

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

MICHAEL BASKA)	
Claimant)	
V.)	AP-00-0492-086
)	CS-00-0486-754
AMAZON.COM SERVICES INC.)	
Respondent)	AP-00-0492-087
AND)	CS-00-0480-356
)	
LM INSURANCE CORP.)	
Insurance Carrier)	

ORDER

Claimant requests review of the September 3, 2025, preliminary hearing Order entered by Administrative Law Judge (ALJ) Kenneth J. Hursh. Roger D. Fincher appeared for Claimant. Weston A. Mills 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 August 27, 2025, with exhibits attached, and the documents of record filed with the Division.

ISSUES

1. Did Claimant suffer a compensable psychological injury or traumatic neurosis?
2. Is Claimant entitled to temporary total disability (TTD) compensation?

FINDINGS OF FACT

Claimant worked for Respondent as a warehouse associate. On September 25, 2023, Claimant injured his left elbow while unloading and putting carts together.¹ Claimant was pulling on a stuck cart when his hand slipped off the cart, causing his elbow to strike a different cart. On February 8, 2024, Dr. Mark Winston, the authorized treating physician,

¹ CS-00-0480-356.

diagnosed Claimant with left lateral epicondylitis and left ulnar neuritis. Claimant treated conservatively until May 8, 2024, when Dr. Winston performed a left elbow cubital tunnel release and lateral epicondyle debridement. Following post-operative treatment, physical therapy, and work conditioning, Dr. Winston released Claimant to full-duty work on November 21, 2024. Dr. Winston anticipated a release at maximum medical improvement (MMI) in four weeks. Claimant did not attend the next two appointments, and was released from Dr. Winston's care.

On December 14, 2024, Claimant sustained a right inguinal hernia while lifting at work.² Dr. Wanda Kaniewski provided treatment, including a right inguinal hernia repair with mesh, on March 6, 2025. Dr. Kaniewski opined Claimant reached MMI on April 25, 2025, and did not require additional treatment.

On January 22, 2025, Dr. Daniel Zimmerman examined Claimant, at his attorney's request. Claimant reported ongoing pain and discomfort affecting his left elbow with occasional numbness and tingling in all digits of his left hand. Dr. Zimmerman opined Claimant was at MMI, the prevailing factor causing Claimant's left elbow injury was the September 25, 2023, work accident, provided a functional impairment rating and recommended future medical treatment.

Claimant returned to Dr. Zimmerman, at his attorney's request, on May 27, 2025, for an evaluation related to the inguinal hernia. Claimant reported sharp pain in his right hemiscrotum and groin, with pain and discomfort affecting the right inguinal canal. Claimant also reported a bulge in the right lower quadrant of the abdomen, post-surgery. Dr. Zimmerman opined Claimant was at MMI, the prevailing factor causing the right inguinal hernia and irritability of the right ilioinguinal nerve was the December 2024 work accident, provided a functional impairment rating and recommended additional future medical treatment.

Dr. Michael Stone, Claimant's personal physician, examined Claimant on August 13, 2025, for ongoing groin pain. Dr. Stone referred Claimant to a general surgeon and imposed work restrictions until Claimant was evaluated by the general surgeon.

According to Claimant, he was doing well emotionally and was in a good place in his life until he suffered his physical injuries. He believed the physical injuries to his left elbow and right-sided hernia caused psychological injuries.³ He testified:

Dude, my whole life has been absolutely destroyed by this. It's absolutely – I mean, I'm devastated. I had gotten to a point where everything in my life was going good.

² CS-00-0486-754.

³ See P.H. Trans. at 18.

I mean, it was the best I had ever gotten it. You know what I mean? I had my job going. I had a career going great. I had great money coming in.

I was married. I had a great relationship with my wife. . . Didn't have any debt going on. It was just – I couldn't have been in a more better position.

Now, it's literally every area of my life is destroyed, including I just got, you know, divorce paperwork with it filled out last week.⁴

According to Claimant, he has lost all family relationships, is in debt, and can no longer afford maintenance on his vehicle or phone. He continued:

And not only that, I mean, I had to go through nine months of extreme, intense pain every day before I even got surgery on my arm. And we had to get a judge's order to get surgery for my hernia, which I had to wait three months for that when I was told that would only take a couple weeks.

Like, it's pretty devastating. It's pretty soul crushing when you feel less than because of all this. And you feel like nobody cares and nobody wants to do anything for you to make it right. And nobody wants to work with you. And nobody gives a shit.⁵

According to Claimant, he is depressed, cannot eat or sleep, feels worthless and is barely able to function. He has feelings of hopelessness and isolates himself from others. Claimant is confused, unsure what to do, is devastated over the loss of his family and his relationship with his wife. Claimant described it as "utter despair."⁶ He asserts his psychological symptoms started immediately after his physical injuries and are a direct result of the injuries. When asked specifically why he was depressed, Claimant said:

Oh, because of all the compounding issues of the injuries. It's the injuries, you know, and the late work comp, the nonpayments, the non-coordination, the extreme confusion, just feeling like I'm not getting – you know, wasn't getting any help. It's been extremely frustrating.⁷

Claimant currently takes medication for depression and ADHD. He obtained a Missouri medical marijuana prescription in 2017 or 2018 for PTSD and anxiety. Claimant

⁴ P.H. Trans., Resp. Ex. E at 81.

⁵ *Id.* at 82-83.

⁶ *Id.* at 85.

⁷ P.H. Trans. at 21.

also takes Suboxone because he had a reaction to pain medication following a dental procedure. Suboxone keeps Claimant from suffering through withdrawal and is monitored by Dr. Debra Williams with Interpersonal Psychiatry, who also monitors his marijuana usage. Dr. Williams' records are not in the evidentiary record.

Claimant's wife served him with divorce papers in August 2025. Since seeing Dr. Barnett, Claimant has looked for work, but is not working and does not have any income. According to Claimant, he has daily pain in his groin/testicle area and pain in his left arm every other day. He can not lift above 35 pounds without suffering from burning, stabbing pain between his leg and groin area, into his thigh and in his right testicle. Repetitive lifting results in a burning sensation in his arm. He is unable to perform the physical requirements of his job with Respondent.

Claimant testified he was sexually abused by a family friend when he was a child. He first received psychiatric care when he was 13 or 14 years old due to his parents' divorce, family issues and an onset of depression. Claimant was psychiatrically hospitalized once during this time period. Claimant suffered emotional periods following the deaths of family and friends. He attempted suicide in 2013. He has been on medication and seen counselors off and on since then.

Claimant was involved in a motor vehicle accident in high school and suffered two subdural hematomas. In 2019 or 2020, he was involved in another motor vehicle accident resulting in a fractured neck. Claimant wore a neck brace for nine months. He struggled with alcohol, leading to multiple DUIs (8) and incarceration in the Kansas Department of Corrections (off/on for ten years). Claimant attended two substance abuse treatment programs and reported he has not used drugs or alcohol in four years.

Licensed psychologist Robert Barnett, PhD, examined Claimant at his attorney's request on February 24, 2025, and March 10, 2025. Dr. Barnett took a history from Claimant and conducted a mental status examination with testing. Dr. Barnett diagnosed Claimant with Moderate to Severe Adjustment Disorder with Depressed Mood. He opined:

On the issue of prevailing factor, the work accident is the prevailing factor of the psychological injury and resulting neurosis. There are no other factors causing this condition. There are no pre-existing concerns. The work accident is the primary or prevailing cause of the mental/psychological conditions (i.e., depression, anxiety).⁸

Dr. Barnett provided a functional impairment rating and recommended psychotherapy/counseling focusing on improving Claimant's current psychological

⁸ P.H. Trans., Cl. Ex. 8 at 7.

functioning and adjustment. He also recommended a medication re-evaluation from a psychiatrist.

Kate Higgins, PsyD, ABPP-CN, is a board-certified clinical neuropsychologist. At Respondent's request, she conducted a records review and produced a report regarding Claimant's psychological condition on August 25, 2025. After a review of Claimant's medical records, including Dr. Barnett's report, Dr. Higgins opined:

Given the limited information available, proffering a psychiatric diagnosis is not possible. But, the available records indicate that [Claimant] has longstanding psychiatric diagnosis and psychiatric care that predate either work injury. Therefore, neither work injury can be a causal factor in [Claimant's] preinjury anxiety, depression, PTSD, or panic attack diagnoses.⁹

Dr. Higgins described how Claimant's prior substance abuse and psychiatric diagnoses have impacted his current condition. She stated:

[Claimant] appears to have a significant substance use history. A history of substance use, especially with opioids, plays a complex and significant role in pain perception. A history of substance use inevitably alters the nervous system. It can cause the brain to become more sensitive to pain signals, a phenomenon called hyperalgesia. Additionally, over time, substance [use] will decrease the body's own natural pain-relieving systems. This can lead to a lower pain tolerance and an increased reliance on external substances to manage even minor pain. Finally, substance use can lead to or worsen mental health conditions like anxiety and depression. These conditions are major risk factors for chronic pain and can interfere with a person's ability to cope with pain and stress.

[Claimant] has multiple psychiatric diagnoses in his medical record, including PTSD [sic], panic attacks, anxiety, and depression. Psychiatric diagnosis and chronic pain are deeply intertwined in a vicious cycle, where each condition worsens the others. Emotional distress often leads to "somatization", meaning psychological suffering appears as physical symptoms. Anxiety intensifies pain by increasing muscle tension, making the nervous system overly sensitive, fostering a fear of movement that leads to physical deconditioning, and promoting negative thought patterns like catastrophizing. Similarly, depression lowers pain tolerance, encourages inactivity that deconditions the body, disrupts sleep (which fuels pain and inflammation), and contributes to negative thinking and social withdrawal. A sedentary lifestyle, often caused by pain and mood issues, further amplifies muscular and myofascial pain by weakening muscles, reducing flexibility, impairing circulation, and causing sticky connective tissue (fascia) to form. Ultimately, this complex interplay of physical and

⁹ P.H. Trans., Resp. Ex. A at 7.

emotional factors makes pain feel more widespread and overwhelming, creating a persistent and debilitating cycle.

. . .

While [Claimant's] work-place injuries may have contributed or temporarily exacerbated his pain and functional limitations, it would be gross negligence to ignore [Claimant's] medical, psychiatric, and substance use history when conceptualizing his current experience. Additionally, given the relatively innocuous nature of his injuries and his extensive medical care, ongoing contributions from his work place injuries are minimal at most.¹⁰

The ALJ found Claimant reached MMI related to his physical injuries and denied additional medical treatment and TTD. Regarding psychological treatment, the ALJ found the opinions of Dr. Higgins more persuasive and denied Claimant's request for treatment. In so doing, the ALJ found Claimant's psychological conditions were not directly traceable to his physical injuries and not the prevailing factor causing his psychological conditions, rendering his psychological conditions non-compensable.

Claimant argued the ALJ erred in finding he did not establish he sustained a compensable psychological injury. In so doing, Claimant argued his two work-related injuries are undisputed and his symptoms of traumatic neurosis are supported by the opinions of Dr. Barnett. Claimant acknowledged his past struggles with his mental health but argued he was doing well mentally for the months or years prior to his work-related injuries, which he argues was undisputed. Lastly, Claimant argued the only evidence to the contrary was provided by Dr. Higgins, whose opinions are not credible because she did not speak with Claimant and was unable to form a psychiatric diagnosis due to limited information. Respondent maintains the ALJ's Order should be affirmed.

PRINCIPLES OF LAW AND ANALYSIS

1. Did Claimant suffer a compensable psychological injury or traumatic neurosis?

The Kansas Workers Compensation Act states 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.¹¹

¹⁰ *Id.* at 5-6.

¹¹ See K.S.A. 44-534a(a)(3).

Claimant has the burden of proof to establish his right to compensation and to prove the conditions on which his right depends.¹² Kansas recognizes the compensability of traumatic neurosis injuries.¹³ Traumatic neurosis is a broad legal term and is not a specific psychiatric diagnosis.¹⁴ For Claimant to establish a compensable claim for traumatic neurosis, he must prove: (1) a work-related physical injury, (2) symptoms of a traumatic neurosis, (3) the neurosis must be directly traceable to the physical injury, and (4) the accident was the prevailing factor causing the psychological injury.¹⁵

Claimant sought medical treatment for a psychological disorder at a preliminary hearing before the ALJ. In general, preliminary hearing orders granting or denying medical benefits are not subject to Board review. The issue presented, however, is whether Claimant proved he has a traumatic neurosis which is directly traceable to his physical injuries and whether the accidents were the prevailing factor causing the psychological injury.

In this case, it is undisputed Claimant suffered two work-related physical injuries to his left elbow and a hernia. The ALJ was provided competing medical opinions regarding the issue of whether the traumatic neurosis arose out of and in the course of his employment. Claimant provided the opinions of Dr. Barnett in support of his position, Respondent, Dr. Higgins. The ALJ was persuaded by the opinions of Dr. Higgins because Dr. Barnett opined there were no other factors or preexisting conditions regarding Claimant's psychological condition. This Board Member agrees with the ALJ's analysis and conclusion.

Claimant testified he was doing well emotionally prior to his injuries and his emotional and psychological symptoms began and have been present since the injuries. There is nothing in the medical records provided to support this. He did not describe any emotional or psychological symptoms stemming from his physical injuries to the treating physicians or his own medical evaluator. There are no medical records in the record supporting Claimant's assertion he suffered from emotional issues as a result of his work-related physical injuries until Claimant was evaluated by Dr. Barnett.

Claimant's past psychological conditions and substance abuse cannot be ignored.

¹² See K.S.A. 44-501b(c).

¹³ See *Love v. McDonald's Restaurant*, 13 Kan. App. 2d 397, 771 P.2d 557, rev. denied 245 Kan. 784 (1989).

¹⁴ See *Adamson v. Davis Moore Datsun, Inc.*, 19 Kan. App. 2d 301, 308, 868 P.2d 546 (1994).

¹⁵ See *Love*, *supra*.

It is true Dr. Higgins arrived at her opinions without the benefit of talking with Claimant or reviewing his testimony. Her report, however, details how Claimant's past issues have contributed to or caused his current psychological condition and how they made him more susceptible to the issues he presently experiences. Dr. Barnett's statements, "There are no other factors causing this condition. There are no preexisting concerns." simply are not credible given Claimant's lengthy psychological medical and substance abuse history.

Accordingly, Claimant did not prove by a greater weight of the credible evidence his neurosis was directly traceable to his physical injuries or that his physical injuries are the prevailing factor for his current psychological condition. His request for benefits for a psychological injury is denied.

2. The Board does not have jurisdiction to review Respondent's appeal regarding TTD.

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.¹⁶ "Certain defenses" grant jurisdiction only if they dispute the compensability of the injury under the Kansas Workers Compensation Act.¹⁷ The determination regarding TTD is also within the ALJ's discretion and not reviewable by the Board.¹⁸ The plain language of K.S.A. 44-534a does not grant the Board authority to address this issue preliminarily. Claimant's appeal regarding TTD is dismissed for lack of jurisdiction.

DECISION

WHEREFORE, it is the finding, decision and order of the undersigned Board Member the Order of ALJ Kenneth J. Hursh dated September 3, 2025, is affirmed. Claimant's application for review regarding TTD is dismissed for lack of jurisdiction.

¹⁶ See K.S.A. 44-534a(a)(3).

¹⁷ See *Carpenter v. National Filter Service*, 26 Kan. App. 2d 672, 675, 994 P.2d 641 (1999).

¹⁸ See *Hargraves v. Goodyear Tire & Rubber Co.*, No. 1,022,008, 2005 WL 2519631 (Kan. WCAB Sept. 9, 2005).

IT IS SO ORDERED.

Dated this _____ day of November, 2025.

CHRIS A. CLEMENTS
BOARD MEMBER

c: Via OSCAR

Roger D. Fincher, Attorney for Claimant
Weston A. Mills, Attorney for Respondent and its Insurance Carrier
Hon. Kenneth J. Hursh, Administrative Law Judge