services, the usual wage paid for similar services by other employers. The average weekly wage so determined shall not exceed the actual average weekly wage the employee was reasonably expected to earn in the employee's specific employment, including the average weekly value of any additional compensation.¹³

Without explanation, the ALJ found Claimant's average weekly wage was \$630, resulting in a compensation rate of \$420.02. The Fund argues the ALJ's finding is based on Claimant's self-serving and contradictory testimony about his alleged earnings, there is no supporting evidence to Claimant's testimony, and, therefore Claimant failed to meet his burden of proving his average weekly wage. Claimant urges the Board to find his average weekly wage is \$725.00.

The only wage information in the record is Claimant's testimony. He initially reported getting paid \$100-200 per day, working 3-5 days per week, depending on the job. Claimant subsequently reported receiving \$150-180 per day, working 2-6 days per week. Respondent argues this is self-serving and contradictory information and therefore not credible. The Board disagrees. The range of wages and number of days worked are not significantly different. There is nothing in the record challenging the accuracy of this information. It should be noted while the record is absent of any specific wage information, these were cash exchanges based on verbal agreements between the parties.

The range of wages earned, depending on the job, was \$100 to \$200 per day. The Board finds Claimant's average daily rate is \$150.00. The range of days worked was two to six. The Board finds Claimant's average number of days worked is four, resulting in an average weekly wage of \$600.00 and a compensation rate of \$400.02.

4. Claimant is entitled to temporary total disability (TTD) compensation.

Temporary total disability exists when the employee, on account of the injury, has been rendered completely and temporarily incapable of engaging in any substantial and gainful employment, and an authorized treating physician's opinion regarding work status shall be determinative.¹⁴ Where the employee remains employed by the employer and an authorized treating physician imposes restrictions, the employee shall receive temporary total disability compensation if the employer cannot accommodate the restrictions.¹⁵ A rebuttable presumption an employee is not eligible to receive temporary total disability

¹³ See K.S.A. 44-511(b)(2).

¹⁴ See K.S.A. 44-510c(b)(2)(A).

¹⁵ See K.S.A. 44-510c(b)(2)(B).

compensation if the employee refuses accommodated work within the temporary restrictions.¹⁶ An employee terminated for cause or who voluntarily resigns shall not receive temporary total disability compensation if the employer could have accommodated the temporary restrictions imposed by an authorized treating physician, and an employee shall not be entitled to temporary total disability compensation during the weeks the employee receives unemployment compensation.¹⁷

Dr. Dart was Claimant's treating physician from August 12, when he surgically repaired Claimant's right elbow, until he released Claimant, without restrictions on January 18, 2022. Each of Dr. Dart's medical reports state Claimant was given a "work note." Unfortunately, the work notes in the record did not list the specific work restrictions contained on the work note. The only specific written work restriction were listed in Dr. Dart's September 28, 2021 report, which placed Claimant on temporary work restrictions of no pushing, pulling or lifting over 5 pounds with the right arm and no driving. These restrictions would have been in place until Claimant saw Dr. Dart on October 19, 2021.

The only evidence in the record reflects from the end of his hospitalization through his deposition on October 1, 2021, Claimant worked for short periods of time on various job sites picking up trash. He was paid by the workers who chipped in to help him out. This does not constitute substantial and gainful employment. Claimant was a roofer, which is a physically demanding job requiring the use of both hands and arms. Claimant is right hand dominant and suffered a broken right elbow. He does not speak English. Claimant was not offered accommodated work by Soria or Garcia. He was not terminated for cause and he did not work elsewhere. Based on the credible evidence of the record as a whole, Claimant met his burden of proving he was temporarily and totally disabled from engaging in substantial and gainful employment from August 12, 2021 through October 19, 2021, or 9.86 weeks. It is unclear what restrictions Dr. Dart placed on Claimant after the October 19 appointment up through his release in January, 2022. The award of temporary total disability compensation is affirmed, but modified to end on October 19, 2021. Claimant is awarded 9.86 weeks of TTD.

5. Nature and extent of Claimant's functional impairment.

The ALJ found Claimant suffered permanent functional impairment to his right upper and lower extremities based upon the opinions of Dr. Do and Dr. Zimmerman. He further found Claimant had two scheduled injuries pursuant to K.S.A. 44-510d and 44-510e. The ALJ found the opinions of Dr. Do, as the Court-ordered evaluator was more credible than the opinions of Dr. Zimmerman and awarded Claimant 12% to the right upper extremity and 1% to the right lower extremity. Respondent did not challenge this finding. Claimant

¹⁶ See *id.*

¹⁷ See K.S.A. 44-510c(b)(2)(C)&(b)(4).

argues the opinions of Dr. Zimmerman are more credible and urges the Board to award 40% to the right upper extremity and 10% to the right lower extremity.

Two medical opinions were presented as to the nature and extent of Claimant's functional impairment. Both opinions have merit. Dr. Do's ratings are based on a strict interpretation of the *Guides 6th ed.*, without consideration of competent medical evidence. Dr. Zimmerman's rating is based on the *Guides 6th ed.* as a starting point and considers competent medical evidence. The Board finds the opinions of both physicians credible and under these circumstances, splits the ratings of the two physicians. Claimant is awarded 26% functional impairment to the right upper extremity and 5.5% functional impairment to the right lower extremity.

6. Claimant is entitled to future medical benefits.

The employer's liability for compensation includes the duty to provide medical treatment as may be reasonably necessary to cure or relieve the effects of the injury.¹⁸ It is presumed the employer's obligation to provide medical treatment terminates upon the employee's reaching maximum medical improvement. The presumption may be overcome with medical evidence it is more probably true than not additional medical treatment will be necessary after maximum medical improvement. "Medical treatment means treatment provided or prescribed by a licensed healthcare provider and not home exercises or over the counter medications."¹⁹

The treating physician (Dr. Dart), the Court-ordered evaluator (Dr. Do) and Claimant's expert (Dr. Zimmerman) opined Claimant may need to have the hardware in his right elbow removed. These opinions, contained in the physicians' reports and testified to by Dr. Zimmerman, are medical evidence it is more probably true than not medical treatment will be required. The Award of future medical benefits for the injuries sustained by Claimant on August 11, 2021 are affirmed.

7. The Fund is responsible for all payments due, including benefits due and owing to Claimant, the medical providers, court reporters, interpreters and costs of the court-ordered independent medical evaluation.

The burden of proving Respondent can be found and is able to pay benefits lies with the Fund.²⁰

¹⁸ See K.S.A. 44-510h(a).

¹⁹ See K.S.A. 44-510h(e).

²⁰ See *Alvarez v. John E. Minson, D/B/A Quick Response Property Care*, No. 1,078,510 2017 WL 491311 (Kan WCAB Jan. 26, 2017).

The ALJ ordered Respondent to pay all outstanding medical bills and found the Fund responsible for payment of all outstanding benefits due to Claimant and all other outstanding bills and costs incurred. The Fund did not challenge the order to pay all outstanding bills and costs based upon their arguments the claim was not compensable. The Fund did challenge the ALJ's finding Soria was financially unable to pay. In finding the Fund's arguments unpersuasive, the ALJ noted Soria's income information was not current and it was not shown he could be located. The Board agrees with the ALJ's analysis and affirms the ALJ's order for the Fund to pay all benefits and costs pursuant to the award.

AWARD

WHEREFORE, it is the finding, decision and order of the Board the Award of Administrative Law Judge Gary K. Jones, dated March 6, 2024, is affirmed in part and modified in part.

For the injury to Claimant's right elbow, he is entitled to 9.86 weeks of temporary total disability at the rate of \$400.02, or \$3,944.02, followed by 52.04 weeks of permanent partial disability at the rate of \$400.02 per week, or \$20,817.04 for his 26% functional impairment to the right upper extremity, making a total award of \$24,761.24, which is all due and owing and ordered paid in one lump sum less any amounts previously paid.

For the injury to Claimant's right leg, he is entitled to 11 weeks of permanent partial disability at the rate of \$400.02 per week, or \$4,400.22, for a 5.5% permanent partial functional disability, which is all due and owing and ordered paid in one lump sum less any amounts previously paid.

The Award of future medical benefits is affirmed and shall be paid by the Fund.

IT IS SO ORDERED.

Dated this day of August, 2024.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: (Via OSCAR)

Randy Stalcup, Attorney for Claimant
Terry Torline, Attorney for Fund
Hon. Gary K. Jones, Administrative Law Judge

c: (Via U.S. Mail)

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