BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

STEVEN OROPEZA	)	
Claimant	)	
V.	)	AP-00-0491-472
	)	CS-00-0487-200
GENERAL MOTORS LLC	)	
Self-Insured Respondent	)	

ORDER

Respondent appealed the July 31, 2025, preliminary hearing Order entered by Administrative Law Judge (ALJ) Kenneth J. Hursh. Keith L. Mark appeared for Claimant. Aaron J. Greenbaum appeared for Respondent.

RECORD AND STIPULATIONS

The Board adopted the same stipulations and considered the same record as the ALJ, consisting of the transcript of Preliminary Hearing held July 30, 2025, with exhibits attached, and the documents of record filed with the Division.

ISSUES

1. Did Claimant's alleged injury arise out of and in the course of his employment, including whether the work accident was the prevailing factor causing Claimant's neck complaints?

2. Did the ALJ exceed his authority and/or jurisdiction in granting benefits?

FINDINGS OF FACT

Claimant worked on Respondent's assembly line installing "half shafts" into motors approximately 125 to 150 times a day. Half shafts are approximately two feet wide and shaped like a dumbbell. They weigh approximately 10 to 15 pounds. According to Claimant, the half shafts are supposed to slide in easily, but when they do not, they have to be forced into place.

On December 12, 2024, Claimant was putting in a half shaft, which was not going in easily. When he finally forced the half shaft into place, he immediately felt excruciating pain in the base of his neck and down his left arm to his fingertips. He reported the accident to the group leader and was referred to the plant medical department where he was examined by Jesse Cheng, M.D. Claimant was taken to medical on a medical cart and needed assistance to walk to the cart. Upon arrival to medical, Dr. Cheng noted Claimant needed assistance with ambulation due to his unsteady gait, was in obvious discomfort/distress and was unable to lift his left arm overhead. His working diagnosis was left rhomboid muscle spasm and trapezius strain/pain.

Claimant returned to work the next day. His condition had not improved, so he was placed on light duty, where he stayed for the rest of the week. Dr. Cheng ordered an MRI, which was provided on December 19, 2024. It showed multilevel degenerative change involving the cervical spine, resulting in mild to moderate right and moderate left foraminal and moderate central canal stenosis at C4-5, moderate to severe right greater than left foraminal and mild central canal stenosis at C5-6, and moderate left foraminal and central canal stenosis with effacement of the left lateral recess at C6-7. In a letter to Respondent's attorney dated March 11, 2025, Dr. Cheng opined the prevailing factor for Claimant's medical condition preexisted the work accident. Based on his review of the job and the evaluation of Claimant's medical condition, he stated:

> The work accident occurring on December 12, 2024 was thoroughly evaluated on December 12, 13, 16, 19, and 20, 2024; and based on the available medical records, the objective medical data does not support that work was the prevailing factor causing any injury, medical condition, and resulting disability.[1]

Dr. Cheng noted a Medical Workplace Walkthrough was performed of Claimant's job. It gave the size of the half shaft cylinder, stated the operator used both hands at chest level and the part fit easily into the aperture. Based on this description, Dr. Cheng opined "the objective medical data mechanism of injury does not correlate with the medical condition of left rhomboid muscle spasm."[2]

Respondent denied the claim. Claimant sought treatment at his expense with his primary care physician who referred him to Patrick Griffith, M.D. Dr. Griffith saw Claimant on December 31, 2024. Claimant was diagnosed with acute left C6-7 disc herniation with neck pain and cervical radiculopathy as well as continued ongoing neck pain secondary to cervical disc bulging, C4-5 and C5-6. Dr. Griffith provided conservative treatment, which included physical therapy, cervical injections, prescription medications and most recently,

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[1] P.H. Trans., Respondent's Ex. B at 1.

[2] *Id*. at 1-2.

radiofrequency ablation. Dr. Griffith referred Claimant to Rohit Kesarwani, M.D., a neurosurgeon, who recommended C6-7 discectomy with anterior fusion.[3]

In a letter to Claimant's attorney dated April 7, 2025, Dr. Griffith stated:

> It is my medical opinion within a reasonable degree of medical probability that the prevailing factor giving rise to [Claimant's] diagnosis, work status and treatment are the direct result of the work-related injury that he suffered on December 12, 2024 while shoving a half shaft into a motor.[4]

Claimant continues to experience loss of range of motion (can not turn his head to the left); sharp, daily stabbing/throbbing pain; trouble sleeping; and numbness in his fingers. Claimant is off work based on the restrictions of Dr. Griffith. According to Claimant, he did not have any issues with his neck and left arm and was able to perform his regular job duties prior to his work accidental injury on December 12, 2024. He was working without restrictions and did not self-limit his work (or home) activities due to physical problems.

Prior Neck Problems

Claimant has a history of neck problems. While working for Respondent, Claimant sustained injuries to his whole body from repetitive trauma through November 16, 2015. Claimant saw Edward Prostic, M.D., on this date. He opined Claimant had a combination of cervical strain, with possible spinal stenosis, and peripheral nerve entrapment. Plain x-rays of the cervical spine were consistent with disc narrowing at C5-6. The doctor recommended an MRI of the cervical spine and epidural steroid injections, which were not provided.

On December 7, 2015, Prem Parmar, M.D., began treating Claimant. In a letter dated November 18, 2016, Dr. Parmar reviewed Dr. Prostic's report and opined an MRI of the cervical spine was not required because it was not work related.

On January 30, 2017, Claimant saw Dr. Fotopoulos for a Court-ordered independent medical evaluation (COIME). Claimant reported significant neck pain radiating to both shoulders which he attributed to working underneath cars installing brake lines. He reported occasional episodes of numbness in both hands. Dr. Fotopoulos diagnosed Claimant with chronic neck pain and recommended physical therapy to reduce Claimant's neck pain. If his condition did not improve, Dr. Fotopoulos recommended an MRI to be followed up with possible epidural steroid injections. He opined Claimant's medical

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[3] Dr. Kesarwani's records are not in evidence.

[4] P.H. Trans., Claimant's Ex. 1 at 2.

condition (carpal tunnel and possible neck pains) was due to the overhead work he performed. The MRI was not provided and Claimant did not receive additional medical treatment.

On December 30, 2017, Claimant saw Michael J. Poppa, D.O., at the request of his attorney. Claimant completed a pain diagram showing a stabbing pain at the base of his neck. Claimant reported: "When I do certain things (jobs at work looking up while bending under the cars) makes my neck hurt. Then I get pain down into the arm to my fingers. At times it feels like a knife in my neck."[5] Dr. Poppa found claimant to be at MMI, the prevailing factor for Claimant's medical condition and resulting disability/impairment was his work activities, provided a functional impairment rating and recommended future conservative medical treatment to address his ongoing symptoms, to include an MRI of the cervical spine should his cervical spine pain and symptoms continue.

On April 2, 2018, Claimant saw Peter Bieri, M.D., for a COIME. Claimant reported persistent neck pain, which had improved slightly with physical therapy and his recent job change. Claimant was not provided an MRI and he did not receive epidural block injections. Dr. Bieri opined Claimant's condition placed him in the default value of 2% functional impairment to the whole body.

On July 20, 2018, Claimant settled his neck claim, based on Dr. Bieri's 2% functional impairment to the whole body, leaving future medical open for two years. Claimant also settled a workers compensation claim for injuries sustained while in the course of his employment with Respondent to his upper extremities. The upper extremity injuries required surgical intervention to both upper extremities (right elbow and both wrists).

Claimant denied receiving treatment for his neck prior to December 2024, and did not recall his neck being a part of the July 2018 settlements. He testified between July 2018 and his work accident, he was able to perform his regular job duties without difficulty.

The ALJ found the claim compensable and ordered medical treatment, stating:

> Clearly, the claimant had some neck pain prior to the latest accident, whether he remembered it or not. The neck issue involved in the 2018 settlement did not seem serious. Dr. Bieri described the 2% rating as a "default" rating for the claimant's neck complaints. The claimant pointed out he worked full duty the seven years since the settlement with no additional medical treatment. There was no evidence to the contrary.

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[5] *Id*., Respondent's Ex. E at 14.

> Dr. Cheng of the respondent's plant medical department also commented on causation. He noted the claimant's MRI showed cervical diffuse spondylosis, cervical degenerative disc disease, and left sided cervical radiculopathy. Dr. Cheng's March 11, 2025 report said the claimant's injury could not be work related because the doctor observed the half shaft job duties of inserting a 1.5 foot, 8 pound shaft at chest level, not overhead or at the shoulder, and the shafts enter smoothly.
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> It was hard to see, without more explanation, why the body level for inserting the half shaft precluded the claimant from being injured the way the claimant reported it right after it happened. The claimant did not say he was [injured] inserting a half shaft smoothly. He said he was injured when the half shaft stuck and had to be forced.
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> The court found some deficiency in the assumptions in both causation opinions. Respondent's counsel suggested an independent medical examination (IME) as a possible remedy. The current version of K.S.A. 44-516 allows the court to order an IME for diagnosis, treatment recommendations, and work restrictions. It does not appear to give the court authority for an IME on causation absent the parties' agreement for same.
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> The court was more persuaded by Dr. Griffith. The claimant was not completely pain free prior to the December 12, 2024 accident, but appeared to have minimal, if any, effects from neck pain for some 7 to 8 years before the accident. Also, the recent MRI showed evidence of an acute injury.[6]

Respondent argues the credible evidence establishes Claimant's work accident was not the prevailing factor causing his neck condition, and thus Claimant failed to meet his burden of proving the alleged injury arose out of and in the course of his employment. In support of their argument, Respondent contends Dr. Griffith's opinion is not credible because it was based on Claimant not having any prior neck problems and he was not familiar with Respondent's machine operations. Respondent further argues Dr. Cheng provided the more credible evidence because he is Respondent's medical department physician, he is familiar with the mechanics of the workplace, he viewed the actual site and job performed by Claimant and was familiar with Claimant's preexisting medical conditions and treatment.

Claimant argues the Board does not have jurisdiction to review the preliminary decision awarding medical benefits. Should the Board find it has jurisdiction, Claimant maintains the Order should be affirmed.

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[6] ALJ Order at 2-3.

PRINCIPLES OF LAW AND ANALYSIS

The burden of proof shall be on the employee to establish the right to an award of compensation based on the entire record under a "more probably true than not" standard and to prove the various conditions on which the right to compensation depends.[7] The Board possesses authority to review *de novo* all decisions, findings, orders and awards of compensation issued by administrative law judges.[8] A *de novo* hearing is a decision of the matter anew, giving no deference to findings and conclusions previously made by the administrative law judge.[9]

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.[10] The accident must be the prevailing factor causing the injury. Prevailing factor is defined as the primary factor compared to any other factor, based on consideration of all relevant evidence.[11] An accidental injury is not compensable if work is a triggering factor or if the injury solely aggravates, accelerates or exacerbates a preexisting condition or renders a preexisting condition symptomatic.

Proof of prevailing factor is not dependent on medical evidence alone.[12] Preexisting degenerative conditions can be the prevailing factor, but the presence of a preexisting condition does not always preclude compensability after an accident.[13]

1. Claimant's December 12, 2024, work injury is the prevailing factor for the medical condition in his neck.

Claimant's argument the Board does not have jurisdiction to review the order of medical benefits is considered and rejected. Respondent's defense to Claimant's request for benefits is Claimant failed to prove his medical condition arose out of and in the course

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[7] *See* K.S.A. 44-501b(c) and K.S.A. 44-508(h).

[8] *See* K.S.A. 44-555c(a).

[9] *See Rivera v. Beef Products, Inc.,* No. 1,062,361, 2017 WL 2991555 (Kan. WCAB June 22, 2017).

[10] *See* K.S.A. 44-508(d).

[11] *See* K.S.A. 44-508(g).

[12] *See Fish v. Mid America Nutrition Program,* No. 1,075,841, 2018 WL 3740430 (Kan. WCAB July 12, 2018).

[13] *See Shook v. Waters True Value Hardware,* No. CS-00-0368-737, 2019 WL 6695514 (Kan. WCAB Nov. 19, 2019).

of his employment because the prevailing factor for his medical condition is his preexisting medical condition, clearly within the jurisdictional parameters of K.S.A. 44-534a(a)(3).

The undersigned Board Member affirms the ALJ's Order finding the December 12, 2024 injury is the prevailing factor for Claimant's medical condition requiring medical treatment. The Order is well-reasoned and supported by the evidence.

Dr. Griffith opined the prevailing factor for the medical condition, necessitating medical treatment for Claimant's neck, was the December 12 work accident. Dr. Cheng, Respondent's company physician, opined it was not. This Board Member shares the ALJ's finding there is "some deficiency in the assumptions in both causation opinions" and Dr. Griffith's opinion is more credible than Dr. Cheng.[14] Dr. Cheng noted the shafts entered smoothly, leading him to conclude the mechanism of injury was inconsistent with the injuries sustained. Claimant stated the shafts do not always enter smoothly and sometimes need to be forced. His opinion also ignores Claimant's condition immediately following the described incident, which was not disputed. Claimant felt immediate pain and discomfort following the work accident. He needed assistance to get on the medical cart and to ambulate into the company medical facility.

Claimant's faulty memory is concerning, but not fatal to his claim. His prior workers compensation claim was settled in 2018 and included three surgically repaired body parts, not including his neck. Claimant returned to work without restrictions and did not receive medical treatment for his neck from 2018 until his current work accident. Claimant has received continuous medical treatment since this occurrence.

Claimant suffered a specific traumatic event resulting in immediate severe symptoms. After review of the MRI, Dr. Griffith diagnosed Claimant with an acute C6-7 herniated disc and has Claimant off work. These factors, coupled with Dr. Griffith's prevailing factor opinion, establish Claimant's work accident arose out of and in the course of his employment and the prevailing factor for his neck condition is the described December 12, 2024 work accident.

2. The ALJ did not exceed his authority and/or jurisdiction in granting benefits.

The Board's authority to consider appeals of preliminary orders is limited to questions of whether the employee suffered an accident, repetitive trauma or resulting injury, whether the injury arose out of and in the course of employment, whether notice was

given or whether "certain defenses" apply.[15] In general, preliminary hearing orders granting or denying medical benefits, TTD, payment of medical bills, reimbursement of medical mileage, out of pocket prescriptions, and unauthorized medical are not subject to Board review.

An order for medical treatment is within the authority of the ALJ. In general, preliminary hearing orders granting or denying medical benefits are not subject to Board review. The authority to make a determination regarding medical care rests clearly within the authority granted to the ALJ by K.S.A. 44-534a.[16] The Board is without jurisdiction to review an ALJ's order for medical treatment. Here, the ALJ made an order for medical benefits following a finding Claimant met his burden of proving his medical condition arose out of and in the course of his employment and the prevailing factor for his medical condition was the work injury. Claimant's appeal regarding the medical treatment ordered is dismissed for lack of jurisdiction.

WHEREFORE, the undersigned Board member affirms the preliminary hearing Order.

IT IS SO ORDERED.

Dated this _____ day of October, 2025.

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CHRIS A. CLEMENTS
BOARD MEMBER

c: (via OSCAR)
Keith Mark
Aaron Greenbaum
Hon. Kenneth Hursh

[15] *See* K.S.A. 44-534a(a)(3).

[16] See *Vizcarra v. LoanSmart, LLC*, No. 1,079,548, 2017 WL 5126039 (Kan. WCAB Oct. 18, 2017).