

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

JOSH MOSKAL)	
Claimant)	
V.)	
)	AP-00-0491-346
UNITED PARCEL SERVICE, INC.)	CS-00-0468-039
Respondent)	
AND)	
)	
LM INS. CORP.)	
Insurance Carrier)	

ORDER

Claimant requested review of the July 24, 2025, motion hearing Order by Administrative Law Judge (ALJ) Gary K. Jones. This is a post-award hearing proceeding for attorney fees. The Board heard oral argument on November 20, 2025.

APPEARANCES

E. Thomas Pyle, III, appeared for Claimant. Kelsy Allison 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 Motion for Attorney Fees/Motion for Penalties hearing held July 1, 2025, with exhibits attached, the documents of record filed with the Division, and the briefs submitted by the parties.

ISSUES

1. Does the July 1, 2024, version of K.S.A. 2024 Supp. 44-510k(b)(2) apply retroactively?
2. Is Claimant entitled to the payment of post-award attorney fees and expenses for the time period of January 1, 2024, through December 31, 2024?

FINDINGS OF FACT

Claimant was involved in an accident on August 12, 2021. Claimant filed an Application for Benefits (E-1) on June 8, 2022, claiming injuries to his right lower extremity, right hip, and back. The ALJ issued an Award on May 22, 2023, finding Claimant sustained 7 percent whole person impairment and leaving the rights to future medical and review and modification open.

On June 17, 2023, Claimant filed an Application for Post Award Medical, Termination or Modification of Medical Benefits (E-4). Claimant then filed a Motion for Post Award Attorney Fees and Expenses on April 27, 2024. Also, on October 14, 2024, an Agreed Order awarded Claimant \$3,000 in post-award attorney fees through December 31, 2023.

Claimant filed another E-4 on September 16, 2024, seeking post-award medical treatment “to cure or relieve the effects of his work-related injuries and payment of medical bills from Anesthesia Consulting Services and Kansas Imaging Consultants.”¹ Claimant also filed an Application for Preliminary Hearing (E-3) on September 16, 2024. An Agreed Order, issued October 14, 2024, ordered Respondent to pay the bills from Anesthesia Consulting Services and Kansas Imaging Consultants.

Claimant filed a Motion for Post Award Attorney Fees and Expenses on March 31, 2025, seeking fees for services provided through December 31, 2024. Claimant then filed an Application for Penalties on May 15, 2025, indicating the bill from Kansas Imaging Consultants had not been paid as ordered. The ALJ held a hearing on both motions on July 1, 2025.

At the hearing, Claimant submitted into evidence an Affidavit with redacted timesheets showing work completed from January 1, 2024, through December 31, 2024. Claimant’s attorney estimated he worked 35.2 hours on post-award medical issues and incurred \$239.40 in expenses during the year. Claimant’s attorney requested \$8,800 in post-award attorney fees plus expenses. Claimant’s attorney affirmed his “legal services have involved no additional award of disability compensation but [have] resulted in an additional award of medical treatment, medical expenses, and medical mileage.”²

Respondent objected to the payment of post-award attorney fees and expenses. Respondent argued a portion of K.S.A. 2024 Supp. 44-510k(b)(2) applied retroactively, and Claimant failed to overcome the presumption set forth therein. Respondent stated all

¹ E-4 (Sept. 16, 2024).

² M.H. Trans., Cl. Ex. 1 at 2.

requested medical benefits were timely provided to Claimant. Further, Respondent argued much of Claimant's attorney's time was spent obtaining medical records Respondent had provided to Claimant. Respondent did not dispute Claimant's attorney's post-award fee rate of \$250 per hour, nor did it dispute whether he conducted the work.

On July 2, 2025, the ALJ issued an Order on Claimant's request for penalties, noting it was unclear whether the Kansas Imaging Consultants bill had been paid from the evidence presented. The ALJ ordered Respondent to pay the bill if it had not already done so. Respondent was given 30 days to obtain documentation of the paid bill and provide the same to Claimant. The ALJ declined to order penalties and reserved the issue of attorney fees. Respondent submitted a billing statement on July 29, 2025, indicating the bill in question was paid.

On July 24, 2025, the ALJ issued an order on Claimant's motion for attorney fees. The ALJ found Claimant was entitled to \$1,750 in attorney fees and \$207.40 in expenses for post-award work completed in 2024. The ALJ concluded the amendment in K.S.A. 44-510k(b)(2), effective July 1, 2024, was procedural and remedial in nature and did not prejudicially affect the rights of the parties since Claimant was entitled to the same medical treatment and had notice of the law change on July 1, 2024. The ALJ denied attorney fees and expenses beginning July 1, 2024, finding Claimant did not show "clear and convincing evidence that he has expended significant time and effort to obtain the benefits or that benefits were not provided."³ The ALJ found the 2024 version of the statute did not apply to attorney fees prior to the July 1, 2024, enactment of the statute. The ALJ ruled the respondent timely paid benefits.

For the time period of January 1, 2024, through June 30, 2024, Claimant requested attorney fees totaling \$4,725 and expenses of \$207.40. The ALJ found:

The Respondent timely provided all requested medical benefits. Again, there were no contested hearings for medical treatment held during 2024.

There is case law regarding this type of situation. In *May v. University of Kansas*, 25, Kan. App. 2d 66, 957 P.2d.1117 (1998) The Court of Appeals found that the Claimant was not entitled to attorney fees when the Respondent conscientiously complied with all provisions of an award. The Court also noted that purely clerical and ministerial post-award work by the Claimant's counsel is not recoverable.

...

There were some issues regarding unpaid bills. The Claimant did make some demands on the Respondent. There was communication between the Claimant and

³ ALJ Order (July 24, 2025) at 3.

his counsel. Some of the time spent by the Claimant's attorney is compensable. Some was merely administrative and ministerial. Some of the entries were not sufficiently specific as to allow the Court to say that the time spent should be reimbursed by the respondent.⁴

The ALJ did not state how many hours were being awarded or the hourly rate being approved. There is no indication the factors set forth in K.S.A. 44-536 were considered.

PRINCIPLES OF LAW AND ANALYSIS

Claimant argues the 2021 versions of K.S.A. 44-510k and K.S.A. 44-536(g) apply in this case. Claimant contends nothing in K.S.A. 2024 Supp. 44-510k(b)(2) states it applies retroactively to dates of accident prior to July 1, 2024. Claimant also argues the statutory change to K.S.A. 44-510k(b)(2) is substantive and does not apply retroactively. Further, if the statutory change is procedural, it prejudices the vested rights of Claimant and does not apply retroactively.

Alternatively, should K.S.A. 44-510k(b)(2) apply retroactively, Claimant maintains he is entitled to the full amount of his requested attorney fees and expenses. Claimant argues Respondent has admitted no evidence into the record supporting its compliance with the requirements of the new statute, and if it has, then Claimant has overcome that presumption.

Respondent argues the ALJ's Order should be affirmed. Respondent argues no fees are payable because: 1) 44-510k applies retroactively and the presumption of no fees applies; 2) Respondent timely paid the medical pursuant to *May*,⁵ and 3) Claimant is seeking payment clerical and ministerial tasks, which are not payable.

1. Does the July 1, 2024, version of K.S.A. 2024 Supp. 44-510k(b)(2) apply retroactively?

Claimant, in his Application for Review to this Board, asked the Board to determine if the 2021 versions of K.S.A. 44-536(g) and K.S.A. 44-510k apply in this claim. K.S.A. 44-536(g) was not amended in 2024. K.S.A. 44-510k was amended in 2024. Claimant argues the new statute does not apply retroactively.

⁴ ALJ Order (July 24, 2025) at 4.

⁵ *May v. The University of Kansas*, No. 135,577, 1997 WL 155134 (Kan. WCAB Mar. 28, 1997), *aff'd*, 25 Kan. App. 2d 66, 957 P.2d 1117 (1998).

The 2024 amendment to K.S.A. 44-510k includes a new section, K.S.A. 44-510k(b)(2), which states:

The application for hearing pursuant to this section shall, with specificity, identify the post-award medical benefit being sought. If the employer or insurance carrier provides the requested benefit within 30 days of receipt of the application, it shall be presumed that no costs or attorney fees shall be awarded. Such presumption may be overcome by clear and convincing evidence that the attorney pursuing post-award medical benefits expended significant time or resources in obtaining such benefits.

The law in effect on the date of accident generally controls. A statute operates prospectively in the absence of clear statutory language the Legislature intended it to operate retroactively.⁶ Nothing in K.S.A. 2024 Supp. 44-510k(b)(2) suggests the new provisions are meant to be applied retroactively.

As there is no language suggesting the Legislature intended the statute be applied retroactively, the Board finds K.S.A. 2024 Supp. 44-510k(b)(2) does not apply retroactively. The law in effect on August 21, 2021, shall be applied to determine whether attorney fees are appropriate in this case.

2. Is Claimant entitled to the payment of post-award attorney fees and expenses for the time period of January 1, 2024, through December 31, 2024?

K.S.A. 2021 Supp. 44-510k(c) states:

The administrative law judge may award attorney fees and costs on the claimant's behalf consistent with subsection (g) of K.S.A. 44-536, and amendments thereto. As used in this subsection, "costs" include, but are not limited to, witness fees, mileage allowances, any costs associated with reproduction of documents that become a part of the hearing record, the expense of making a record of the hearing and such other charges as are by statute authorized to be taxed as costs.

K.S.A. 2021 Supp. 44-536(g) provides:

In the event any attorney renders services to an employee or the employee's dependents, subsequent to the ultimate disposition of the initial and original claim, and in connection with an application for review and modification, a hearing for additional medical benefits, an application for penalties or otherwise, such attorney shall be entitled to reasonable attorney fees for such services, in addition to attorney fees received or which the attorney is entitled to receive by contract in

⁶ See *Bryant v. Midwest Staff Solutions, Inc.*, 292 Kan. 585, 588, 257 P.3d 255 (2011).

connection with the original claim, and such attorney fees shall be awarded by the director on the basis of the reasonable and customary charges in the locality for such services and not on a contingent fee basis.

(1) If the services rendered under this subsection by an attorney result in an additional award of disability compensation, the attorney fees shall be paid from such amounts of disability compensation.

(2) If such services involve no additional award of disability compensation, but result in an additional award of medical compensation, penalties, or other benefits, the director shall fix the proper amount of such attorney fees in accordance with this subsection and such fees shall be paid by the employer or the workers compensation fund, if the fund is liable for compensation pursuant to K.S.A. 44-567, and amendments thereto, to the extent of the liability of the fund.

(3) If the services rendered herein result in a denial of additional compensation, penalties, or other benefits, and it is determined that the attorney engaged in frivolous prosecution of the claim, the employer and insurance carrier shall not be liable for any portion of the attorney fees incurred for such services.

In *Pierson v. City of Topeka*,⁷ the Court of Appeals wrote, in the context of post-award attorney fees in post-award medical matters:

Kansas courts generally determine the reasonableness of attorney fees utilizing the eight factors set forth in KRPC 1.5(a). *Snider v. American Family Mut. Ins. Co.*, 297 Kan. 157, 169, 298 P.3d 1120 (2013). One of those factors, “the fee customarily charged in the locality for similar legal services” is identical to the second requirement of K.S.A. 2017 Supp. 44-536(g). Thus, an attorney fees analysis under K.S.A. 2017 Supp. 44-536(g) must incorporate the eight factors set forth in KRPC 1.5(a).

Sec. 1.5(a) of the Kansas Rules of Professional Conduct provides:

(a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

⁷ *Pierson v. City of Topeka*, 56 Kan. App. 2d 92, 105, 424 P.3d 549 (2018).

- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent.⁸

The Court of Appeals vacated an award of post-award attorney fees because there was no record the factors from K.S.A. 44-536 were considered, and the matter was remanded for further proceedings.

Claimant's attorney requested \$8,800 in post-award attorney fees, at the rate of \$250 per hour, plus expenses. Claimant's attorney submitted an affidavit in support of his claim for fees, with a copy of his fee statement. The Board has held evidence must show the services Claimant's attorney and office staff performed were necessary to insure the respondent paid the medical bills submitted.⁹ Additionally, the Board, in the past, has capped attorney fees at \$225 per hour.¹⁰

The affidavit did not address the requirements contained in *Pierson* and *May*. Many of the entries contained in the attorney fee statement are difficult to understand. The affidavit, with attachments, purports to represent 35.2 hours incurred in 2024, although some of the entries have no description, some entries appear to seek attorney fees for seeking attorney fees, and some entries appear to relate to the later motion for penalties unrelated to the application for attorney fees presently before the Board.

The ALJ did not consider the factors from K.S.A. 44-536 or apply the *Pierson* analysis in arriving at his award of fees. The ALJ awarded \$1,750 without explaining which entries were approved or disapproved. Without that specific information, it is impossible for the Board to review whether the ALJ's Order conforms with *Pierson*.

Per the Act, the Board is vacating the award of attorney fees and expenses, and remanding for further proceedings on: 1) whether post-award attorney fees are to be

⁸ KRPC 1.5(a) (2019 Kan. S. Ct. R. 226).

⁹ See *May*, *supra*, at *2.

¹⁰ See *Ard v. Catholic Health Initiatives*, No. AP-00-0467-574, 2022 WL 16725769 (Kan. WCAB Oct. 13, 2022).

awarded; and 2) if so, what is an appropriate fee using the factors set forth in K.S.A. 44-536.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Order of ALJ Gary K. Jones, dated July 24, 2025, is vacated and the matter remanded to the ALJ to conduct further proceedings and allow the parties to present additional evidence, if necessary, related to the issues outlined above.

IT IS SO ORDERED.

Dated this _____ day of December, 2025.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: (Via OSCAR)

E. Thomas Pyle, III, Attorney for Claimant
Kelsy Allison, Attorney for Respondent and its Insurance Carrier
Hon. Gary K. Jones, Administrative Law Judge