

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

GARY ROME)	
Claimant)	
V.)	
)	AP-00-0487-341
BOMGAARS SUPPLY INC.)	CS-00-0479-191
Respondent)	
AND)	
)	
SENTRY CASUALTY COMPANY)	
Insurance Carrier)	

ORDER

Claimant requested review of the January 27, 2025, Award by Administrative Law Judge (ALJ) Bruce E. Moore. The Board heard oral argument on June 5, 2025.

APPEARANCES

Scott J. Mann appeared for Claimant. Joseph C. McMillan appeared for Respondent and its insurance carrier (Respondent).

RECORD AND STIPULATIONS

The Board has adopted the same stipulations and considered the same record as the ALJ, consisting of the transcript of the Preliminary Hearing held December 6, 2023, with exhibits attached; the transcript of the Preliminary Hearing held March 1, 2024, with exhibits attached; the transcript of the Regular Hearing held October 1, 2024; the transcript of the Remote Discovery Deposition of Gary L. Rome from November 29, 2023; the transcript of the Zoom Videoconference Evidentiary Deposition of Kevin Campbell from December 4, 2024, with exhibits attached; the transcript of the Evidentiary Deposition of Pedro Murati, M.D., from October 14, 2024, with exhibits attached; the transcript of the Zoom Videoconference Evidentiary Deposition of David W. Hufford, M.D., from November 25, 2024, with exhibits attached; the transcript of the Evidentiary Deposition of Steve Benjamin from October 14, 2024, with exhibits attached; the transcript of the Zoom Videoconference Evidentiary Deposition of Terry L. Cordray from December 4, 2024, with exhibits attached; and, the documents of record filed with the Division.

ISSUES

1. Did Claimant sustain personal injury by accident on September 18, 2023?
2. If so, did Claimant's injury arise out of and in the course of his employment with Respondent?
3. What was the prevailing factor causing Claimant's injury, need for treatment, and resulting impairment or disability?
4. Did Claimant voluntarily participate in a fight?
5. Was there an underpayment of temporary total disability benefits (TTD)?
6. Is Claimant entitled to medical mileage and medical bill reimbursement?
7. Is Claimant entitled to future medical treatment?

FINDINGS OF FACT

Claimant, born in 1940, is currently 85 years old. He worked for Respondent and its predecessor, Orscheln Farm and Home, for approximately 15 years. Claimant worked in the farm department of the store. In this position, Claimant cared for live chickens, assisted customers, cleaned, and placed stock on the floor.

On September 18, 2023, Claimant placed a new item in the sporting goods department. Kevin Campbell, the department head of sporting goods, called Claimant on the radio and asked him to report to the sporting goods department as the item was improperly placed. Mr. Campbell and Claimant engaged in an argument, during which Claimant fell to the ground and sustained injury to his left hip. Claimant was taken to Hays Medical Center by emergency personnel for treatment of an intertrochanteric fracture of the left hip, which was treated surgically by Dr. Timothy Wright on September 19, 2023.

Respondent investigated the incident. Kevin Mead, store manager, testified he was not on the premises the day of the incident but had been contacted by an assistant. The following day, Mr. Mead spoke with Mr. Campbell. Mr. Mead recalled:

[Mr. Campbell] said that he called [Claimant] over there because [Claimant] put something in an incorrect spot, that's happened many times before, and that it ensued into a verbal argument, that ensued into them nose to nose, fairly physical,

until the point – or in each others face till [Mr. Campbell] said he put his arm out to push [Claimant] back, and then [Claimant] fell down.¹

Mr. Mead then visited Claimant at the hospital. Mr. Mead indicated Claimant's version of events was nearly identical to Mr. Campbell's, with the exception of whether Claimant was shoved. Mr. Mead explained:

[Claimant] said that [Mr. Campbell] shoved him, and he shoved him hard. But they both said they were nose to nose, and they both said that they were equally to blame. It was stupid, it was just a heated argument that shouldn't have happened, and but – anyway, that's –

. . .

They just said that it was just an argument about putting something in the wrong spot that got out of hand, so . . .²

Mr. Campbell visited Claimant in the hospital on September 20, 2023. Claimant's adult son, Michael Rome, was present. The meeting between Claimant and Mr. Campbell was cordial, and they apologized to each other. Michael Rome provided a statement:

Kevin Campbell came to apologize to dad. He was very sympathetic and I heard the whole conversation. He said to dad he never should of [sic] shoved him and for that he was sorry. He (Kevin) said he's taken down lots of guys in his life but this pushing of dad was not acceptable.³

On September 28, 2023, Claimant's wife reported the incident to the Hays Police Department. Detective David Gillan and Master Patrol Officer Derick Nordell investigated. Claimant described the argument with Mr. Campbell, noting they were "chest to chest and got pretty heated," when Mr. Campbell "gave [him] a shove and [he] fell backwards."⁴ Records from Hays Medical Center indicate Claimant reported falling on his left hip after he was pushed by a coworker.

Mr. Campbell provided a statement to the police. He stated Claimant became "somewhat angry and began raising his voice" when confronted about the misplaced

¹ P.H. Trans. (Dec. 6, 2023) at 11-12.

² *Id.* at 12-13.

³ Campbell Depo., Ex. 1 at 12.

⁴ *Id.* at 21.

product.⁵ Claimant said something like “get off my ass you always give me a hard time,” and he “ain’t scared of” Mr. Campbell.⁶ Mr. Campbell indicated Claimant got in his face, nose-to-nose, and poked him repeatedly in the chest. Mr. Campbell then placed his right hand on Claimant’s chest and told Claimant to back off. Claimant fell. Mr. Campbell was unsure whether Claimant took a step backwards prior to the fall. Mr. Campbell denied applying force to Claimant’s chest and denied pushing Claimant. Mr. Campbell further denied apologizing to Claimant for pushing him, as reported by Michael Rome.

Pam Winebrinner, the vice-president of Respondent’s HR department, was involved with Respondent’s internal investigation. Ms. Winebrinner testified:

On September 18th, Mr. Rome had put some product away, put products on the shelf. Per the statements that we have, put products on the shelf, and put it in the wrong area. Mr. Campbell called him on the radio, asked him to come over and see him. And Mr. Rome was pretty agitated by the request to come over and see him. When he got over to see him, meaning Mr. Campbell, he basically said, you know, I don’t know what – I’m coming over to see you regarding this. He’s upset, it was very aggressive and he eluded [*sic*] to and said, you know, I’m going to kick your ass. And Mr. Campbell at that time said that Mr. Rome stepped forward, at the same time poking him in the chest, and saying, I’m going to kick your ass. And Mr. Campbell put his hand up, and then put his hand on his chest. And does not remember if there was a push, but he put his hand on the chest and then Mr. Rome went to step backwards and he fell. But it was aggressive, and it says that both in the police statement and in both statements, Mr. Rome, as well as Mr. Campbell.⁷

Mr. Campbell testified the statement he provided the police was true and accurate. He described:

I called [Claimant] over to correct him on some items he put in the wrong area. I was going to show him where they went. And when he got there, he immediately went off and started yelling at me.

...

He told me he wasn’t scared of me and he’s tired of me, calling me names. Telling me he was going to, excuse my language, kick my fat ass, poking his finger in my chest.⁸

⁵ *Id.* at 20.

⁶ *Id.*

⁷ P.H. Trans. (Mar. 1, 2024) at 9-10.

⁸ Campbell Depo. at 8-9.

Mr. Campbell continued:

Q. So after he pokes you with his finger and after he says he's not afraid of you and he could kick your ass right now, what did you do?

A. Put my hand on his chest, told him to back off, and I turned around and walked away.

Q. When you did that, did you shove him so that he lost his balance or did you just back him up a little bit?

A. I didn't apply any force.

...

Q. Okay. So you just touched his chest?

A. Correct.

Q. And then what happened?

A. I turned to walk away, I heard something, and he fell down.⁹

Camera footage did not capture the incident, and there are no witnesses to the event. Respondent terminated both Claimant and Mr. Campbell for fighting on company premises in violation of store policy.

Claimant provided testimony at his deposition on November 29, 2023. Claimant agreed he was called to sporting goods by Mr. Campbell for misplaced merchandise. He continued:

I told [Mr. Campbell], I says, Well, I know I did. I'm the one that brought this out and set it down. It's my fault, and I said, I'll guarantee you it won't happen again. That's what I told the man. I said, Kevin, I got to get back to finish my job, which I wasn't done for the day

As I turned to go back to finish my job, I lost my balance which I don't have very good anymore because my other hip was broke. My right hip was broke several years ago. I lost my balance and of course I fell down. He tried to grab me. Hell, he couldn't hold me. Like I said, I went down on one side. He tried to hold me up and I hit the deck, hit the floor in other words.¹⁰

⁹ Campbell Depo. at 15.

¹⁰ Claimant's Depo. at 24-25.

Claimant testified Mr. Campbell did not push him. He said he slipped and lost his balance. Claimant denied having a confrontation with Mr. Campbell or getting into Mr. Campbell's face.

Claimant later testified at the regular hearing held October 1, 2024. Claimant denied experiencing balance issues at the time of the incident:

Q. Okay. So you didn't have any balance issues because of your right hip, like you testified back in November?

A. No, no.

Q. Okay. Specifically on page 24 and 25 of your deposition you stated, I don't have good balance any more because of my other hip?

A. I can't remember that.

Q. Is that not accurate?

A. That's not right, I don't believe that.

Q. So you didn't have any balance problems before this incident?

A. No.¹¹

Claimant further testified he did not recall saying Mr. Campbell pushed him and did not recall writing a statement to that effect for the police. Claimant did not recall informing EMS or Hays Medical Center personnel he was shoved or pushed. Claimant agreed the handwritten statement he provided to police indicated they were having a discussion about product placement. Claimant continued:

Q. And according to the statement, you were turning to return to your department and Mr. Campbell shoved you?

A. Well, I thought he was, but actually he was trying to grab me because I started to fall. He tried to grab me so I wouldn't fall down. And when I hit the deck –

Q. Okay.

A. – he tried to pick me up. I hurt so bad I couldn't move.¹²

¹¹ R.H. Trans. at 15.

¹² *Id.* at 23-24.

Dr. Pedro Murati evaluated Claimant, at his counsel's request, on May 15, 2024. Claimant's chief complaints included pain in the left hip occasionally radiating to the left low back, stiffness, and difficulty standing, walking, and rising from a seated position. Dr. Murati reviewed Claimant's history and available medical records. Claimant reported he was talking to a coworker when he stepped back, lost his balance, and fell on his left hip. Dr. Murati noted the medical records indicate Claimant was in an argument where he was pushed and fell onto his left hip. Dr. Murati performed a physical examination, finding Claimant sustained a fracture of the neck of his left femur, resulting in surgery for closed reduction and placement of a trochanteric fixation nail, left hip. He further found Claimant has left trochanteric bursitis, left iliotibial band sprain, low back sprain secondary to antalgic gait, and left sacroiliac joint dysfunction secondary to antalgic gait. Dr. Murati concluded the prevailing factor causing Claimant's condition was the accident at Respondent. Dr. Murati recommended future medical treatment, including a total hip replacement.

Dr. Murati imposed permanent work restrictions. Claimant cannot work more than 4 hours per day. He cannot squat, crawl, drive a manual vehicle, use stairs, use ladders, or use repetitive controls with his left lower extremity. Claimant cannot lift, carry, push, or pull over 20 pounds occasionally, 10 pounds frequently, or 5 pounds constantly. He should rarely stand, walk, bend, crouch, or stoop. Claimant must frequently alternate sitting, standing, and walking as needed, and he should spend 50 percent of his work day resting. Dr. Murati opined Claimant is essentially and realistically unemployable.

Using the *AMA Guides*¹³ as a starting point before implementing his experience and expertise, Dr. Murati determined Claimant sustained 14 percent functional impairment to the whole body as a result of the fall at work. Dr. Murati provided 7 percent left lower extremity impairment for Claimant's status post comminuted intertrochanteric fracture, 7 percent for trochanteric bursitis, 2 percent for iliotibial band sprain, and 10 percent for loss of range-of-motion in the left hip. These combine for a total 24 percent left lower extremity impairment, or 10 percent whole person impairment. Dr. Murati added another 2 percent whole person impairment for lumbar spine strain. Dr. Murati stated the whole person impairments of 10 percent and 2 percent combined to be a total 14 percent whole person impairment as a result of the work injury.

Dr. David Hufford evaluated Claimant at Respondent's request on July 24, 2024, for rating purposes. Dr. Hufford reviewed Claimant's available medical records and performed a physical examination. Dr. Hufford determined Claimant sustained an occupational fall with intertrochanteric fracture of the left hip. Dr. Hufford opined the work accident was the prevailing factor causing Claimant's condition. He did not recommend future medical treatment, explaining:

¹³ American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (6th ed.).

I felt that at his age, he probably would not require any additional treatment. That recommendation was tempered by the fact that he could go on to develop post-traumatic arthritis in his hip. However, that usually takes some time to develop. And I did not think that he would probably develop arthritis to a significant degree where a hip replacement would be considered and that was, again, primarily because of his chronological age.¹⁴

Dr. Hufford imposed permanent restrictions of no lifting over 10 pounds, no repetitive bending at the waist or twist/turn of the trunk, and no working at unprotected heights on ladders or uneven terrain. Dr. Hufford indicated Claimant's work should primarily be sedentary, with no kneeling, squatting, crawling, or crouching.

Also utilizing the *AMA Guides* as a starting point, Dr. Hufford determined Claimant sustained a total 12 percent whole person functional impairment as a result of the September 18, 2023, work incident. Dr. Hufford applied 10 percent whole person impairment for intertrochanteric fracture of the left hip, plus an additional 2 percent whole person impairment for left sacroiliitis/strain. These ratings combine to be 12 percent whole person impairment.

Vocational expert Steve Benjamin interviewed Claimant on May 15, 2024, at Claimant's counsel's request. Mr. Benjamin obtained a history of Claimant. Claimant graduated high school before serving in the Kansas National Guard. He worked as a bricklayer from 1988 to 2003, when he began drawing Social Security Retirement. Claimant has a valid driver's license. He does not have clerical computer skills. Mr. Benjamin generated a list of 12 unduplicated tasks Claimant performed in the five years preceding the work accident. Using the restrictions of Drs. Murati and Hufford, Mr. Benjamin opined Claimant is permanently and totally disabled. He noted Dr. Hufford's restrictions could potentially allow for light delivery work, but most sedentary jobs require clerical skills Claimant lacks.

Dr. Murati reviewed the task list provided by Mr. Benjamin. Of the 12 unduplicated tasks on the list, Dr. Murati opined Claimant could no longer perform 11, for a 91.67 percent task loss. If the one task required repetitive left foot controls, Dr. Murati stated Claimant could not perform it either, for a 100 percent task loss.

Terry Cordray, vocational consultant, interviewed Claimant on September 16, 2024, at Respondent's request. Mr. Cordray generated a list of 11 unduplicated tasks Claimant performed in the five years preceding the injury. Mr. Cordray opined Claimant was unemployable based on Dr. Murati's restrictions. Based on Dr. Hufford's restrictions, Mr. Cordray concluded Claimant could find work at a comparable wage. Mr. Cordray noted

¹⁴ Hufford Depo. at 11.

placing Claimant in another job would require a targeted approach. Claimant has not worked anywhere since September 18, 2023, and is not currently looking for work.

Dr. Hufford reviewed the task list generated by Mr. Cordray. Of the 11 unduplicated tasks on the list, Dr. Hufford opined Claimant could no longer perform 8, for a task loss of 72.7 percent.

The parties stipulated Claimant was temporarily and totally disabled from September 18, 2023, through December 27, 2023. Medical expenses total \$81,478.58, without considering the Workers Compensation Fee Schedule, and have been paid by Medicare. Claimant claimed \$342.50 in unpaid medical mileage and per diem. The parties also stipulated Claimant has received Social Security Retirement benefits since 2003, currently paid at \$435.58 per week.

The ALJ found Claimant's injuries were sustained as a result of his voluntary participation in a fight with a coworker, and his recovery is barred by K.S.A. 44-501(a)(1)(E). The ALJ wrote:

The court finds that the credible evidence supports the conclusion that, on September 18, 2023, [Claimant] engaged Campbell initially in a verbal argument, then approached Campbell, entered his personal space and stood nose-to-nose and chest-to-chest with him, and repeatedly poked Campbell in the chest while telling him that he wasn't afraid of him and was going to beat his ass. The court believes this "*res gestae*" evidence from the time at and immediately following the confrontation is more believable than the pasteurized version now being offered by [Claimant].¹⁵

PRINCIPLES OF LAW AND ANALYSIS

Claimant argues he sustained 14 percent functional impairment to the whole body as a result of the work accident. Claimant contends his injury resulted from a fall which was not caused by either a verbal or physical confrontation or fight. Claimant argues he is entitled to payment of his medical bills and mileage, as well as future medical treatment. Claimant notes he is not entitled to TTD, permanent partial disability benefits, and/or permanent total disability benefits because his Social Security Retirement exceeds his workers compensation rate, pursuant to K.S.A. 2024 Supp. 44-501(g).

Respondent argues the ALJ's Award should be affirmed. Respondent maintains the ALJ found Claimant had no credibility, and the weight of the evidence was clear Claimant voluntarily participated in a fight with a coworker. Alternatively, Respondent argues Claimant's accident arose from a risk personal to Claimant.

¹⁵ ALJ Award (Jan. 27, 2025) at 12.

It is the intent of the Legislature the Workers Compensation Act be liberally construed only for the purpose of bringing employers and employees within the provisions of the Act.¹⁶ The provisions of the Workers Compensation Act shall be applied impartially to all parties.¹⁷

K.S.A. 44-501b(c) states:

The burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends. In determining whether the claimant has satisfied this burden of proof, the trier of fact shall consider the whole record.

K.S.A. 44-508(h) states:

"Burden of proof" means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record unless a higher burden of proof is specifically required by this act.

1. Did Claimant sustain personal injury by accident arising out of and in the course of his employment with Respondent on September 18, 2023?

K.S.A. 44-508(f) states, in part:

(1) "Personal injury" and "injury" mean any lesion or change in the physical structure of the body, causing damage or harm thereto. Personal injury or injury may occur only by accident, repetitive trauma or occupational disease as those terms are defined.

(2) An injury is compensable only if it arises out of and in the course of employment. An injury is not compensable because work was a triggering or precipitating factor. An injury is not compensable solely because it aggravates, accelerates or exacerbates a preexisting condition or renders a preexisting condition symptomatic.

K.S.A. 44-508(d) defines:

"Accident" means 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. An accident shall be identifiable by time and place of occurrence, produce at the time symptoms of an injury, and occur during a single

¹⁶ See K.S.A. 44-501b(a).

¹⁷ See *id.*

work shift. The accident must be the prevailing factor in causing the injury. "Accident" shall in no case be construed to include repetitive trauma in any form.

In light of the Board's ruling on issue no. 2, whether Claimant's injury by accident arose out of and in the course of his employment is moot. Even if Claimant sustained personal injury by accident arising out of and in the course of his employment, compensation is disallowed if he voluntarily engaged in a fight with a coworker for any reason, work-related or not. Our ruling on issue no. 2 is dispositive.

2. Is Claimant barred or disallowed compensation for an injury which occurred as a result of voluntarily fighting with a coworker?

K.S.A. 44-501(a) provides, in relevant part:

(1) Compensation for an injury shall be disallowed if such injury to the employee results from:

...

(E) the employee's voluntary participation in fighting or horseplay with a co-employee for any reason, work related or otherwise.

There are several versions of what occurred leading up to Claimant's fall and his injury.

Claimant stated he and Mr. Campbell were chest-to-chest and got pretty heated, when Mr. Campbell "gave [him] a shove and [he] fell backwards."¹⁸ Claimant said Mr. Campbell shoved him hard.

Mr. Campbell indicated Claimant got in his face and poked him repeatedly in the chest. Mr. Campbell then placed his right hand on Claimant's chest and told Claimant to back off. Claimant fell. Initial statements indicate Mr. Campbell did not remember if there was a push, but he put his hand on Claimant's chest, and Claimant went to step backwards and fell.

Mr. Mead, the store manager, indicated Claimant and Mr. Campbell were involved in a physical confrontation in which Mr. Campbell put his arm out to push Claimant and Claimant fell. Claimant told Mr. Mead he was shoved hard by Mr. Campbell.

Mr. Campbell told Respondent's HR he did not recall if he pushed Claimant. Mr. Campbell testified he put his hand on Claimant's chest, but did not apply any force.

¹⁸ Campbell Depo., Ex. 1 at 21.

Mr. Campbell apologized to Claimant at the hospital for shoving him. Claimant's son witnessed this apology.

They both said they were nose-to-nose, and both said they were equally to blame. They both indicated the incident "was stupid, it was just a heated argument that shouldn't have happened."¹⁹

Claimant's wife reported the incident to the police. Claimant told law enforcement he was shoved by Mr. Campbell. Mr. Campbell denied to the police he pushed Claimant or ever apologized.

Claimant told emergency medical personnel and Hays Medical Clinic he was pushed to the ground by a coworker.

Claimant testified Mr. Campbell did not push him and denied a physical confrontation occurred at all. Claimant testified Mr. Campbell was trying to grab him to prevent his fall.

When considering the multiple versions of the accident, the Board has no concern adopting ALJ Moore's conclusion Claimant was injured as a result of a voluntary fight with Mr. Campbell. Further, the Board agrees with the ALJ's finding Claimant "wholly lacks credibility."²⁰ The injury was caused by Claimant's voluntary participation in fighting by getting in Mr. Campbell's face and poking him in the chest. Pursuant to K.S.A. 44-501a(1)(E), compensation is therefore disallowed.

AWARD

WHEREFORE, it is the finding, decision, and order of the Board the Award of ALJ Bruce E. Moore, dated January 27, 2025, is affirmed.

¹⁹ P.H. Trans. (Dec. 6, 2023) at 12.

²⁰ ALJ Award (Jan. 27, 2025) at 12.

IT IS SO ORDERED.

Dated this _____ day of August, 2025.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

CONCURRING OPINION

The undersigned agree Claimant is barred from receiving compensation under K.S.A. 44-501. The majority decision, however, fails to address all the issues raised by the parties. Claimant also failed to prove he sustained personal injury from an accident arising out of and in the course of his employment with Respondent. Therefore, the undersigned write separately.

It is the intent of the Legislature the Workers Compensation Act be liberally construed only for the purpose of bringing employers and employees within the provisions of the Act.²¹ The provisions of the Workers Compensation Act shall be applied impartially to all parties.²² The burden of proof shall be on the employee to establish the right to an award of compensation, and to prove the various conditions on which the right to

²¹ See K.S.A. 44-501b(a).

²² See *id.*

compensation depends.²³ After the employee proves a right to receive benefits, the burden shifts to the employer to show an exception barring compensation applies.²⁴

First, compensation should be denied because Claimant failed to prove by the greater weight of the credible evidence he was involved in an accident. 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.²⁵ Claimant presented two irreconcilable descriptions of the alleged work-related accident. First, Claimant alleged he was pushed to the floor by a coworker during a work-related fight. Second, Claimant alleged there was no fight, and he fell as he was turning around or walking away after talking with a coworker. The difference between these two versions is not *de minimis*. The remaining evidence concerning the alleged accident is also contradictory: Mr. Campbell denied pushing Claimant, but Claimant's son alleged Mr. Campbell apologized to Claimant for pushing him. Claimant failed to prove by a greater weight of the credible evidence the time and place of occurrence producing symptoms of an injury occurring during a single work shift.

Second, assuming, *arguendo*, Claimant was injured as a result of being pushed to the floor while fighting with a coworker, Claimant is barred from receiving compensation under K.S.A. 44-501. The Kansas Workers Compensation Act states compensation shall be disallowed if the injury resulted from the employee's voluntary participation in fighting with a coworker for any reason, work-related or otherwise.²⁶ If the testimony of a fight is believed, Claimant approached a coworker in a hostile manner, engaged in a heated argument over work performance, arguably made first physical contact, and fell after being pushed by the coworker in response. Even if the fight was work-related, the evidence of a fight indicates Claimant voluntarily participated in it, and was arguably the aggressor. Under this scenario, Claimant is barred from receiving compensation for voluntarily participating in fighting.

Third, if Claimant's second version of events is believed, the alleged accident and injury are not compensable because the accident or injury arose out of a personal risk. An injury by accident shall be deemed to arise out of employment only if there is a causal connection between the conditions under which work is performed and resulting accident.²⁷

²³ See K.S.A. 44-501b(c).

²⁴ See *Anderson v. PAR Electrical Contractors, Inc.*, No. 118,999, 2018 WL 6074279, at *3 (Kansas Court of Appeals unpublished opinion filed Nov. 21, 2018).

²⁵ See K.S.A. 44-508(d).

²⁶ See K.S.A. 44-501(a)(1)(E).

²⁷ See K.S.A. 44-508(f)(2)(B)(I).

The Kansas Workers Compensation Act states “arising out of and in the course of employment” shall not be construed to include an accident or injury arising out of a risk personal to the worker.²⁸

According to Claimant’s alternative version of events, Claimant and the coworker discussed Claimant’s work performance, and Claimant fell as he was turning away from the coworker or walking to his working area. Claimant’s testimony regarding what happened next is contradictory: Claimant initially testified he lost his balance, which was compromised from a prior right hip injury, and he fell down, but Claimant later testified he did not have balance problems. Claimant was not carrying anything, rushing to return to work, or distracted while talking to the coworker or engaging in work. There is no evidence Claimant fell due to a hazard on Respondent’s premises. Claimant did not prove his work exposed him to a unique risk of injury he would not encounter outside his working life. Rather, Claimant was injured while engaging in an activity of daily living, walking or turning, and the accident was caused either by poor balance caused by Claimant’s personal health condition or Claimant apparently tripped over his feet. Under this scenario, Claimant failed to prove the alleged accident or injury arose out of and in the course of his employment with Respondent.

For the foregoing reasons, the undersigned agree compensation should be denied herein. The remaining issues of nature and extent, temporary total disability compensation, past and unauthorized medical, and future medical treatment are moot.

BOARD MEMBER

BOARD MEMBER

c: (Via OSCAR)

Scott J. Mann, Attorney for Claimant
Joseph C. McMillan, Attorney for Respondent and its Insurance Carrier
Hon. Bruce E. Moore, Administrative Law Judge

²⁸ See K.S.A. 44-508(f)(3)(A)(iii).