

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

MARTIN MADDEN)	
Claimant)	
V.)	
)	AP-00-0491-331
J. WARREN CO., INC.)	CS-00-0478-282
Respondent)	
AND)	
)	
KANSAS BUILDERS INSURANCE GROUP)	
Insurance Carrier)	

ORDER

Claimant requests review of the July 22, 2025, preliminary hearing Order entered by Administrative Law Judge (ALJ) David J. Bogdan.

APPEARANCES

Roger D. Fincher appeared for Claimant. Michael P. Bandre and Mark Hoffmeister appeared for Respondent and its insurance carrier (Respondent).

RECORD AND STIPULATIONS

The Board adopted the same stipulations and considered the same record as the ALJ, consisting of the transcript of the Preliminary Hearing held November 29, 2023, with exhibits attached, and the documents of record filed with the Division.

ISSUE

Did Claimant provide proper and timely notice of his injury by accident to Respondent?

FINDINGS OF FACT

Claimant, born in 1960, began working for Respondent as a laborer in 2015. Respondent performs street light and traffic signal installation. On September 7, 2022, Claimant worked with a coworker and his field supervisor, Dan Rosenberger, on a project located on US-75 highway near 37th Street in Topeka. Claimant was in a muddy trench,

approximately three feet deep, attempting to put connectors on a pipe when his right leg slipped. Claimant explained: “Dan had been he was right there bringing me parts and my leg just slipped down the pipe until I heard a pop and pretty good pain in my right hip and I said a lot of bad words.”¹ Claimant took a break before completing his shift at a slower pace.

Mr. Rosenberger has worked for Respondent since 1999. He is an elevated traffic signal technician in charge of work crews as a field supervisor. Mr. Rosenberger recalled the day of Claimant’s incident:

A. What I recall is that he was exiting the trench and he cursed and said, Oh, my hip, I think I popped my hip. And I said, Well, get your old ass out of the trench, and he proceeded to get out of the trench.

Q. So it was your understanding or impression that when he was complaining about his hip at that moment, that it was something that had just happened?

A. Yes.²

Mr. Rosenberger testified he did not notify Respondent’s owners of the incident and had no official duty to do so. Claimant did not request benefits or medical treatment from Mr. Rosenberger. According to Mr. Rosenberger, Claimant repeated he believed he injured his pelvis a few times throughout the day of the incident. Claimant also periodically complained of pain in his hip after September 7, 2022. Mr. Rosenberger explained why he did not notify Respondent’s owners:

So [Claimant] is an older gentleman and he would complain about various body parts hurting on any given day before and after this incident. On the day of the incident, when the incident happened, he was able to exit the trench and gather himself for a few moments and then proceed to still do the duties of the day.³

Mr. Rosenberger did not know if Respondent had a written policy directing employees on how to report a workplace injury. He testified:

Q. So let’s say you were to get hurt at work. Would you have any place that you would go to look at something that was written down and be like, Oh, yeah, I need to do these things?

¹ P.H. Trans. at 14.

² *Id.*, Resp. Ex. A at 13.

³ *Id.* at 14.

A. Something written down, no.

Q. So anything you know about workplace injuries or reporting them is just in your head?

A. Yes.⁴

Claimant testified at the preliminary hearing:

Q. And did you know anything about who you were supposed to report an accident to at work?

A. In the past, we've always talked to whoever the supervisor was at the time.... Dan was our supervisor.

We told Dan if we were going to be gone a week, if you're going to be gone for two days, if you have doctors appointment, Dan was the person you would tell. He put it in his phone and at that point, it went out to Amanda [King] and Adam [Warren].⁵

Amanda King is Respondent's office manager and daughter of the owner, Joe Warren. She has worked for Respondent for over 20 years. As office manager, Ms. King talked with new hires about Respondent's policies. Included in those discussions were workers compensation claims and how to report them. Ms. King stated all workers compensation claims should be reported to either Joe Warren, vice-president Adam Warren, or herself. Ms. King testified these instructions are located in the employee manual and were signed for by Claimant. The employee manual and Claimant's signed acknowledgment are not in evidence.

Ms. King indicated there is also a workers compensation informational sign posted on a bulletin board above Adam Warren's desk. She described:

Q. What does that sign say?

A. It's the work comp claim that work comp gives you and it gives the numbers on who to call. There is not one that says specifically me on that form, it's just the form that needs to be filled out and there is a yellow form that says who to call for work comp.⁶

⁴ *Id.* at 16.

⁵ P.H. Trans. at 18.

⁶ *Id.*, Resp. Ex. C at 14.

Claimant continued to work his regular shift after September 7, 2022. He testified he informed Adam Warren about a week or two after the incident: “I said my hip is not getting any better. We need to do something about this.”⁷ Claimant was told by Adam Warren to see a chiropractor and to use the company credit card for payment. Claimant stated Adam Warren said they “don’t want this on workman’s comp.”⁸ Claimant visited the chiropractor three times, with the initial visit occurring on October 11, 2022. Claimant estimated his conversation with Adam Warren happened “a few weeks prior” to October 11, 2022, as it took time to get an appointment with the chiropractor’s office.⁹

Adam Warren agreed he gave permission for Claimant to use the company credit card for chiropractor appointments. He could not recall when he first learned of Claimant’s incident, but guessed it was in October 2022 based on the chiropractor receipts.¹⁰ Adam Warren described his conversation with Claimant:

[Claimant] said, “Oh, I injured – I heard a pop and my hip’s been bothering me. I said, “Well, do you need to go see a doctor?” And he said specifically, “I do not want to file a work comp.” I said, “Well, why don’t you go see a chiropractor. Maybe they can help you.” And I said, “I guess we can pay for it.” I mean, I figured we’d help him out, I mean, I didn’t know specifically the details, if it really got hurt at work, other than what he said. But, I mean, we’re a small company. We try to help out if we can.”¹¹

Adam Warren stated Respondent has paid for minor work-related injuries in the past. He denied paying for illnesses or any issue not related to an injury on the job. Adam Warren testified:

Q. And when [Claimant] talked to you about wanting to go to a doctor or chiropractor or whatever it ended up being, you understood at that point he was relating that to the work he did in this hole, correct?

A. Yes.¹²

⁷ P.H. Trans. at 16.

⁸ *Id.* at 17.

⁹ *Id.*

¹⁰ *See id.*, Resp. Ex. B at 6.

¹¹ *Id.* at 7.

¹² *Id.* at 18.

Claimant continued to seek treatment, on his own, for his right hip pain. Following diagnostic studies and a steroid injection, Claimant was referred to Dr. J. Paul Schroepfel. Dr. Schroepfel obtained an MRI, which was read to reveal a tear of the anterosuperior labrum with moderate chondromalacia of the right hip joint. Dr. Schroepfel performed a right hip arthroscopy on August 24, 2023.

Ms. King testified she first learned Claimant was claiming workers compensation for his right hip in July 2023, prior to the surgery. Ms. King acknowledged she was aware of Claimant's hip injury in October 2022 when he submitted a receipt from the chiropractor. Ms. King spoke with Adam Warren about Claimant's chiropractor visit. Ms. King elaborated:

Q. [Adam Warren] said that he had authorized [Respondent] to pay for the chiropractor appointment?

A. Yes.

Q. What was your understanding of why he approved [Respondent] paying for those appointments?

A. I did not know that he was in an injury. Adam just said that he was having some pain in his hip and that he suggested him to go to the chiropractor.

Q. Does [Respondent] have a history of paying for employee's doctor's appointments that are not work related?

A. Not generally, no. I guess I didn't press Adam for anymore details as to why he was sending him to the chiropractor.

Q. Can you give me any other times that [Respondent] paid for non-work-related appointments for employees?

A. Not off the top of my head, no, I can't.¹³

Ms. King stated she was unaware Claimant's hip injury was work-related until he spoke with her in July 2023. Claimant worked continuously from September 2022 through August 2023, and he did not request additional medical treatment following the chiropractor visits. Ms. King indicated, to her knowledge, Claimant had no difficulty performing his job duties either before or after September 7, 2022.

¹³ P.H. Trans., Resp. Ex. C at 15-16.

Claimant has not worked since August 18, 2023, when he was taken off work by his doctor. As of the date of the preliminary hearing, November 29, 2023, Claimant continued to be employed by Respondent.

The ALJ found Claimant failed to sustain his burden of proving appropriate notice of accident was provided to Respondent. The ALJ determined Claimant did not provide proper notice to Joe Warren, Adam Warren, or Amanda King in a timely or sufficient manner.

PRINCIPLES OF LAW AND ANALYSIS

Claimant argues he met his burden in establishing the notice requirements under K.S.A. 44-520 were met. Claimant contends his supervisor had actual knowledge of the incident. Further, Claimant argues there is no evidence Respondent's designation of "an individual or department to whom notice must be given"¹⁴ was communicated to him in writing.

Respondent maintains the ALJ's Order should be affirmed. Respondent argues Claimant failed to provide notice of an injury to any of Respondent's owners until October 2022, more than 20 days after the accident, and failed to provide sufficient notice to his supervisor on September 7, 2022.

Where an employee alleges personal injury from an accident arising out of and in the course of employment, the employee must give the employer notice by the earliest of twenty days from the date of accident, twenty days from the date medical treatment is sought when the employee continues to work for the employer, or ten days from the last date worked if the employee no longer works for the employer, whichever is earliest. Notice must be provided either to the employer's designee or to a supervisor or manager, and must include the time, date, place and particulars, and must include evidence the employee is seeking workers compensation benefits or has sustained a work-related injury.¹⁵

The notice requirement, however, shall be waived if the employer had actual knowledge of the injury. The Board previously noted the Act does not define "actual knowledge," but "notice" and "knowledge" were synonymous.¹⁶ Casual conversations about

¹⁴ Claimant's Brief (filed Aug. 18, 2025) at 4; *citing* K.S.A. 2022 Supp. 44-520(a)(2).

¹⁵ See K.S.A. 44-520(a).

¹⁶ See *Gilkey v. State of Kansas*, No. 1,066,859, 2016 WL 453036, at *7 (Kan. WCAB Jan. 26, 2016); see also *Cunningham v. Quivira, Inc.*, No. 1,084,856, 2018 WL 6587520, at *5 (Kan. WCAB Nov. 5, 2018); *Wakes v. Budget Blinds*, No. 1,083,446, 2018 WL 6587517, at *3 (Kan. WCAB Nov. 27, 2018).

pain or symptoms has been held insufficient to satisfy proof of notice to the employer,¹⁷ and an employer does not have a duty to rule out a work-related cause of an employee's pain.¹⁸ Rather, the employer must have either been given express or implied facts sufficiently specific to impose the duty to investigate further and to furnish a natural clue to the ultimate fact.¹⁹ Where an employer only knew an employee was limping more than usual, a single Board Member held this was insufficient to give cause to investigate because there was no suggestion of a work injury.²⁰

The ALJ found Claimant failed to sustain his burden of proving appropriate notice of accident was provided. The ALJ appeared to be operating under the theory Claimant was only complaining about his hip pain, which was not notice of an accident. The ALJ does not refer to Mr. Rosenberger's testimony noting his understanding that when Claimant was complaining about his hip immediately after the accident, it was something that had just happened.

Mr. Rosenberger was present at the time of Claimant's injury by accident. He testified he understood something had just happened to Claimant's hip. The undersigned finds Respondent had actual knowledge of a work-related accident on the day the accident occurred.

DECISION

WHEREFORE, it is the finding, decision and order of the undersigned Board Member the Order of ALJ David J. Bogdan dated July 22, 2025, is reversed.

¹⁷ See *Camp v. Bourbon County*, No. 104,784, 2012 WL 3135512, at *9 (Kansas Court of Appeals unpublished opinion filed July 27, 2012); see also *Gardner v. Certainteed Corp.*, No. 1,064,307, 2013 WL 4051836, at *5 (Kan. WCAB July 25, 2013) (citing *Mendoza v. American Warrior, Inc.*, No. 1,018,561, 2005 WL 600055 [Kan. WCAB Feb. 1, 2005]; *Ball v. Overnite Transportation Company*, Nos. 219,411 & 219,442, 1997 WL 377949 [Kan. WCAB June 19, 1997]).

¹⁸ See *Cunningham*, 2018 WL 6587520, at *4.

¹⁹ See *Wakes*, 2018 WL 6587517, at *3.

²⁰ See *Cunningham*, 2018 WL 6587520, at *6.

IT IS SO ORDERED.

Dated this _____ day of October, 2025.

SETH G. VALERIUS
BOARD MEMBER

c: Via OSCAR

Roger D. Fincher, Attorney for Claimant
Michael P. Bandre, Attorney for Respondent and its Insurance Carrier
Mark Hoffmeister, Attorney for Respondent and its Insurance Carrier
Hon. David J. Bogdan, Administrative Law Judge