

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

TROY MITCHELL

Claimant

v.

CNH INDUSTRIAL AMERICA LLC

Respondent

AP-00-0484-241

CS-00-0473-109

and

INDEMNITY INS. CO. OF N. AMERICA

(INA INS) (CT GEN)

Insurance Carrier

ORDER

On May 22, 2026, The Kansas Court of Appeals affirmed in part, reversed in part, and remanded with directions, the Board's January 10, 2025, decision. This matter was placed on the Board's Summary Docket for decision without oral argument.

APPEARANCES

Randy S. Stalcup appeared for Claimant. Karl L. Wenger appeared for Respondent.

RECORD AND STIPULATIONS

The Board considered the same record itemized in its prior Order, consisting of the transcript of Regular Hearing, held April 9, 2024, including Claimant's Exhibits 1-3, and excluding Claimant's Exhibits 4-6; the transcript of Evidentiary Deposition of Michael Flaherty, taken May 10, 2024, including Exhibits 1-2; the transcript of Evidentiary Deposition of Valerie Hammond, taken June 10, 2024, including Exhibits 1-5; the transcript of Evidentiary Deposition of Dana Schrader, taken June 10, 2024, including Exhibit 1, but excluding Exhibits 2-3; the transcript of Evidentiary Deposition of Sarah Johnson, taken May 10, 2024, including Exhibits 1-3; the transcript of Videoconference Deposition of Daniel D. Zimmerman, M.D., taken March 25, 2024, including Exhibits 1-3 and Exhibits A-D; the transcript of Evidentiary Deposition of Paul Hardin, taken March 29, 2024, including Exhibits 1-3; the transcript of Deposition of James S. Zarr, M.D., taken June 4, 2024, including Exhibits 1-5; the transcript of Zoom Deposition of Steve Benjamin, taken June 3, 2024, including Exhibits 1-2; the pleadings and orders contained in the administrative file; and the briefs submitted by the parties in the initial review proceedings before the Board.

ISSUE

Was Claimant terminated for cause by Respondent, rendering him ineligible to receive permanent partial general disability compensation based on work disability?

FINDINGS OF FACT

This matter comes before the Board on remand from the Court of Appeals.

Claimant worked for Respondent as an assembler from March 2021 through June 2023. For eight months, Claimant was assigned to a unit where he was exposed to hydraulic fluid. For the next one and one-half months, Claimant was assigned to a different unit, "Rear Fittings," where he was not exposed to hydraulic fluid. In March or April 2022, Claimant was assigned to another post, "Wash Bay/Steam Bay," where he was exposed to hydraulic fluid. Claimant wore safety gear to minimize contact with hydraulic fluid, but the gear did not fully eliminate his exposure. Claimant worked in Wash Bay/Steam Bay through the end of 2022. Claimant denied being exposed to hydraulic fluid before working for Respondent.

Claimant developed a rash and blisters about his arms, forehead, neck, trunk, back, legs and feet while working. Claimant reported his problems to Respondent's human resources department. Claimant also spoke with a company nurse about his symptoms. Respondent referred Claimant to an occupational medicine clinic. According to Claimant, the occupational medicine provider diagnosed Claimant with eczema and stated Claimant could return to work. The occupational medicine records are not in evidence. Claimant testified he provided this information to Respondent, and Respondent provided Claimant information about the workers compensation process.

Claimant also sought treatment on his own at GraceMed. Claimant testified he was unable to squeeze his hand to hold a tool. Claimant testified he did not receive a diagnosis, but he did receive a work status form stating he was unable to work. Claimant also testified, however, he received work restrictions prohibiting him from having any contact or exposure to hydraulic fluid. Claimant provided the work status form he received to Respondent's human resources department. The medical records from GraceMed are not in evidence.

Claimant also saw Sarah Johnson, a nurse practitioner at Wichita Dermatology, on his own. Ms. Johnson initially saw Claimant from June 22, 2022, through December 16, 2022. Claimant reporting being exposed to something at work causing a rash on his hands. Claimant stated his symptoms were getting worse. Ms. Johnson diagnosed allergic contact dermatitis versus an autoimmune blistering condition, and a biopsy of the affected tissue was done to confirm the allergic contact dermatitis diagnosis. Although Claimant

stated Ms. Johnson imposed restrictions, Ms. Johnson denied this. In October 2022, Claimant was also treated for a skin infection on his ears. Creams and prednisone were prescribed, but no work restrictions were imposed. Ms. Johnson stopped Claimant's treatment on December 16, 2022, because Claimant seemed to be doing well. Ms. Johnson also stated she had not seen Claimant's workplace, and did not know what was causing Claimant's rash.

In January 2023, Respondent moved Claimant to a new work area, called "Rear Doors," where he was not exposed to hydraulic fluid. Claimant worked in this position through March or April 2023. Claimant testified his symptoms did not flare up. From March or April 2023 through May 2023, Claimant was transferred to a different job, called "ROPS Line," where he was exposed to hydraulic fluid continuously. Claimant's condition worsened. Claimant returned to Ms. Johnson on May 10, 2023, and treatment resumed. Ms. Johnson also resumed efforts to determine the cause of Claimant's condition.

In May 2023, Claimant was transferred back to Rear Doors, where he worked for one and one-half weeks until he was terminated. Claimant testified he was watched by his supervisors, who did not offer assistance. Claimant believed he was being allowed to fall behind in his work by his supervisors. Claimant admitted he cursed at his supervisors, but denied being physically threatening or using a racist epithet. Claimant also admitted he yelled at his supervisors and had altercations with them because he was exposed to hydraulic fluid at work and was frustrated. Claimant was never written up for insubordination.

Claimant testified on the Friday before he was terminated, he received a text message from "Rebecca" with Human Resources advising she wanted to visit with Claimant. Claimant testified he spoke with Rebecca and his supervisor, and left the workplace. Claimant subsequently received a call from Respondent advising he should not come to work on Saturday because an investigation of Claimant's behavior was taking place.

Claimant testified on the following Monday, he sent a text message to Respondent asking what was happening, and Respondent advised they would speak with Claimant when he returned to work. Claimant called Respondent on Tuesday, but was not told to return to work. Respondent and Claimant did not communicate on Wednesday.

Claimant testified on Thursday he received a call from Rebecca, with someone else present, and Rebecca told Claimant he was terminated. Claimant testified he did not receive a reason for the termination, and no paperwork or electronic forms concerning his termination were provided. Claimant subsequently applied for unemployment compensation, which was contested by Respondent, and a hearing was held on Claimant's application in September 2023. Claimant's application for unemployment was denied due to his behavior.

Claimant admitted he was previously counseled by Respondent for attendance issues, which he corrected. Claimant also admitted he was written up one time for job performance issues, but was not subsequently disciplined.

Valerie Hammond, Respondent's Human Resources Manager, testified all employees receive an employee handbook to review as part of the hiring process. Newly-hired employees are also expected to sign a form confirming they received and reviewed the employee handbook. Claimant complied with the process, and signed a form confirming he received the employee handbook. The employee handbook contains a code of conduct stating, among other things, violating Respondent's harassment policy; using abusive language or engaging in profane, abusive or threatening conduct; or failing to cooperate with coworkers can subject an employee to discipline. The employee handbook describes Respondent's progressive discipline policy, but also states some actions may warrant immediate discipline, including termination, at management's discretion. An employee who is subject to discipline may request review by human resources.

Ms. Hammond confirmed she received emails from Claimant's supervisors reporting abusive conduct and language by Claimant starting in May 2023. On May 25, 2023, one of Claimant's supervisors reported Claimant became verbally abusive and swore at his supervisor after he was told his job performance was deficient and his productivity would be monitored. On May 30, Claimant's supervisor reported Claimant yelled profanities at him and another supervisor, including "motherfuckers." On June 2, 2023, another supervisor reported Claimant spoke to him in a threatening manner, and Claimant said he was waiting for the supervisor to "make a move." Claimant's supervisors also reported Claimant yelling at them, and using profane language. A coworker confirmed Claimant stated, "Yeah, walk away you weird ass nigga" as the supervisor walked away.¹ Claimant's supervisors expressed frustration with Claimant's behavior and the perception Human Resources was aware of the situation and did nothing. In response, Ms. Hammond informed Claimant's supervisors their complaints were taken seriously, but Claimant's behavior had to be investigated.

Ms. Hammond testified her department investigated Claimant's behavior. As part of the investigation, Claimant was contacted for a statement. Claimant was also informed he was told he was suspended pending the investigation. Claimant inquired about the availability of overtime work on June 2 or 3, and Ms. Hammond told Claimant the work involved exposure to hydraulic fluid.

Ms. Hammond testified she spoke with Claimant by phone on June 13, and Dana Schrader was present during the conversation. Ms. Hammond told Claimant the investigation indicated Claimant engaged in multiple instances of using abusive language

¹ See Hammond Deposition, Exhibit 3.

and engaging in threatening behavior. In response, Claimant said he did not think he said a particular swear word, but he was not sure. Claimant also admitted he told a supervisor, “I was waiting for him to make a move”, but did not comment when asked if his behavior was appropriate.² Claimant also said he wasn’t sure “if that’s exactly what I said.”³ Claimant admitted he spoke with a supervisor in a disrespectful manner on another occasion, and said he did not like one of his supervisors.

Following Ms. Hammond’s conversation with Claimant on June 13, Respondent decided to terminate Claimant’s employment effective June 19, 2023. Ms. Hammond admitted Claimant was not written up for abusive conduct or offensive language before being terminated. Claimant was informed by telephone he was terminated, and a form was completed by Ms. Hammond documenting the decision to terminate Claimant for using abusive language and engaging in profane, abusive or threatening conduct, in violation of Respondent’s code of conduct.

Ms. Schrader, Respondent’s Senior Human Resources Representative, testified she was involved in the investigation of Claimant’s behavior leading to his termination, and she confirmed Ms. Hammond’s account of events. According to Ms. Schrader, Claimant applied for unemployment compensation after he was terminated by Respondent. Respondent contested the claim for unemployment compensation. The application for unemployment was denied, following a hearing, because Claimant was terminated based on his conduct. Records concerning the application for unemployment and the determination by the Kansas Department of Labor were offered into evidence. The notice advising Claimant applied for unemployment compensation was admitted, but two documents containing the determination of Claimant’s eligibility were not admitted.

On July 24, 2024, ALJ Jones issued the Award. Exhibits 2-3 from the deposition of Ms. Schrader were not admitted because they were records from the Department of Labor concerning Claimant’s application for unemployment benefits. Based on the medical reports of Drs. Zimmerman and Zarr, ALJ Jones concluded Claimant proved his occupational hydraulic fluid exposure at work was the prevailing factor causing his injuries, medical condition and resulting impairment. ALJ Jones found Claimant’s functional impairment was 19% of the body as a whole based on the testimony of Drs. Zimmerman and Zarr. The request for permanent partial general disability compensation based on work disability was granted because ALJ Jones found Claimant was not terminated for cause because he was not previously disciplined for insubordination, he was not given a chance to correct his behavior, and his frustration with Respondent was understandable. ALJ Jones found Claimant’s task loss was 32.13% based on an average of the physicians’

² See Hammond Deposition, at 19.

³ *Id.*

opinions, and Claimant's wage loss was 44.65% based on an average of the vocational opinions, resulting in 38.39% work disability starting July 1, 2023. Future medical was awarded, as well as payment of the past medical bills incurred with St. Francis.

Respondent sought review by the Board, and it issued its Order on January 10, 2025. The Board affirmed ALJ Jones' exclusion of two exhibits from Ms. Schrader's deposition into evidence, pursuant to K.S.A. 44-709(j). The Board also affirmed the determinations Claimant proved he sustained compensable dermatitis from repetitive trauma arising out of and in the course of his employment with Respondent, and Claimant proved entitlement to an award of future medical treatment. The Board modified the determination of Claimant's functional impairment to 12.5% of the body as a whole.

The Board reversed ALJ Jones' determination Claimant was eligible to receive permanent partial general disability compensation based on work disability because Claimant was terminated for cause. Applying the standard from *Morales-Chavarin v. Nat'l Beef Packing Co.*,⁴ the Board concluded Claimant did not reasonably attempt to retain his employment, while Respondent proved Claimant's termination was not pretextual. In particular, the Board found Claimant was previously disciplined for attendance and performance issues, which were corrected, and Claimant was not previously disciplined for insubordination. Claimant testified he was not told the reason for his termination, despite being informed of the investigation of his conduct, the request for a statement, and Claimant being aware his behavior was the reason his application for unemployment compensation was denied. The Board also found Respondent provided records documenting Claimant's behavior and its investigation, Respondent's policy prohibited Claimant's behavior, and management had discretion to discipline Claimant by termination. The Board concluded Claimant did not make a good faith effort to remain employed, as it was unreasonable to use profanity or racist language at the workplace or to behave in a threatening manner towards a supervisor. Having determined Claimant was terminated for cause, the award of permanent partial disability compensation was amended to reflect compensation based on Claimant's functional impairment. Claimant appealed the decision.

On May 22, 2026, the Court of Appeals issued its Memorandum Opinion affirming in part and vacating in part the Board's decision.⁵ The Board's determinations Claimant proved he sustained compensable injuries from repetitive trauma arising out of and in the course of his employment with Respondent, Claimant's resulting functional impairment was

⁴ No. 95,261, 2006 WL 2265205 (unpublished Kan. App. opinion filed Aug. 4, 2006), *rev. denied* 282 Kan. 790 (2006).

⁵ See *Mitchell v. CNH Industrial America, LLC*, No. 128,607, 2026 WL 1453334 (unpublished Kan. App. opinion filed May 22, 2026).

12.5% of the body as a whole, and Claimant proved entitlement to future medical were affirmed.

The Court of Appeals, however, questioned the Board's conclusion Claimant was terminated for cause and was ineligible to receive permanent partial general disability compensation based on work disability. The Court of Appeals, expressing concerns Respondent made Claimant's employment conditions difficult so Claimant would quit, ruled the Board must provide a reason for disagreeing with the ALJ's credibility determinations. According to the Court of Appeals, the Board failed to address the timing of Claimant's termination after he complained of workplace chemical exposure, or the reason Claimant's testimony was rejected in favor of Ms. Hammond's testimony. The Court of Appeals also ruled the Board did not follow the inquiry required in *Morales-Chavarin*. This matter was remanded to the Board with instructions to make further findings of fact consistent with *Morales-Chavarin*.

PRINCIPLES OF LAW AND ANALYSIS

This matter has been remanded to the Board for consideration of Claimant's eligibility for work disability benefits. Where an employee sustains an injury to the body as a whole resulting in functional impairment in excess of 7.5% solely from the present injury, or in excess of 10% where there is preexisting functional impairment, and the employee sustains at least a 10% wage loss as defined in K.S.A. 44-510e(a)(2)(E), the employee may receive work disability compensation in excess of the percentage of functional impairment.⁶ Wage loss caused by voluntary resignation or termination for cause shall in no way be construed to be caused by the injury.⁷

1. THE BOARD DISAGREES WITH THE APPARENT CREDIBILITY DETERMINATION MADE BY THE ALJ, IF A CREDIBILITY DETERMINATION WAS MADE.

In the Award, the ALJ did not determine whether Claimant was terminated for cause specifically under *Morales-Chavarin*. Rather, the ALJ concluded:

Although it is a close case, the Court concludes that the Claimant was not terminated for cause. The Claimant was not given any verbal or written reprimands for insubordination or rudeness toward his supervisors prior to [his] termination. Although instances of insubordination were finally reported to the Respondent's HR, they apparently were not reported until after several instances had occurred. If the

⁶ See K.S.A. 44-510e(a)(2)(C).

⁷ See K.S.A. 44-510e(a)(2)(E)(i).

Claimant had been given at least one warning prior to his termination, then this ruling by the Court might be different.

The Court also notes that there was understandable frustration on the part of the Claimant because he had been moved back into the ROPS line where he was exposed to hydraulic fluid prior to his termination. Although he was working the rear doors area when he [was] terminated, he had only been in that area a short time. He was having considerable symptoms at the time he was terminated.⁸

The ALJ also did not expressly make a credibility determination. The ALJ did not state Claimant's testimony was credible, or the testimony of Respondent's witnesses were not credible. The Court of Appeals characterized the ALJ's findings Claimant was not previously reprimanded for insubordination and the short period between Claimant's last placement in accommodated work and termination as credibility determinations. The Court of Appeals faulted the Board for disagreeing with these credibility determinations without providing a basis for the disagreement to assist with judicial review. While the Board possesses *de novo* review authority over ALJ decisions,⁹ the Court of Appeals has held the Board must provide a reason for disagreeing with an ALJ's credibility determination.¹⁰

Having reviewed the record, the Board concludes Claimant's testimony concerning the circumstances of his termination is not credible evidence, alone. Claimant initially denied using any foul language or racial epithets. Claimant later admitted to swearing at his supervisors after he was presented with copies of emails from coworkers who reported Claimant swearing at them. Ms. Hammond testified to Respondent's investigation, and her deposition exhibits includes copies of statements from the supervisors and a coworker confirming Claimant used foul language and racial epithets. Claimant also denied engaging in physically threatening behavior. Ms. Hammond's evidence contradicted Claimant's testimony. Claimant admitted to Ms. Hammond he told a supervisor he was "waiting for him to make a move." Claimant acknowledged he yelled at his supervisors following his chemical exposure. Claimant's testimony was inconsistent and contradicted by Respondent's consistent evidence of Claimant's behavior. The Board concludes Claimant's testimony is not credible evidence, alone. Ms. Hammond's testimony is credible. The credible evidence proves Claimant engaged in aggressive, physically-threatening behavior, swore, and used foul language, including "motherfucker" and the "N-word", when addressing his supervisors.

⁸ ALJ Award, at 7.

⁹ See K.S.A. 44-555c(a).

¹⁰ See *Kotnour v. City of Overland Park*, 43 Kan. App. 2d 833, 837, 233 P.3d 299 (2010).

The ALJ's determination Claimant's behavior was "understandable frustration" appears to be rooted more in a *Morales-Chavarin* factual analysis than a credibility determination subject to *Kotnour*. Regardless of the label applied by the Court of Appeals, the Board disagrees with the determination Claimant's behavior was "understandable frustration." Respondent attempted to accommodate Claimant's condition by placing him in an area where he was not exposed to hydraulic fluid. Respondent's supervisor initially attempted to warn Claimant about his job performance, and Claimant became verbally abusive. From May 24 through June 2, Claimant engaged in an ongoing pattern of aggressive behavior, swearing and using racial epithets at work. Respondent's workplace policies prohibit activities creating a hostile environment. This behavior undermines workplace morale, and is not acceptable behavior in any workplace. As stated later, the temporal relationship between Claimant's placement in accommodated work and his termination, and the lack of prior discipline for insubordination do not render Claimant's termination pretextual. The Board concludes Claimant's behavior did not represent "understandable frustration" in the context of credibility.

The credible evidence proves Claimant's behavior was unreasonable. The reasons given by the ALJ in support of the determination Claimant was not terminated for cause are not legal justifications. An employee is not allowed to behave as he or she pleases because he or she was placed in an accommodated position. There is no requirement a foul-mouthed and aggressive employee needs to be previously disciplined or given a chance to rectify serious misconduct. It is not legally sound, and would create unwise precedent, to give an angry employee the opportunity to be insubordinate without any consequences because the employee made a workers compensation claim.

2. BASED ON THE GREATER WEIGHT OF THE CREDIBLE EVIDENCE, THE BOARD FINDS AND CONCLUDES CLAIMANT WAS TERMINATED FOR CAUSE AND IS NOT ELIGIBLE TO RECEIVE PERMANENT PARTIAL GENERAL DISABILITY COMPENSATION BASED ON WORK DISABILITY.

The Board next addresses whether Claimant was terminated for cause, and ineligible to receive work disability compensation in excess of his functional impairment. The Court of Appeals vacated the Board's prior determination Claimant was terminated for cause, and remanded this matter with instructions to determine whether Claimant was terminated for cause using the standard used in *Morales-Chavarin*:

[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 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.¹¹

The burden of proving the employee's termination was for cause belongs to the employer.¹²

After being provided work restrictions, Respondent endeavored to place Claimant in a position where he would not be exposed to hydraulic fluid based on restrictions provided on May 10. It is undisputed the area where Claimant was assigned did not expose him to hydraulic fluid. The record also indicates a supervisor attempted to warn Claimant he was falling behind a productivity quota. In response, Claimant swore at his supervisor.

Claimant continued to engage in a pattern of unreasonable behavior. On May 30, Claimant yelled profanities at his supervisors because he thought they were watching him. On June 2, Claimant was physically threatening and told a supervisor he was waiting for the supervisor to make a move, presumably to engage in an altercation. When the supervisor walked away, Claimant called him the "N-word."

On multiple occasions after May 24, Claimant's supervisors notified Respondent's Human Resources department of Claimant's behavior. Under Rule 10 of Respondent's policies, the use of abusive, threatening and harassing language towards peers, team leaders and supervisors creating a hostile work environment was grounds for discipline, including immediate termination. Once Respondent's Human Resources department received notification, they conducted an investigation of Claimant's behavior to determine whether a violation occurred. Claimant was suspended pending the outcome of the investigation. Claimant was asked to make a statement as part of the investigation. Evidence of Respondent's investigation is contained in the record. After determining a violation of Rule 10 occurred, Respondent determined the appropriate discipline was immediate termination, which was permitted under Respondent's policies. Although Claimant testified he was not told the reason for his termination, Claimant later acknowledged he was aware he was terminated for misconduct.

Under these facts, Claimant's behavior was unreasonable and does not indicate Claimant acted in good faith to retain his employment. Claimant was deficient in his work performance, and a supervisor attempted to warn him. Claimant responded to his supervisor's warning by swearing at him. Claimant also engaged in physically threatening behavior towards his supervisors. Claimant also directed the "N-word" at a supervisor. Claimant's testimony regarding his behavior was contradictory, and his testimony he was

¹¹ 2006 WL 2265205, at *5.

¹² See *Mitchell*, 2026 WL 1453334, at *8 (citing *Merrill v. Georgia Pacific*, No. 113,996, 2016 WL 3202663, at ** 6, 8 (unpublished Kan. App. opinion filed June 10, 2016)).

not aware of the reason for his termination was contradicted by his subsequent behavior. Claimant's testimony, alone, regarding his termination is not credible evidence. The credible evidence suggests Claimant's offensive behavior did not display a good faith effort to remain employed.

On the other hand, Respondent's witnesses consistently provided details of Claimant's bad behavior at the workplace after May 24. Claimant was not immediately disciplined because Respondent conducted an investigation into whether a violation of Rule 10 occurred. The time period at issue included a legal holiday. There is no evidence Respondent delayed or hindered its investigation to accrue additional workplace violations. Respondent's witnesses testified Claimant's workers compensation claim or request for accommodation did not factor into the decision to terminate Claimant. Respondent's witnesses provided consistent testimony of the outcome of the investigation and the decision to terminate Claimant pursuant to their policies. Respondent's policies did not require progressive discipline for hostile workplace incidents, as opposed to Claimant's prior attendance or productivity issues. The Board also finds it unreasonable to expect an employer to retain an employee who engages in aggressive behavior, and directs profanity and racist slurs at coworkers or supervisors. The Board finds the evidence of Respondent more credible, and proves Respondent made a good faith effort to accommodate Claimant's restrictions and to retain Claimant. Only after Claimant engaged in unreasonable behavior did Respondent terminate his employment for violating company policy. The Board does not find Respondent's termination pretextual.

The timing of Claimant's termination does not render Claimant's termination pretextual, alone. Temporally, Claimant was terminated after making a workers compensation claim and seeking accommodated work. This does not end the analysis, however. *Morales-Chavarin* does not state timing is the only factor in determining whether an employee was terminated for cause. In this case, additional significant events occurred. Claimant was placed in an accommodated position, and Claimant subsequently engaged in aggressive behavior and unacceptable workplace behavior. Claimant swore at supervisors repeatedly and used a racist epithet. Respondent's testimony and records of their investigation clearly establish Claimant's offensive behavior after he was placed in an accommodated position was the reason for his termination. The Board concludes the termination was not pretextual based solely on timing.

Having considered the record as a whole, the Board concludes Claimant did not act in good faith to retain his employment with Respondent. The Board also concludes Respondent did not purposefully create a difficult working environment when it accommodated Claimant's restrictions, attempted to counsel Claimant on productivity issues, or investigate the complaints of Claimant creating a hostile work environment. Rather, Respondent made a good faith effort to retain Claimant and terminated Claimant for cause after its investigation confirmed complaints of Claimant creating a hostile work environment in an obvious violation of company policy. The Board concludes Claimant's

termination was not pretextual, and Claimant was terminated for cause. Because Claimant was terminated for cause, his resulting wage loss was not caused by his work-related injuries. Claimant is not eligible to receive work disability compensation. Accordingly, Claimant's request for work disability compensation is denied, and Claimant's award of permanent partial disability compensation is limited to compensation based on 12.5% functional impairment of the body as a whole.

AWARD

WHEREFORE, it is the finding, decision and order of the Board the Award issued by ALJ Gary K. Jones, dated July 24, 2024, is reversed and modified to reflect an award of permanent partial disability compensation based on 12.5% functional impairment to the body as a whole.

IT IS SO ORDERED.

Dated this ____ day of September, 2026.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: (Via OSCAR)

Randy S. Stalcup
Karl L. Wenger
Hon. Gary K. Jones