

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

ROBERT DULTMEIER)	
Claimant)	
V.)	
)	AP-00-0491-031
HILL'S PET NUTRITION INC.)	CS-00-0482-332
Respondent)	
AND)	
)	
INDEMNITY INS. CO. OF N. AMERICA (INA INS))	
(CT GEN))	
Insurance Carrier)	

ORDER

Claimant appeals the June 26, 2025, preliminary hearing Order entered by Administrative Law Judge (ALJ) Brian Brown.

APPEARANCES

Jeff K. Cooper and Jordan Cooper appeared for Claimant. Daniel Lobdell appeared for Respondent and its insurance carrier.

RECORD AND STIPULATIONS

The Board adopted the same stipulations and considered the same record as did the ALJ, consisting of the transcript of Preliminary Hearing from May 12, 2025, with exhibits attached¹; Evidentiary Deposition of Anna Ellul taken May 19, 2025, the documents of record filed with the Division and the parties' briefs.

ISSUES

1. Did Claimant provide proper notice?
2. Did Respondent have actual notice of a work-related injury to the Claimant's low back?

¹ Claimant objected to his discovery deposition being admitted as part of the record. The objection was noted and overruled by the ALJ and admitted as Exhibit E, marked as 5.

FINDINGS OF FACT

Claimant began working for Respondent on December 5, 2022, as a grain room technician. This job required Claimant to gather ingredient products produced by Respondent, bring them to the grain room with a forklift and unload them manually into hoppers. The bags containing the ingredients weighed 50 to 75 pounds. Claimant worked 12-hour shifts from 7:00 p.m. to 7:00 a.m. Saturday, Sunday and Monday. The work was physically demanding.

Claimant testified to nightly back aches on the days he worked since the beginning of his employment with Respondent. Claimant attributed these aches to 12 hours of lifting 50 to 75 pound bags repeatedly three days in a row. These aches were relieved with rest.

In August 2023, after experiencing some low back and upper back strains, Claimant contacted Respondent about what he had to do so he could take some time off to rest. Claimant was advised by Heather Mosqueda, in HR (Human Resources), to file for Family and Medical Leave (FMLA). Claimant missed work from August 11 to 15, 2023, due to back pain. Claimant went to his personal physician, Dr. Leinwetter, to get the FMLA paperwork completed. FMLA paperwork was completed by Dr. Leinwetter on September 14, 2023, stating Claimant was unable to work from August 11, 2023, to August 15, 2023, due to lumbar radiculopathy, which he characterized as a chronic condition. Since Claimant had not worked for Respondent a year, he did not qualify for disability, vacation or personal leave.

On September 23 and 24, Claimant worked his 12 hour shift went home and went to bed after his shift ended at 7:00 p.m. Around 2:00 a.m., he woke up and could not sit up or roll out of bed. He was scheduled to work that night. He called the employer asking to speak with the lead on duty. His call was transferred to Anna Ellul. Claimant told Ms. Ellul he was unable to work his scheduled shift because of severe back pain. Claimant told Ms. Ellul he believed it was due to his work. According to Claimant, Ms. Ellul told him to get a doctor's note and not to worry about disciplinary action or points going against him for his absences.

In September 2023, Ms. Ellul was an Operations team leader. She was responsible for operations on the floor between production, processing, and packaging. She was a liaison with the workers, the union and the office.

According to Ms. Ellul, she first learned Claimant was claiming a work injury on May 9, 2025. She did not recall having a phone conversation with Claimant on September 24, 2023, about him hurting his back due to work. If she had remembered a conversation about Claimant hurting his back at work, she would have referred him to HR and then emailed HR notifying them of a work injury. She would have also contacted Environmental Health Services (EHS). She would log the reason the employee was calling and whether

Paid Time Off (PTO) or FMLA was being used for the hours the employee would be absent.

Ms. Ellul confirmed she is aware of Respondent's policy for reporting work injuries. She testified work injuries must be reported to a team lead if it is not on shift. After that, the team lead reports it to EHS and HR, management, then a formal report is created with all the details of what happened when the employee was injured on the job. She testified employees receive training on this, but did not know the specifics because operators receive different training with EHS.

Claimant returned to work a week later for his Saturday shift and attended a staff meeting with HR at which time he again reported his back injury to HR. He reported getting medication for inflammation and had a followup visit scheduled. Claimant also submitted work restrictions. He was instructed to keep them posted. Claimant was not told about seeing a workers compensation doctor and had no idea it was something he needed to do.

Claimant talked Heather Mosqueda at the HR meeting. She has worked in Respondent's HR department since April 11, 2022. She oversees recruitment, on-boarding new hires, leave management, and disciplinary drafting. She testified if an employee reports a work injury to her, she puts them in touch with EHS or the safety department who handles workers compensation claims.

Ms. Mosqueda testified she on-boarded Claimant through orientation which included providing instructions on what to do should there be a work injury, which included reporting it immediately to a team leader, HR or EHS.

Ms. Mosqueda testified she first learned of Claimant having issues with his back around August 2023. He did not state at that time it was work-related. There was no discussion about the cause of his pain. Ms. Mosqueda felt it was not her position to ask. She testified Claimant asked about FMLA, since he did not qualify for paid leave because he had not been there a year yet. She directed him to apply for an unpaid leave of absence under the FMLA guidelines.

Ms. Mosqueda first became aware of Claimant claiming his back injuries were work-related was around March 2024, when she received this information from Allison, the HR director who handled it. She testified that had anyone else notified her, she would have alerted EHS. Ms. Mosqueda testified she would never tell Claimant he had to keep working despite a work injury because he had not met his one year anniversary yet. She also indicated Claimant not having sick or vacation leave yet would not have required him to come into work if he were injured.

Ms. Mosqueda testified she was aware Claimant had back problems, but was unaware he was alleging they were work-related. She was not familiar with his job duties.

Ms. Mosqueda testified she was not aware of and was not a part of any staff meeting with Claimant regarding a doctor's note.

Claimant met with Dr. Lee E. Leinwetter, his personal doctor, on September 14, 2023, with chronic low back pain in the lumbar and sacroiliac areas. Claimant described the pain as a moderate aching and shooting pain. Dr. Leinwetter diagnosed lumbar pain with radiation down the right leg; sciatica of the right side; and spasm of right piriformis muscle.

Claimant testified the pain he had on September 24, 2023, was different than the pain he experienced before. The pain did not go away in a day. He was not able to stand up straight, could not sit down for long and could not lift his foot forward. His pain was constant and sharp, going up and down his back and his leg.

When Claimant saw Dr. Leinwetter after September 24, 2023, he was told his back problems were from his working and bending over to pick up the bags. Claimant was referred for an MRI. The MRI showed Claimant had 3 bulging discs.

Claimant reported in an email dated November 29, 2023, to Allison Sedore, the HR director, he thought he had a herniated disk.

Claimant continued to work without work restrictions from September 24, 2023, until December 5, 2023, which was difficult for him. As of December 5, 2023, he had been there 1 year and was eligible for paid time off. He used all the vacation and sick leave he was given, which was approximately one month.

According to Claimant, Dr. Leinwetter had told him his back complaints were work-related. However, there are no records from Dr. Leinwetter, admitted into evidence documenting Dr. Leinwetter opining Claimant's back pain was work-related. Claimant did not specify when Dr. Leinwetter told him his back injury was work-related, just it was after September 24, 2023.

When Claimant exhausted all his paid leave, he applied for FMLA on December 29, 2023. It was noted Claimant had degenerative disc disease and multilevel disk protrusion of the low back. It was also noted that Claimant's work required him to lift and move heavy objects. He was unable to lift, push, pull anything greater than 10 pounds. On January 8, 2024, the paperwork for FMLA was completed by Dr. Leinwetter.

According to Claimant, he worked 4 or 5 six-hour shifts in January 2024. Claimant has not worked for Respondent since January 8, 2024.

The first medical record documenting Claimant's back injury was work-related was from Dr. Corey Trease on April 19, 2024. Claimant was referred to Dr. Trease by his attorney.

Claimant filed an application for workers compensation benefits on April 4, 2024, alleging repetitive injury to his low back and right lower extremity.

Currently, Claimant has a dull strong pain in his low back at all times. If Claimant moves his right leg, he experiences a strong sting or shock in his right leg. Claimant's pain level is usually at a 5 but will go up to 10 if he moves too much. Claimant has to frequently change positions because if he stays in one position too long his pain increases. Claimant no longer mows his lawn or plays basketball. Most of his days are spent sitting and watching TV. Claimant does not lift anything because it is likely he will be unable to stand up straight for several days.

Dr. Burton, who saw Claimant at the request of the Court on February 7, 2025, Claimant was given restrictions of no lifting over 20 pounds except on occasion and lifting 10 pounds frequently.

Claimant's testimony was erratic and uncertain. Claimant contended he did not fully understand what type of injuries workers compensation covers. He believed there had to be a specific event for a work injury to be compensable. Respondent pointed out Claimant's testimony about him not taking a planned trip to Italy is not credible. Claimant testified he did not take the trip to Italy due to his back. However, Respondent pointed to an email referencing Claimant being in Chicago and thus according to Respondent Claimant took his trip to Italy. Thus, Claimant's testimony is not credible about reporting his work injury timely.

The ALJ found Claimant's date of accident to be September 24, 2023, because Claimant, Dr. Trease and Dr. Burton indicate his lumbar injury resulted from the September 24, 2023, work shift. The ALJ also found Claimant's date of accident is September 14, 2023, for a repetitive trauma injury. However, at the beginning of award The ALJ stated the date of accident is September 24, 2023. The ALJ held Claimant had not established he provided proper notice to Respondent by a preponderance of the credible evidence a work injury within 20 days of September 24, 2023, and therefore, denied Claimant's request for benefits. The ALJ found Claimant's testimony about notice not credible because two employer witnesses testified they do not remember Claimant telling them his back problems were work related and if Claimant had done so they would have taken certain steps in accordance with Respondent's policies.

PRINCIPLES OF LAW AND ANALYSIS

Claimant argues the timing of the notice defense raises suspicions as to the credibility of the Respondent's witnesses and overall defense. Claimant asserts that based on the entire record, the evidence proves the Claimant provided adequate notice.

Respondent argues Claimant failed to provide timely and requisite notice of a September 24, 2023, injury or repetitive trauma. Respondent contends it was not aware Claimant was claiming a work injury until March 2024. The ALJ's decision should be affirmed.

The issue is whether notice was properly given by Claimant to Respondent. To make that determination, you must first have a date of accident.

Claimant is alleging a repetitive trauma injury to his low back and right lower extremity. There is no evidence of a particular acute event causing Claimant's injury. There is evidence of a gradually worsening back condition. Dr. Leinwetter who saw Claimant on September 14, 2023, described Claimant's back condition as chronic. The evidence established Claimant was injured due a repetitive trauma:

K.S.A. 44-508(e) sets out the criteria for determining the date of injury in the case of a repetitive trauma injury.

In the case of injury by repetitive trauma, the date of injury shall be the earliest of:

- (1) The date the employee, while employed for the employer against whom benefits are sought, is taken off work by a physician due to the diagnosed repetitive trauma;
- (2) the date the employee, while employed for the employer against whom benefits are sought, is placed on modified or restricted duty by a physician due to the diagnosed repetitive trauma;
- (3) the date the employee, while employed for the employer against whom benefits are sought, is advised by a physician that the condition is work-related; or
- (4) the last day worked, if the employee no longer works for the employer against whom benefits are sought.

In no case shall the date of accident be later than the last date worked.

Claimant was off work from August 11 to 15, 2023, due to his back. Claimant then saw Dr. Leienwetter on September 14, 2023, for him to complete FMLA paperwork for Claimant's absences on August 11 to 15. It was on September 14, 2023, Dr. Leienwetter documented Claimant was off work due to a chronic back condition

Based on K.S.A. 44-508(e)(1) the date of injury is September 14, 2023. This is the date a doctor documented Claimant was off work due to his repetitive injury. This the earliest date for date of accident according to K.S.A. 44-508(e). September 24, 2023, arguably could be the date of accident but it is not the earliest possible date of accident.

K.S.A. 2023 Supp. 44-520 states:

(a) (1) Proceedings for compensation under the workers compensation act shall not be maintainable unless notice of injury by accident or repetitive trauma is given to the employer by the earliest of the following dates:

(A) 20 calendar days from the date of accident or the date of injury by repetitive trauma;

(B) if the employee is working for the employer against whom benefits are being sought and such employee seeks medical treatment for any injury by accident or repetitive trauma, 20 calendar days from the date such medical treatment is sought; or

(C) if the employee no longer works for the employer against whom benefits are being sought, 10 calendar days after the employee's last day of actual work for the employer.

Notice may be given orally or in writing.

(2) Where notice is provided orally, if the employer has designated an individual or department to whom notice must be given and such designation has been communicated in writing to the employee, notice to any other individual or department shall be insufficient under this section. If the employer has not designated an individual or department to whom notice must be given, notice must be provided to a supervisor or manager.

(3) Where notice is provided in writing, notice must be sent to a supervisor or manager at the employee's principal location of employment. The burden shall be on the employee to prove that such notice was actually received by the employer.

(4) The notice, whether provided orally or in writing, shall include the time, date, place, person injured and particulars of such injury. It must be apparent from the content of the notice that the employee is claiming benefits under the workers compensation act or has suffered a work-related injury.

(b) The notice required by subsection (a) shall be waived if the employee proves that (1) the employer or the employer's duly authorized agent had actual knowledge of the injury; (2) the employer or the employer's duly authorized agent was unavailable to receive such notice within the applicable period as provided in paragraph (1) of subsection (a); or (3) the employee was physically unable to give

such notice.

(c) For the purposes of calculating the notice period proscribed in subsection (a), weekends shall be included.

On September 24, 2023, Claimant talked by telephone to the team leader Ms. Ellul and told her his back condition was going to keep him from coming to work that evening for his scheduled shift. Claimant told her his back condition was “probably due to work”. Such words constitute actual notice. Ms. Ellul is the employer’s authorized agent since she is the team leader.

Respondent denies notice because Ms. Ellul testified she does not remember the conversation with Claimant on September 24, 2023. But if it had occurred she would have notified HR and EHS. Claimant would also have instructed to contact HR and EH to report a work accident.

The Board does not find Respondent’s denial of actual notice persuasive. It is denial based on I don’t remember with the addition if such a conversation had occurred I would have taken steps to report it. Such statements are speculation and are not persuasive.

Respondent attempts to discredit Claimant’s testimony because it is confusing and erratic. Much of this confusion is due to Claimant’s attempts to deal with his back injury and keep his job. Claimant lacked sufficient information on how is the best way to go about dealing with a work injury, like filing a workers compensation claim. Claimant mistakenly believed you had to have a traumatic event to have a work injury. Respondent points out Claimant reported he cancelled a planned trip to Italy due to his back but there was an email from Claimant about a plane trip and Chicago which to Respondent Claimant went to Italy. To the Board this does not discredit Claimant’s straight forward testimony he told Ms. Ellul on September 24, 2023, he hurt his back and he believed it was because of his work.

It is found and concluded Claimant gave actual notice on September 24, 2023, a date within 20 calendar days from the date of injury, September 14, 2023. Claimant’s notice was timely and legally sufficient.

DECISION

WHEREFORE, it is the finding, decision and order of the undersigned Board Member the Order of ALJ Brian Brown dated June 26, 2025, is reversed. The matter is remanded to the ALJ to rule on Claimant’s preliminary hearing requests of authorized medical treatment and temporary total benefits.

IT IS SO ORDERED.

Dated this _____ day of September, 2025.

REBECCA SANDERS
BOARD MEMBER

c: Via OSCAR

Jeff K. Cooper and Jordan Cooper, Attorneys for Claimant
Daniel Lobdell, Attorney for Respondent and its Insurance Carrier
Hon. Brian Brown, Administrative Law Judge