BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

SERGIO MARTINEZ	)	
Claimant	)	
V.	)	
	)	AP-00-0484-477
HAVERKAMP BROTHERS, INC.	)	CS-00-0458-598
Respondent	)	
AND	)	
	)	
REDWOOD FIRE AND CASUALTY INS. CO.	)	
Insurance Carrier	)	
AND	)	
	)	
KANSAS WORKERS COMPENSATION FUND[1]	)	

ORDER

On January 16, 2026, the Kansas Court of Appeals affirmed in part and reversed in part the Board's January 8, 2025, Order. The matter was remanded with directions for the Board to reevaluate Claimant's work disability based on a redetermination of task loss. The case was placed on the summary docket for disposition without oral argument. Jeff K. Cooper appeared for Claimant. Brent A. Jepson appeared for Respondent and its insurance carrier (Respondent). Kathryn Gonzales appeared for the Kansas Workers Compensation Fund (Fund).

RECORD AND STIPULATIONS

The Board considered the record, including the parties' remand briefs, and adopted the stipulations set forth in its original Order, dated January 8, 2025, together with the January 16, 2026, Memorandum Opinion of the Kansas Court of Appeals.

FINDINGS OF FACT

The Board adopts the factual and procedural overview set forth by the Court of Appeals and the Board's Findings of Fact written in the Board's January 8, 2025, Order.

[1] Kansas Workers Compensation Fund added March 13, 2026.

This matter was originally before the Board on Claimant's appeal of the July 29, 2024, Award of Administrative Law Judge (ALJ) Bruce E. Moore.

In its Order, the Board modified the ALJ's award of work disability compensation and reversed the ALJ's finding regarding future medical benefits. The Board found Claimant was entitled to compensation for a 55.5% work disability based on a 61% wage and a 50% task loss as a result of the 2020 accident. To compute Claimant's task loss, the Board averaged the opinions of Drs. Wheeler (0%) and Hess (100%).

The Court of Appeals, in its January 16, 2026, Memorandum Opinion, determined the Board erred in calculating Claimant's task loss. The Court remanded the issue for redetermination of Claimant's task loss. The Court affirmed the Board's other findings. The Court stated:

> The record lacks evidence that could induce a reasonable factfinder to conclude that Martinez' 2020 injury resulted in a 50% task loss. Hess was the only physician that found Martinez suffered any task loss, and he failed to consider Martinez' preexisting permanent restrictions. Wheeler considered the necessary factors but found no task loss. Wheeler found that Martinez did not need any new restrictions after his 2020 injury because his preexisting restrictions appropriately accommodated all Martinez' injuries. True, Wheeler's task analysis found that Martinez was not capable of committing one of 14 tasks, but Martinez was unable to complete that task under his preexisting restrictions, so Wheeler properly excluded that loss from her assessment of the task loss resulting from Martinez' 2020 injury.
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> Martinez tacitly agrees that Hess failed to consider his preexisting permanent restrictions but contends that Hess did not need to consider them because they were not "realistically in effect" when he was injured in 2020. As support, he alleges that he had returned to his position as a breeding technician and had worked for several months without restrictions by the time the 2020 accident occurred.
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> But the details are unclear about the similarities or differences in Martinez' postinjury and preexisting permanent restrictions, about what jobs he performed after his 2015 injury, and whether his duties were within or outside the permanent restrictions. Martinez claims that he worked for several months without restrictions after his 2015 injury but tacitly alleges that he was assigned additional restrictions based on his 2020 injury. The record is unclear as to whether Martinez performed his normal work duties with no restrictions or other accommodations for any amount of time. The parties seemingly agree that Martinez worked in an accommodated position for a period of time and worked under permanent restrictions since July 2020. The record is similarly unclear. But the lack of clarity cuts against the Board's task loss finding.

> Based on a review of the record as a whole, we find the Board's task loss determination is not supported by substantial evidence. We thus remand the case on this issue to the Board for reconsideration.[2]

Respondent filed its motion to implead the Fund on March 12, 2026. Counsel for the Fund entered her appearance on March 31, 2026. The Board, in its January 8, 2025, Order, awarded Claimant a total award of $118,038.07, which included temporary total, temporary partial and permanent partial disability (work disability) compensation. Respondent reported providing indemnity compensation of $120,655.63.

PRINCIPLES OF LAW AND ANALYSIS

Respondent argued Claimant sustained a 0% task loss based on Dr. Wheeler's opinion and therefore had a 30.5% work disability as a result of the November 2020 injury. Respondent also seeks reimbursement from the Kansas Workers Compensation Fund in the amount of $54,543.40.

Claimant argued the Board was correct in awarding a 55.5% work disability based on a 50% task loss. In support of his argument, Claimant argued the Court of Appeals did not find the Board erred as a matter of law for failing to reduce Claimant's task loss based on prior permanent restrictions and is free to weigh the evidence regarding task loss. In weighing the evidence, Claimant urges the Board to find any permanent restrictions from the prior injury were not realistically in effect and should not reduce Claimant's task loss. Finally, Claimant argues because the Board found Dr. Wheeler's task loss opinion was not credible, the Board can not find it credible simply because the Court of Appeals remanded the task loss issue for redetermination.

K.S.A. 44-510e(a)(2)(D) states:

> "Task loss" means the percentage to which the employee, in the opinion of a licensed physician, has lost the ability to perform the work tasks that the employee performed in any substantial gainful employment during the five-year period preceding the injury. The permanent restrictions imposed by a licensed physician as a result of the work injury shall be used to determine those work tasks which the employee has lost the ability to perform. If the employee has preexisting permanent restrictions, any work tasks which the employee would have been deemed to have lost the ability to perform, had a task loss analysis been completed prior to the injury at issue, shall be excluded for the purposes of calculating the task loss which is directly attributable to the current injury.

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[2] *Martinez v. Haverkamp Brothers, Inc.*, No. 128, 693, 2026 WL 124316 (Kansas Court of Appeals unpublished opinion filed Jan. 16, 2026).

There are two task loss opinions in the record, Respondent's expert Dr. Wheeler (0% task loss) and Claimant's expert Dr. Hess (100% task loss). The Board's January 8, 2025, Order found Dr. Wheeler's 0% task loss was not credible because she found no task loss when Claimant was "let go from an accommodated job by an employer who considered him a good employee, with valuable experience."[3] There is nothing in the Court of Appeals' memorandum opinion requiring the Board to change or alter this finding. The Board, in re-weighing the evidence, does not find sufficient evidence to change its previous finding and concludes Dr. Wheeler's 0% task loss opinion is not credible.

The Court of Appeals found Dr. Hess was the only physician to find a task loss, but his opinion was flawed because he failed to consider Claimant's preexisting permanent restrictions. Claimant's argument the prior restrictions were not realistically in effect and therefore should not be considered was rejected by the Court of Appeals. In so doing, the Court of Appeals noted the unclear record regarding the similarities or differences between the current and prior restrictions and whether Claimant's job duties were within or outside those permanent restrictions.

K.S.A. 44-510e(a)(2)(D) requires task loss opinions must be provided by a licensed physician. The record contains two task loss opinions to consider. The Board concludes the two task loss opinions are not credible, and therefore, there is no credible evidence regarding task loss contained in the record. The Board must find Claimant has 0% task loss. Averaging this with Claimant's 61% wage loss results in a 30.5% work disability.

Respondent seeks reimbursement from the Fund because of an alleged overpayment of the amount of permanent partial (work disability) compensation due Claimant. Under the modified award, Claimant is awarded a total award of $68,614.68, which includes temporary total, temporary partial and permanent partial (work disability) compensation. It appears Respondent previously paid compensation in excess of the compensation awarded herein. Pursuant to K.S.A. 44-534a and K.S.A. 44-569a, Respondent may seek certification by the Director for reimbursement by the Fund for compensation it paid in excess of the compensation awarded.

AWARD

WHEREFORE, it is the finding, decision and order of the Board the Award of the Board, dated January 8, 2025, is modified to reflect a 30.5% work disability.

Claimant is entitled to 5 weeks of temporary total disability at the rate of $500.49 per week, or $2,502.45, and temporary partial disability compensation of $257.76, for a total paid of $2,760.21 (5.52 weeks of temporary total disability equivalence), followed by

[3] *Martinez v. Haverkamp Brother;* AP-00-0484-477, 2025 WL 432162 (Kan. WCAB Jan. 8, 2025).

126.58 weeks of permanent partial disability at the rate of $500.49 per week, or $63,352.02, for a 30.5% work disability, making a total award of $68,614.68, which is all due and owing and ordered paid, less any amounts previously paid.

IT IS SO ORDERED.

Dated this _____ day of April, 2026.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

CONCURRING AND DISSENTING OPINION

I concur the Board properly followed the Court of Appeals' instructions to account for the claimant's preexisting permanent restrictions. However, it is necessary to address the claimant's argument regarding the last sentence in K.S.A. 44-510e(a)(2)(D). The statute states, "If the employee has preexisting permanent restrictions, any work tasks which the employee would have been deemed to have lost the ability to perform, had a task loss analysis been completed prior to the injury at issue, shall be excluded for the purposes of calculating the task loss which is directly attributable to the current injury."

In his brief to the Court of Appeals, the claimant argued:

> The inclusion of the words 'had a task loss analysis been completed prior to the injury at issue' can be interpreted to constitute a qualifying event or condition precedent that must occur before the tasks may be excluded. There is no evidence in the record that a task loss analysis has been completed prior to the November 2020 work injury. Without such evidence of a prior task loss opinion, claimant's task

loss should be based solely on his current restrictions, without a deduction based upon preexisting restrictions.[4]

The claimant reasserted this argument to the Board in the remand proceedings. This argument was not addressed by the Court of Appeals or the Board. It should have been addressed, and still should be addressed. As such, I respectfully dissent.

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BOARD MEMBER

c: (Via OSCAR)

Jeff K. Cooper, Attorney for Claimant
Brent A. Jepson, Attorney for Respondent and its Insurance Carrier
Kathryn Gonzales, Attorney for Kansas Workers Compensation Fund
Hon. Bruce E. Moore, Administrative Law Judge

[4] Sergio Martinez, Sr., Claimant-Appellee, v. Haverkamp Brothers, Inc., and Redwood Fire & Casualty Insurance, Respondent-Appellant., 2025 WL 2249068, at *14.