

**BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD**

**MARIA OSORIO MERINO**

Claimant

v.

**S&S ACTIVEWEAR LLC**

Respondent

AP-00-0492-272

CS-00-0486-272

and

**SAFETY NATIONAL CASUALTY CORP.**

Insurance Carrier

**ORDER**

Claimant appeals the September 12, 2025, Order issued by Administrative Law Judge (ALJ) Troy A. Larson.

**APPEARANCES**

Thomas R. Fields appeared for Claimant. Christopher J. McCurdy appeared for Respondent and Insurance Carrier (Respondent).

**RECORD AND STIPULATIONS**

The Appeals Board adopted the same stipulations and considered the same record as the ALJ, consisting of the Transcript of Proceedings, held August 26, 2025; the transcript of Evidentiary Deposition of Maria Osorio Merino, taken May 30, 2025, including Claimant's Exhibits 1-2 and Respondent's Exhibits A-C; the transcript of Evidentiary Deposition of Barbara Euceda, taken June 5, 2025; the transcript of Evidentiary Deposition of Rizi Starr, taken June 5, 2025, including Exhibits D-F; the transcript of Evidentiary Deposition of Gabriel E. Frometa Pupo, taken August 11, 2025, including Exhibit 1; and the pleadings and orders contained in the administrative file. The Board also reviewed the parties' briefs.

**ISSUES**

1. Did Claimant prove she gave proper notice?
2. Did Claimant prove she sustained personal injury from an accident arising out of and in the course of her employment with Respondent on October 23, 2024?

3. Did Claimant prove the alleged accident was the prevailing factor causing her alleged injury, medical condition and resulting disability?
4. Is Claimant entitled to a preliminary award of medical treatment and temporary total disability compensation?

### **FINDINGS OF FACT**

Claimant worked in Respondent's warehouse from September 17, 2024, through November 15, 2024, as a "Picker" and a "Packer." As a Picker, Claimant retrieved items for orders, and drove a motorized cart as part of her job duties. As a Packer, Claimant was not required to drive a cart. Claimant was issued a computer tablet containing her work orders. Regardless of job, Claimant was also required to wear a reflective safety vest over her clothing. Claimant emigrated from Cuba, possesses a work permit allowing her to work in the United States, and she communicates in Spanish.

According to Claimant, on October 23, 2024, at approximately 3:00 p.m., she was working as a picker and driving a cart. Claimant was confident the accident occurred on October 23, 2024, because it was two days before her birthday. A co-worker driving another cart struck Claimant's cart from behind. Claimant did not know the name of the co-worker, but testified he was American and wore headphones while working. As a result of the impact, Claimant's right knee struck something inside the cart. Claimant testified she did not experience pain, but her knee began swelling immediately after the event.

Claimant testified two female co-workers, whose names Claimant did not know, witnessed the accident. According to Claimant, the co-workers saw Claimant's knee strike the cart, and they told Claimant she needed to complete an accident report. Claimant was aware Respondent's policies required her to complete an accident report immediately, but she did not know where to fill out a report. Claimant later testified she was not aware she was required to notify anyone she was involved in an accident.

Claimant also testified one of her supervisors, Ms. Euceda, was passing through Claimant's work area immediately after the accident. Claimant testified she called for Ms. Euceda. According to Claimant, she told Ms. Euceda about the accident and showed Ms. Euceda her knee. Claimant also testified the two co-workers who witnessed the accident spoke with Ms. Euceda. An accident report was not prepared by Claimant or the two co-workers. Claimant testified she expected Ms. Euceda to complete the accident report for her. Claimant testified she could not complete an accident report with the tablet Respondent provided, and she did not know where to complete the report. Claimant,

however, also testified she did not complete an accident report because she was “nervous.”<sup>1</sup>

Claimant continued performing her usual work. Claimant testified her knee remained swollen and became painful over the next two days. Claimant also testified she experienced a burning sensation in the knee. According to Claimant, she told Ms. Euceda on October 28 and 31 she needed to see a physician. Ms. Euceda reportedly said she needed to consult the Safety Manager, Ms. Starr. An accident report apparently was not completed on October 28 or 31.

Claimant testified Ms. Euceda later took her to visit with Ms. Starr. According to Claimant, Ms. Starr looked at Claimant’s knee and scheduled an appointment for Claimant to be seen at a clinic. Ms. Starr also had Claimant complete a written accident report. The report, which was dated November 8, 2024, is part of the record. Claimant testified she completed the top part of the form, provided a description of the accident in Spanish, and indicated on the form her knee was swollen, but not painful, at the time of the accident. Although the form contained an area to note the date of accident, Claimant did not provide the date of accident or the time. Claimant testified she did not provide the date or time of accident, despite answering other questions, because no one instructed her to provide the date or time of accident. Claimant denied writing “N/A” in the date of accident blank. Claimant testified she did not know if Ms. Euceda translated Claimant’s answers.

On November 10, 2024, Claimant was seen at Care Now Urgent Care (Care Now). The chart and a form filed with the Missouri Division of Workers’ Compensation state Claimant struck her knee on a cart at work on October 23, 2024, and she developed intermittent right knee pain. Medication was prescribed. Claimant was provided a brace to wear at work. Temporary work restrictions were imposed instructing Claimant to wear the brace while working, to allow frequent rest periods, to elevate the right leg and to apply ice.

Claimant testified she continued working after the appointment at Care Now. According to Claimant, she was assigned her regular work and her restrictions of resting frequently and elevating and icing the right knee were not accommodated. Claimant testified Ms. Starr came to Claimant at her work station, opened the immobilizer brace and looked at Claimant’s right knee. Claimant also testified Ms. Starr told her to take a fifteen-minute break if she thought she needed one, and to tell her supervisor if she felt tired.

Claimant returned to Care Now on November 17, 2024. According to Care Now’s records, Claimant reported increasing pain, burning and instability. Claimant was diagnosed with right knee pain, unspecified internal derangement. An immobilizer brace

---

<sup>1</sup> Claimant Deposition Trans., p.43.

and crutches were provided. Work restrictions of four additional fifteen-minute breaks during the day and sit-down work only were imposed. Claimant was referred to an orthopedist, and a return appointment was scheduled for December 1, 2024.

Claimant continued working. Claimant testified the restrictions were never accommodated and she was not provided sit-down work. According to Claimant, Ms. Euceda told her no other positions were available, and Claimant could rest at home if she wanted. Claimant testified she did not go home because she did not want to lose her job.

Claimant also testified on November 15, 2024, she had a meeting with management. According to Claimant, she was presented a form stating she committed a safety rule violation by failing to properly wear a safety vest, which she denied. Claimant was also told she violated Respondent's policies requiring accidents to be reported timely. Claimant was also involved in a prior accident with a cart, and another incident where she almost struck a co-worker with her cart. Claimant was informed her employment was terminated.

Claimant testified her knee is not as swollen as before, but her pain is severe and her knee gives way. Claimant continues to wear a knee brace and uses a crutch. Claimant keeps her knee elevated. Claimant also testified she saw her primary care provider for her knee injury, and was told she has arthritis. The medical records from Claimant's primary care provider confirm she was seen for osteoarthritis of the right knee in February and March 2025. Claimant admitted she suffered prior knee pain in 2022, which resolved with medication after a month. Claimant denied having knee pain between 2022 and October 23, 2024. The medical records of Claimant's primary care provider indicate Claimant was seen for bilateral knee pain on May 10, 2022, and for multiple joint pain on February 7, 2023.

On cross-examination, Claimant denied reporting knee pain before October 23, 2024, or requesting a different job assignment due to knee pain. Claimant confirmed during the time she was placed on restricted duty, she worked wherever she was placed and was capable of performing her job duties. In a prior discovery deposition, Claimant testified she experienced knee pain immediately after the accident.

Claimant's relative and former co-worker, Mr. Pupo, completed an affidavit and testified by deposition. According to Mr. Pupo's affidavit, he worked for Respondent on October 23, 2024, in the same area Claimant worked. Mr. Pupo stated he witnessed a blond, male co-worker strike Claimant with a cart. Immediately after the event, Mr. Pupo approached Claimant, and she said her knee was hurting. Mr. Pupo left the scene after managers arrived. Mr. Pupo also stated in the affidavit he saw Claimant during the lunch break, and noticed Claimant's leg was red, swollen and had a noticeable bump.

In his deposition, Mr. Pupo testified he was in Claimant's work area on October 23, 2024, saw several co-workers pass behind Claimant, and saw a co-worker strike Claimant's cart from behind while trying to pass. Mr. Pupo could not recall the time of the accident. Mr. Pupo testified he spoke briefly with Claimant immediately after the accident, and Claimant did not say her knee was hurting. Mr. Pupo testified he saw Ms. Euceda go to Claimant after the accident, and he resumed working. Mr. Pupo later testified he did not speak with Claimant immediately after the accident. Mr. Pupo also saw two co-workers present at the accident scene. According to Mr. Pupo, he next saw Claimant around 4:00 p.m. during his break. Mr. Pupo testified Claimant's knee was red and swollen, and Claimant said her knee hurt. Later, Mr. Pupo testified Claimant was wearing pants, although he could see swelling through Claimant's pants. Mr. Pupo later testified Claimant's knees were not covered by her pants, although he could not recall the length of Claimant's pants.

On cross-examination, Mr. Pupo testified he did not know the names of the two co-workers at the accident scene. Mr. Pupo was aware Claimant did not identify him as a witness. Mr. Pupo last worked for Respondent on November 21, 2024, after he was terminated. Mr. Pupo also testified Claimant did not tell him her knee was hurting, and he was aware Claimant stated her knee did not start hurting until the following day. Mr. Pupo acknowledged he did not notify management he witnessed an accident, did not complete a witness statement or complete an accident report. Although Mr. Pupo testified Claimant did not tell him she was in pain, he testified he was aware Claimant was in pain.

Ms. Euceda, Respondent's Shipping Manager, manages Respondent's facility operations, including employee discipline. Ms. Euceda confirmed Claimant worked as a picker in Respondent's "Red" department, where orders were reviewed by another worker to ensure accuracy. Claimant was also cross-trained as a packer. Ms. Euceda testified Respondent's production records indicated Claimant was working as a packer in the Red department on October 23, 2024, and would not have been driving a cart. Claimant would only drive a cart if she was working as a picker. Ms. Euceda also testified carts would not have been present in the Red department, and Claimant would not have been around carts. According to Ms. Euceda, employees were expected to report work-related injuries before the end of the shift when the accident occurred. Employees can report accidents through a program loaded into the tablets they use to receive orders.

Ms. Euceda denied Claimant reported an accident or injury on October 23, 2024. Specifically, Ms. Euceda denied Claimant came to her on October 23 or Claimant reported she was struck by a cart. Ms. Euceda denied two co-workers told her Claimant was hurt. Ms. Euceda also denied being told by other co-workers Claimant was injured on October 23, 2024.

According to Ms. Euceda, she had asked Claimant to perform jobs before November 8, and Claimant initially refused due to pain complaints on two occasions. In response, Ms.

Euceda told Claimant she needed to report her pain complaints to Ms. Starr and to report any work-related incidents on Respondent's computerized system. On both occasions, Claimant responded by saying she was fine and she performed the jobs Ms. Euceda assigned.

Ms. Euceda testified on November 8, 2024, she was counseling Claimant on a safety rule violation. During the meeting, Claimant stated she was involved in a work-related accident on October 23, 2024, and had swelling in her knee. According to Ms. Euceda, Claimant did not report being involved in a work-related accident or provide particulars of an accident before November 8. Ms. Euceda and Claimant went to Ms. Starr to discuss the accident. Claimant completed part of an accident report form. Ms. Euceda translated the description of the accident, but denied completing any other portion of the form or giving instruction to Claimant about completing the form. Ms. Euceda denied writing "N/A" on the form.

Ms. Euceda confirmed Claimant's description of the co-worker who allegedly struck her matched the physical description of another co-worker, Mr. Sperling. Ms. Euceda denied seeing Mr. Sperling wear headphones while driving a cart, which would constitute a safety rule violation.

Ms. Euceda testified Claimant was sent to a medical provider after the accident form was completed. Claimant was placed on temporary restrictions. Claimant continued working as a packer in the Red department, and was allowed to take frequent breaks and to wear a knee brace. Ms. Euceda testified Claimant was provided a sit-down job. Claimant worked in this capacity until she was terminated by Respondent. According to Ms. Euceda, Claimant was terminated due to multiple safety rule violations, including failure to wear her safety vest properly and not timely reporting a work-related accident.

Ms. Starr, Respondent's Safety Manager Specialist, confirmed she investigated Claimant's accident. Ms. Starr confirmed Respondent's policy requires employees to report accidents the day of occurrence, which can result in termination if an additional infraction occurs. Ms. Starr also confirmed the tablets issued to employees contain a program allowing employees to report work-related accidents.

Ms. Starr testified on November 8, 2024, Claimant notified her of a work-related accident. Ms. Starr met with Claimant, and Ms. Euceda acted as an interpreter. Another manager was present. Claimant completed the accident report form, and Ms. Starr denied anyone else wrote "N/A" on the form. According to Ms. Starr, Claimant could not recall the details of the accident because it happened four to six weeks ago. Claimant said other co-workers were present when the accident occurred, but she could not recall their names. Ms. Starr testified Claimant said she was driving a cart and was struck from behind by another co-worker. Ms. Starr understood the other driver was Mr. Sperling. Ms. Starr asked Claimant why she did not report the accident earlier, and Claimant said she did not

want to get anyone in trouble. Ms. Starr testified Claimant did not give a specific date, time or location of the accident. Ms. Starr also testified she was not aware Claimant alleged she was injured on October 23, 2024, specifically, until she received a medical report from the authorized provider and a report from the workers compensation insurance carrier.

After receiving notice from Claimant, Ms. Starr conducted an investigation. Ms. Starr reviewed her records to locate any accident reports made over the past two months matching Claimant's description of the accident. Ms. Starr found a report completed by Mr. Sperling, with Ms. Starr acting as scrivener, dated September 24, 2024. According to the report, Mr. Sperling was driving a cart and was passing other parked carts. As Mr. Sperling was driving, Claimant started backing out without looking. The carts scrapped, but the impact was not forceful. The report also stated Claimant came out of her cart and said she and Mr. Sperling did not have to report the accident. According to Mr. Sperling, Claimant did not say she was hurt.

Ms. Starr also testified she asked the co-workers around Claimant, including the two co-workers identified by Claimant, if they witnessed an accident. According to Ms. Starr, no one recalled seeing anything, and no witnesses came forward.

Ms. Starr also spoke with Mr. Sperling. Mr. Sperling thought Claimant was the other driver involved in the September 24, 2024, incident. Ms. Starr testified Mr. Sperling told her the incident was minor and Claimant was not injured. Mr. Sperling previously reported the incident to Ms. Starr to comply with Respondent's policies.

Ms. Starr confirmed Claimant was sent to a medical provider after the accident was reported. Claimant was given temporary restrictions, which were addressed by Ms. Euceda. Ms. Starr testified she completed a memorandum confirming Claimant's restrictions and the availability of accommodated work. Both Claimant and Ms. Starr signed the memorandum, and Claimant was provided accommodated work.

Ms. Starr testified Claimant was subsequently terminated for violating Respondent's safety rules requiring timely reporting of accidents and requiring employees to visibly wear a reflective safety vest. Ms. Starr confirmed Claimant worked in an accommodated position, earning her same rate of pay, until she was terminated.

Claimant sought temporary total disability compensation and authorized medical treatment. A preliminary hearing was held on August 26, 2025, and the preliminary order was issued by ALJ Larson on September 12, 2025. ALJ Larson found the report completed by Ms. Starr was the most credible evidence regarding notice, which indicated Claimant reported a work-related accident occurring four to six weeks before November 8, 2024, which did not correspond to an accident date of October 23, 2024. ALJ Larson concluded Claimant did not prove she gave sufficient notice of an accident occurring on October 23, 2024. ALJ Larson also questioned whether Claimant proved she sustained

an injury by an accident arising out of and in the course of her employment on October 23, 2024. ALJ Larson, however, did not rule on those issues. ALJ Larson concluded the issues of whether Claimant proved the occurrence of an accident on October 23, 2024, or whether the alleged accident was the prevailing factor causing her alleged injury were moot, in light of the ruling on notice. Claimant's request for compensation was denied. These proceedings follow.

### **PRINCIPLES OF LAW AND ANALYSIS**

Claimant argues the denial of compensation was erroneous because she proved she gave proper notice. Claimant also argues the medical evidence establishes the alleged accident of October 23, 2024, was the prevailing factor causing Claimant's alleged injuries and medical condition. Claimant contends she is entitled to a preliminary award of medical treatment and temporary total disability compensation.

Respondent argues Claimant did not give proper notice because she did not provide particulars of an alleged accident occurring on October 23, 2024. Respondent also argues Claimant did not prove by a greater weight of the credible evidence an accident occurred on October 23, 2024, or the alleged accident was the prevailing factor causing Claimant's alleged injury or medical condition. Respondent also contends the Board does not possess authority to rule on entitlement to temporary total disability compensation independently.

It is the intent of the Legislature the Workers Compensation Act be liberally construed only for the purpose of bringing employers and employees within the provisions of the Act.<sup>2</sup> The provisions of the Workers Compensation Act shall be applied impartially to all parties.<sup>3</sup> The burden of proof shall be on the employee to establish the right to an award of compensation, and to prove the various conditions on which the right to compensation depends.<sup>4</sup>

Subject to the jurisdictional limitations of K.S.A. 44-534a, the Board possesses exclusive jurisdiction to review all decisions, findings, orders and awards of compensation issued by administrative law judges.<sup>5</sup> The Board's review shall be based on the questions of law and fact as presented and shown by a transcript of the evidence and proceedings

---

<sup>2</sup> See K.S.A. 44-501b(a).

<sup>3</sup> See *id.*

<sup>4</sup> See K.S.A. 44-501b(c).

<sup>5</sup> See K.S.A. 44-534a, K.S.A. 44-555c(a).



presented to the administrative law judge.<sup>6</sup> The Board possesses authority to review *de novo* all decisions, findings, orders and awards of compensation issued by administrative law judges,<sup>7</sup> and the Board possesses the authority to grant or refuse compensation, or to increase or diminish an award of compensation.<sup>8</sup> 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.<sup>9</sup>

## 1. CLAIMANT PROVED SHE GAVE PROPER NOTICE TO RESPONDENT.

The primary issue is whether Claimant proved she gave proper notice to Respondent of her alleged injury by an alleged accident. 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 thirty days from the date of accident, or twenty days from the last date worked if the employee no longer works for the employer, whichever is earlier.<sup>10</sup> Notice must be provided either to the employer's designee or to a supervisor or manager, must include the time, date, place and particulars, and must evidence the employee is seeking workers compensation benefits or sustained a work-related injury.<sup>11</sup> Weekends are included in calculating the notice period.<sup>12</sup>

The alleged date of accident is October 23, 2024, and thirty days from that date is November 22, 2024. Claimant was terminated by Respondent on November 15, 2024, and Claimant worked for Respondent until she was terminated. Twenty days from November 15, 2024, is December 5, 2024. Claimant must prove she gave notice to a supervisor or manager by November 22, 2024.

Claimant testified she notified a manager, Ms. Euceda, she suffered an injury from a work-related accident on October 23, 2024. Mr. Pupo did not give evidence regarding notice. Ms. Euceda testified Claimant did not advise her of a work-related injury from an accident occurring on October 23, 2024, until November 8, 2024. Ms. Euceda denied

---

<sup>6</sup> See K.S.A. 44-555c(a).

<sup>7</sup> See *id.*

<sup>8</sup> See K.S.A. 44-551(l)(1).

<sup>9</sup> See *Rivera v. Beef Products, Inc.*, No. 1,062,361, 2017 WL 2991555, at \*4 (Kan. WCAB June 22, 2017).

<sup>10</sup> See K.S.A. 2024 Supp. 44-520(a)(1).

<sup>11</sup> See K.S.A. 2024 Supp. 44-520(a)(2), (4).

<sup>12</sup> See K.S.A. 2024 Supp. 44-520(c).

receiving notice from Claimant on October 23, 2024. Ms. Starr testified she did not receive notice Claimant sustained a work-related injury until November 8, 2024, which prompted Ms. Starr to arrange medical treatment. Under either Claimant's scenario or Respondent's scenario, Claimant advised management she sustained a work-related injury from an alleged accident occurring on October 23, 2024, or sought workers compensation benefits, prior to November 22, 2024. The undersigned concludes Claimant met her burden of proving she gave proper notice to Respondent. The findings and conclusions regarding notice contained in the September 12, 2025, Order are reversed.

**2. BECAUSE THE ALJ DID NOT RULE ON THE REMAINING ISSUES, THIS MATTER IS REMANDED TO ALJ LARSON FOR FURTHER PROCEEDINGS.**

The Board next addresses whether Claimant proved she sustained personal injuries from an alleged accident arising out of and in the course of employment, and whether Claimant proved the alleged accident was the prevailing factor causing her alleged injury and medical condition. Although the ALJ's determination on notice is reversed, this ruling does not constitute a ruling on the remaining issues. In the September 12, 2025, Order, the issues of whether Claimant proved an accident or prevailing factor were declared moot. ALJ Larson did not rule on those issues. The Board has no findings or decisions regarding accident or prevailing factor to review, and makes no rulings regarding those issues at this time.

On review, the Board possesses the authority to remand any matter to the administrative law judge for further proceedings.<sup>13</sup> Accordingly, this matter is remanded to ALJ Larson for further proceedings and ruling on the remaining issues and Claimant's request for benefits.

**DECISION**

**WHEREFORE**, it is the finding, decision and order of the undersigned Board Member the Order issued by ALJ Troy A. Larson, dated September 12, 2025, is reversed. This matter is remanded to ALJ Larson for further proceedings regarding whether Claimant proved she sustained personal injury from an accident arising out of and in the course of her employment, whether Claimant proved the alleged accident was the prevailing factor causing her alleged injury or medical condition, and Claimant's request for benefits.

---

<sup>13</sup> See K.S.A. 44-551(l)(1).

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of November, 2025.

---

WILLIAM G. BELDEN  
APPEALS BOARD MEMBER

c: Via OSCAR

Thomas R. Fields  
Christopher J. McCurdy  
Hon. Troy A. Larson