

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

GUILLERMO GUZMAN
Claimant

v.

POTTER'S PLUMBING, INC.
Respondent

AP-00-0491-823
CS-00-0470-315

and

**FARM BUREAU PROPERTY & CASUALTY
INSURANCE CO.**
Insurance Carrier

ORDER

Claimant appeals the August 22, 2025, Order issued by Administrative Law Judge (ALJ) Thomas Klein. This matter was placed on the summary calendar for decision without oral argument.

APPEARANCES

C. Albert Herdoiza appeared for Claimant. Matthew S. Crowley appeared for Respondent and 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 Motion Hearing, held August 18, 2025; Claimant's Motion for Change of Administrative Law Judge, with attachments; Claimant's Addendum to Claimant's Motion for Change of Administrative Law Judge, with attachments; Respondent's Response Brief, with attachments; and the pleadings and orders contained in the administrative file. The Board also reviewed the parties' briefs.

ISSUE

Did the ALJ err in denying Claimant's Motion for Change of Administrative Law Judge?

FINDINGS OF FACT

Claimant alleges he sustained physical and psychological injuries from an accident arising out of and in the course of his employment with Respondent on July 27, 2021. This matter has been the subject of several prior proceedings before the Board. On April 26,

2024, a single Board Member determined Claimant proved he sustained a compensable psychological injury. This matter was remanded to ALJ Klein to issue an order authorizing mental health treatment, including an evaluation by a psychologist or psychiatrist.

On May 16, 2024, Respondent issued a letter advising Horizons Mental Health Center (Horizons) was authorized to provide psychiatric or psychological treatment. On June 13, 2024, ALJ Klein appointed Dr. Hufford to perform a second Court-ordered independent medical examination, citing language from the Board's April 26, 2024, Order suggesting Dr. Hufford may have a different causation opinion if he reviewed Claimant's mental health records. A preliminary hearing set for June 25, 2024, was continued. Dr. Hufford evaluated Claimant on September 30, 2024, and reiterated his causation opinion. On November 6, 2024, ALJ Klein issued a preliminary order designating Dr. Allen the authorized treating psychologist. Claimant commenced treatment with Dr. Allen.

Between November 6, 2024, and March 3, 2025, a preliminary hearing on payment of past medical bills was scheduled and subsequently canceled. A regular hearing and prehearing settlement conference were also scheduled and apparently later canceled.

On March 3, 2025, Claimant filed an application for preliminary hearing seeking authorization of psychiatric treatment. A preliminary hearing was set for April 8, 2025, and was subsequently reset for June 16, 2025.

The preliminary hearing on Claimant's request for psychiatric treatment, among other issues, was held on June 16, 2025. No ruling was issued at the hearing. Claimant's counsel sent emails to ALJ Klein inquiring of the status of the forthcoming preliminary order on June 30, 2025, and July 10, 2025. Claimant's counsel also sent an email to the Director on July 15, 2025, requesting the matter be reassigned to a different ALJ for a preliminary decision.

On July 18, 2025, ALJ Klein issued a preliminary order addressing the issues raised at the June 16, 2025, preliminary hearing. Among other things, Horizons was designated the authorized treating facility to provide the psychiatric treatment Claimant requested. Neither party sought review of the order by the Board.

Claimant subsequently filed his Motion for Change of Administrative Law Judge (Motion), with attachments, and Addendum to Claimant's Motion for Change of Administrative Law Judge (Addendum), with attachments. Claimant did not allege ALJ Klein previously was counsel in these proceedings or was otherwise interested in the proceedings. Claimant did not cite instances where ALJ Klein demonstrated actual bias or prejudice. Rather, Claimant argued ALJ Klein's past behavior in issuing late decisions established he was indifferent and biased. Claimant also criticized the designation of Horizons as the authorized psychiatric provider. Claimant did not file an affidavit in support of the Motion. Respondent filed a Response Brief, with attachments, contesting Claimant's allegations.

A hearing on the Motion was held on August 18, 2025. Claimant testified he was receiving medical treatment, but the mental health provider offering Claimant's biofeedback disapproved of Horizons. Claimant also testified, "I feel like things aren't being gone through thoroughly with all of my stuff that's going into my case."¹ Claimant's counsel also raised, without citation to the record, incidents where someone made light of Claimant's prior testimony and disparaging remarks were made about Dr. Allen. Claimant also disagreed with designating Horizons as the authorized psychiatric provider. Claimant sought designation of a new ALJ to revisit Claimant's request for psychiatric treatment. Respondent opposed the Motion, and argued Claimant essentially sought a change in physician via a change in ALJ.

On August 22, 2025, ALJ Klein issued the Order addressing the Motion. ALJ Klein determined he was not biased on account of race, gender or religion. ALJ Klein also determined he did not express a predetermined opinion on the outcome of the case, display favoritism to a party, or make derogatory comments in the proceedings. ALJ Klein noted many delays in the case were attributable to Claimant and his counsel, particularly Claimant's failure to appear or to comply with treatment. ALJ Klein acknowledged a delay between the June 16, 2025, hearing and the July 18, 2025, Order occurred, but the delay was not motivated by bias or hostility. ALJ Klein stated, "In the course of managing nearly eight hundred active cases occasionally delays occur. The Court will try to go faster in the future."² ALJ Klein also found Claimant was dissatisfied with the July 18, 2025, Order's provision for medical treatment. While Claimant may not have received what he wanted, ALJ Klein concluded this did not justify recusal. Claimant's Motion was denied.

Claimant filed his application for review by the Board on August 25, 2025. No affidavit was filed with the Board in support of Claimant's Motion.

PRINCIPLES OF LAW AND ANALYSIS

Claimant argues ALJ Klein has not provided a fair environment to order medical treatment. Claimant argues ALJ Klein's failing to provide timely decisions and failing to adequately review the record before issuing decisions constitute grounds for recusal under K.S.A. 44-523(e)(4)(E). Claimant also takes issue with the designation of Horizons as the authorized psychiatric provider.

Respondent argues Claimant's Motion must fail because he failed to file an affidavit with the Board. Respondent also contends the designation of Horizons as the authorized provider does not constitute a basis for recusal, and Claimant is using K.S.A. 44-523(e) to

¹ Motion Hearing Transcript, p.8.

² Order, p.2.

seek a change in health care provider. Finally, Respondent argues Claimant did not prove an actual interest or bias justifying recusal.

Under the Kansas Workers Compensation Act, if a party believes the assigned administrative law judge cannot afford that party a fair hearing, the party may file a motion for change of administrative law judge. The party shall not file more than one motion for change of administrative law judge in a case. The administrative law judge shall promptly hear the motion, and may have a record made of the proceedings. If the motion is granted, the case shall be assigned to another administrative law judge by the Director. If the administrative law judge refuses to grant the motion, the party seeking a change may file an appeal with the Board within ten days of the refusal.³ The moving party has the burden of proof.⁴

If a party appeals the refusal with the Board, the party shall file an affidavit alleging the administrative law judge was engaged as counsel in the case prior to appointment as an administrative law judge, the administrative law judge is otherwise interested in the case, the administrative law judge is related to either party, the administrative law judge is a material witness, or the party has cause to believe he or she cannot obtain a fair and impartial hearing due to personal bias, prejudice or interest of the administrative law judge. The affidavit shall state the facts and reasons for the belief bias, prejudice or an interest exists.⁵ In any affidavit, the recital of prior rulings or decisions by the administrative law judge on legal issues, or prior motions for change of law judge filed by counsel, shall not be deemed legally sufficient for a belief bias or prejudice exists.⁶ An affidavit filed with the administrative law judge may satisfy the requirement an affidavit be filed with the Board.⁷ No interlocutory appeal to the Court of Appeals of the Board's decision shall be allowed while the underlying claim for compensation is pending.⁸

When the plain language of a statute is clear and unambiguous, a court must apply the statute as written.⁹ The Act requires Claimant to file an affidavit with the Board stating

³ See K.S.A. 44-523(e)(1).

⁴ See *Vargas v. Sears Roebuck & Co.*, No. 1,070,567, 2015 WL 510336, at *5 (Kan. WCAB Jan. 8, 2015).

⁵ See K.S.A. 44-523(e)(2) & (4).

⁶ See K.S.A. 44-523(e)(5).

⁷ See *Peavy v. Deffenbaugh Industries, Inc.*, AP-00-0468-398, CS-00-0441-234, 2022 WL 5621648, at *3 (Kan. WCAB Sept. 19, 2022).

⁸ See K.S.A. 44-523(e)(6).

⁹ See *Bergstrom v. Spears Mfg. Co.*, 289 Kan. 605, 607-08, 214 P.3d 676 (2009).

the cause for his belief he cannot obtain a fair and impartial hearing on account of the personal bias, prejudice or interest of ALJ Klein. Claimant did not file an affidavit with ALJ Klein or the Board. While Claimant’s Motion and Addendum contain allegations of dilatory conduct, those statements were not made under oath, which is an essential element of an affidavit. The Board concludes no affidavit was filed in support of his Motion, which is required under the Act. Because Claimant failed to comply with K.S.A. 44-523(e), the Motion must be denied.

In light of the Board’s ruling, it is unnecessary to address whether Claimant proved he cannot obtain a fair and impartial hearing by ALJ Klein on account of personal bias, prejudice or interest, under K.S.A. 44-523(e)(4)(E).

DECISION

WHEREFORE, it is the finding, decision and order of the undersigned Board Members the Order issued by ALJ Thomas Klein, dated August 22, 2025, is affirmed. Claimant’s Motion for Change of Administrative Law Judge is denied.

IT IS SO ORDERED.

Dated this _____ day of October, 2025.

APPEALS BOARD MEMBER

APPEALS BOARD MEMBER

APPEALS BOARD MEMBER

c: Via OSCAR

C. Albert Herdoiza
Matthew S. Crowley
Hon. Thomas Klein