BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

RONALD LENTZ Claimant	)	
VS.	)	
MIDWEST BUILDING SUPPLY INC. Respondent	)	AP-00-0492-567 CS-00-0461-335
AND	)	
KANSAS BUILDERS INSURANCE GROUP Insurance Carrier	)	

ORDER

The respondent and its insurance carrier (respondent), through Kirby Vernon, requested review of Administrative Law Judge (ALJ) Ali Marchant's Post-Award Medical Award dated October 3, 2025. Phillip Slape appeared for the claimant. This post-award proceeding for medical benefits was placed on the summary docket for disposition without oral argument.

RECORD AND STIPULATIONS

The Board considered the post award record, consisting of the Regular Hearing Transcript dated March 28, 2022, the Regular Hearing by Deposition of Ronald K. Lentz, taken on April 20, 2022, with Ex. 1, the Settlement Hearing Transcript dated June 24, 2022, the Post-Award Medical Hearing Transcript dated July 7, 2025, with Ex. 1, the Deposition Transcript of Thomas Frimpong, D.O., dated August 4, 2025, with Ex. 1-5, documents of record filed with the Division, including the parties' briefs, and adopted the stipulations listed in the Award.

ISSUES

1. Should the claimant's right to future medical be terminated pursuant to K.S.A. 44-510k(a)(4)?

2. Is the claimant entitled to additional medical treatment?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The claimant worked for the respondent as a warehouse and delivery person. He was injured on July 12, 2021, when he fell while lifting and moving an onyx shower base. He had to push the onyx base, which weighed between 300 and 600 pounds, away from him to prevent more serious injury. At the Regular Hearing by Deposition in 2022, the claimant testified he had neck pain immediately after his July 12, 2021, work-related accident, but it was not severe at the time, and his focus was on his serious middle back injury, for which he was taking pain medication. The claimant described his back pain following the accident as excruciating.

On August 24, 2021, the claimant began receiving authorized medical treatment from Thomas Frimpong, D.O., a board certified neurosurgeon, for his thoracic spine. The claimant complained of mid to upper back pain. The claimant also mentioned neck pain and a stiff neck as part of his past medical history. The doctor diagnosed the claimant with an acute T11-12 fracture. The doctor's evaluation and treatment was limited to the thoracic spine. Had the claimant complained of work-related neck pain, Dr. Frimpong indicated he would have examined the neck. The claimant did not request cervical spine treatment. On August 30, 2021, Dr. Frimpong performed a kyphoplasty at T11-12.

At the final visit with Dr. Frimpong on November 2, 2021, the claimant presented with nasal fractures and multiple facial bruises. The claimant was assaulted three weeks prior. Complaints of cervical spine or neck pain were not recorded. Dr. Frimpong placed the claimant at maximum medical improvement and released him from care.

The claimant was also seen by Pedro Murati, M.D., at his attorney's request, on December 15, 2021. The claimant testified Dr. Murati identified issues with the claimant's neck and mid back. This particular report from Dr. Murati was not placed into evidence.

In 2022, the claimant testified the surgery did not alleviate his back pain, especially with standing or walking. Further, the claimant testified he realized there was something more serious occurring with his neck after his thoracic spine surgery. He testified he knew he had something more than just a sore neck from his work accident. The claimant characterized his neck pain as daily, chronic and progressively worsening.

The claimant never received any medical treatment for his neck.

At some point after his accident, the claimant's employment was terminated because the respondent was unable to accommodate his restrictions. The claimant then went to work for Metro Xpress as an over-the-road truck driver. He wore a back brace to

keep his body erect and stated he was not required to lift anything over 30 pounds. The claimant described his position as working with "no touch freight."[1]

On June 24, 2022, the claimant settled his claim for $25,000, with future medical benefits left open. According to the settlement hearing transcript, the medical reports attached included ratings from Dr. Murati for the neck and mid back and Dr. Frimpong for the mid back.[2] The settlement hearing language does not comment on the nature and extent of the claimant's injuries or the situs of his impairment.

The claimant never asked for neck treatment during the litigation of his underlying claim. On December 27, 2022, the claimant filed an Application for Post-Award Medical (E-4) requesting authorized medical treatment. No further action was taken.

The week of December 10, 2024, the claimant ended his employment with Metro Xpress. He has not worked anywhere else.

On January 31, 2025, the claimant filed an E-4 requesting a choice of two physicians to treat his neck.

On May 8, 2025, the claimant saw Dr. Murati at his attorney's request. The claimant told Dr. Murati he was about one week away from retiring as an over-the-road truck driver. This information is contrary to evidence the claimant stopped working in December 2024. The claimant complained of limited neck range of motion; neck pain, popping and cracking; electrical pain that shoots into his low back and causes headaches when looking down; being unable to stand for very long on occasion; difficulty working out; being unable to walk the dog for 2 miles a day; difficulty carrying anything out in front of him; and multiple headaches a week. Dr. Murati diagnosed the claimant with: (1) status post T11 and T12 superior endplate fracture, (2) status post kyphoplasty T11-T12, (3) cervical radiculopathy, (4) myofascial pain syndrome of the bilateral shoulder girdles extending into and including the cervical paraspinals, and (5) right occipital headaches.

Dr. Murati recommended medical treatment for the above diagnoses, including cervical spine and thoracic spine MRI, bilateral upper extremity nerve conduction studies and EMG testing, physical therapy, epidural injections, trigger point injections, occipital blocks and medications. Dr. Murati noted his prevailing factor opinion had not changed since his previous report dated December 15, 2021, at which time he had diagnosed the claimant with cervical radiculopathy.[3]

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[1] P.A.H. Trans. at 13.

[2] These medical reports are not in evidence.

[3] This report is not in evidence.

On June 18, 2025, the respondent filed an E-4 to permanently terminate the claimant's future medical benefits pursuant to K.S.A. 44-510k(3). Both applications were scheduled for hearing on July 7, 2025.

The ALJ conducted the hearing in person and the claimant testified before her. In explaining his reason for requesting additional medical treatment, the claimant testified:

> Well, I just - - the pain in my neck was starting to get more severe, and I mean I'm just driving, you know, my truck, and I've just noticed when I move my head, you know, I was getting kind of electric shocks down my spine when I bend my neck, and I just thought, well, I better get in and get it checked.[4]

The claimant denied any new injuries to his neck. He agreed he started noticing pain and discomfort in his neck or upper back in "later years" or about a year prior to requesting additional treatment.[5] What "later years" means is not explained in any further detail. He admitted he was having additional pain in his neck and thoracic spine from having to look up and down while driving a truck for Metro Xpress, which he had been doing for about four and a half years.

The claimant testified his neck pain never completely stopped after July 12, 2021, stating, "I mean, you know, prior to December, you know, it was kind of sporadic, but it's just become more intense as time goes on."[6] He attributed the neck pain to his 2021 injury and testified it is in the same location as after the 2021 accident. He denied any new injury to his neck from driving for Metro Xpress. He also denied any neck injuries prior to his 2021 work accident.

The claimant continues to experience limitations and pain. The claimant takes Tylenol and Advil daily for his neck and back.

Dr. Frimpong testified on August 4, 2025. When asked if the claimant reported any neck complaints or symptoms at the initial visit approximately four years earlier, Dr. Frimpong testified the claimant had "neck pain, chronic neck pain as part of his normal[.]"[7] The doctor did not address the claimant's neck complaints and stated his evaluation and treatment was restricted to the thoracic spine. The doctor was told the claimant began

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[4] P.A.H. Trans. at 10.

[5] *Id*. at 9.

[6] *Id*. at 18.

[7] Frimpong Depo. at 8.

complaining about his cervical spine in "approximately the last year or so . . . ."[8] The doctor testified:

> Q. Do you have an opinion whether or not the symptoms related to the cervical spine based upon your evaluation and treatment performed in 2021 would be associated with the work accident and injury of . . . July 12, 2021?
>
> A. I mean, he did fall and he was moving 600 pounds of marble slab, but when I saw him at the time I don't recall having reviewed any imaging of the cervical spine.
>
> At least I saw thoracic imaging, so I'm just not sure exactly now what his spine even looked like when I saw him back in, you know, November - - back in August of 2021, to know whether that was acute, because typically you see an acute injury pretty quick just like you saw an acute injury to the thoracic spine. There are specific changes you look for.
>
> So unless there is an MRI, I mean, I can look at it and make a comment, it's different from when I saw him which was close to the injury. It would be difficult to tell exactly whether it was an [aggravation] of a preexisting issue or just a new prevailing factor contributing to the neck issue, or maybe the thoracic issue was much worse, and therefore, he was more injured and I never should have made such comments on the cervical spine.
>
> So just a lot of - - it's difficult to tell exactly without real imaging, but if there was an image I can look at and give you the prevailing factor right now.
>
> Q. I don't believe there is any subsequent imaging that has been done. I can double-check to make sure.
>
> A. But in my opinion, it is difficult that if there is a cervical issue to the degree that he was reporting to me, it's just hard to believe that he wouldn't have reported the same amount of pain in the cervical spine until this time, but it's hard to tell but I just don't know.[9]

Dr. Frimpong opined there was no causal relationship between the claimant's thoracic injury and his cervical complaints and testified:

> I can say that based on my experience, based on the many cervical stuff that I have treated, it's very difficult to think that someone would have this severe mechanism of injury which wasn't a minor thing and has sustained a cervical injury and cervical

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[8] *Id*. at 19.

[9] *Id*. at 19-20.

> injuries are very, very painful, because like I said, the neck is mobile. It's not thoracic where you have ribs to protect it.
>
> That he wouldn't have noticed any pain or symptoms or anything at all for close to four years so even though I don't have imaging, you know, I just don't know that there is a [causal] relationship between that injury and the cervical complaint he may have some.
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> Like I said, he may have had preexisting degenerative stuff and maybe it happened over time and potentially caused it three or four years afterwards, but likely not acute related to the injury itself, because acute would have involved with a disk herniation, a bony fracture, some sort of thing that you would have noticed quite immediately.
>
> Even if he didn't notice it immediately, at least he would have started noticing it once his thoracic spine started getting better. I can see if you have pain from the thoracic and then noticing it once the thoracic spine started getting better which it did, he probably should have noticed some neck issues.[10]

Dr. Frimpong testified without imaging, it is difficult to determine prevailing factor because "there is just so many variables right now."[11] He acknowledged the claimant's mechanism of injury was sufficient to cause a cervical spine injury, but Dr. Frimpong would have expected neck complaints if he had an acute injury, while acknowledging the claimant's primary injury was to the thoracic spine. The doctor testified all of his opinions were within a reasonable degree of medical probability.

The ALJ found the respondent proved the claimant went over two years without obtaining medical treatment for his work-related injury since last receiving authorized treatment. Therefore, the ALJ found the respondent was entitled to the statutory presumption no further medical treatment was needed as a result of the underlying injury. However, the ALJ noted the claimant could overcome the presumption with competent medical evidence. The ALJ found Dr. Murati's 2025 evaluation was considerably more recent than Dr. Frimpong's 2021 evaluation. The ALJ characterized Dr. Frimpong's opinions as "speculative and stale."[12] Without much elaboration, the ALJ found the claimant was entitled to additional treatment for his thoracic spine based on the recent opinion from Dr. Murati. The ALJ stated a closer call of whether the claimant's need for cervical spine or neck treatment was proven compensable.

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[10] *Id*. at 26-27.

[11] *Id*. at 27.

[12] P.A.H. Award at 10.

The respondent argued the claimant's neck complaints were basically absent from the treatment records, the claimant's neck complaints could be due to the assault prior to him being declared at MMI by Dr. Frimpong in 2021, and the claimant's neck complaints were due to an intervening work injury from repetitive work – looking up and down – for Metro Xpress. The ALJ rejected these arguments. The ALJ noted the claimant did not complain to Dr. Frimpong about neck complaints after his assault. The ALJ stated Dr. Murati recommended neck treatment in both 2021 and in 2025.

The ALJ found the claimant met his burden to prove his work-related accident is the prevailing factor causing his present cervical spine complaints. Even though the claimant had never received any neck treatment, the ALJ noted the claimant was consistent he had neck complaints ever since his work accident. The ALJ stated Dr. Frimpong was limited to treating the claimant's thoracic spine only. The ALJ placed more weight in the claimant's testimony and Dr. Murati's recent report than in the "speculative opinions of Dr. Frimpong, who has never examined Claimant's cervical spine."[13] Further, the ALJ found the claimant's neck pain when looking up and down while working for Metro Xpress did not establish a new or intervening work-related injury.

The ALJ ordered the respondent to provide a list of two qualified spine specialists from which the claimant may select an authorized treating physician for the injuries to his thoracic spine and cervical spine.

PRINCIPLES OF LAW & ANALYSIS

The respondent argues its application to permanently terminate medical treatment should be granted. In the alternative, the respondent argues the claimant has failed to sustain his burden of proving his current neck complaints are a natural and probable consequence of his work-related injuries. Apart from the argument future medical treatment should be terminated based on the passage of two years, the respondent does not make specific arguments regarding why future medical for the thoracic spine should be terminated. The claimant maintains the Post-Award Medical Award should be affirmed.

An employer is liable to pay compensation, including medical treatment, to an employee incurring personal injury by accident or repetitive trauma arising out of and in the course of employment.[14] The burden of proof is on the claimant.[15]

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[13] *Id*. at 12.

[14] See K.S.A. 44-501b(b).

[15] See K.S.A. 44-501b(c).

Board review of an order is de novo on the record.[16] A de novo hearing is a decision of the matter anew, giving no deference to findings and conclusions previously made by the judge.[17] On de novo review, the Board makes its own factual findings.[18]

K.S.A. 2021 Supp. 44-508(g) states:

> "Prevailing" as it relates to the term "factor" means the primary factor, in relation to any other factor. In determining what constitutes the "prevailing factor" in a given case, the administrative law judge shall consider all relevant evidence submitted by the parties.

K.S.A. 2021 Supp. 44-510h(e) states:

> It is presumed that the employer's obligation to provide [medical benefits] shall terminate upon the employee reaching maximum medical improvement. Such presumption may be overcome with medical evidence that it is more probably true than not that additional medical treatment will be necessary after such time as the employee reaches maximum medical improvement. As used in this subsection, "medical treatment" means only that treatment provided or prescribed by a licensed healthcare provider and shall not include home exercise programs or over-the-counter medications.

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

> (a)(1) At any time after the entry of an award for compensation wherein future medical benefits were awarded, the employee, employer or insurance carrier may make application for a hearing, in such form as the director may require for the furnishing, termination or modification of medical treatment. . . .
>
> (2) The administrative law judge can (A) make an award for further medical care if the administrative law judge finds that it is more probably true than not that the injury which was the subject of the underlying award is the prevailing factor in the need for further medical care and that the care requested is necessary to cure or relieve the effects of such injury, or (B) terminate or modify an award of current or future medical care if the administrative law judge finds that no further medical care is required, the injury which was the subject of the underlying award is not the prevailing factor in the need for further medical care, or that the care requested is not necessary to cure or relieve the effects of such injury.

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[16] See *Helms v. Pendergast*, 21 Kan. App. 2d 303, 899 P.2d 501 (1995).

[17] See *In re Tax Appeal of Colorado Interstate Gas Co.*, 270 Kan. 303, 14 P.3d 1099 (2000).

[18] See *Berberich v. U.S.D. 609 S.E. Ks. Reg'l Educ. Ctr.*, No. 97,463, 2007 WL 3341766 (Kansas Court of Appeals unpublished opinion filed Nov. 9, 2007).

> (3) If the claimant has not received medical treatment, as defined in subsection (e) of K.S.A. 44-510h, and amendments thereto, from an authorized health care provider within two years from the date of the award or two years from the date the claimant last received medical treatment from an authorized health care provider, the employer shall be permitted to make application under this section for permanent termination of future medical benefits. In such case, there shall be a presumption that no further medical care is needed as a result of the underlying injury. The presumption may be overcome by competent medical evidence.
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> (4) No post-award benefits shall be ordered, modified or terminated without giving all parties to the award the opportunity to present evidence, including taking testimony on any disputed matters. A finding with regard to a disputed issue shall be subject to a full review by the board under subsection (b) of K.S.A. 44-551, and amendments thereto. Any action of the board pursuant to post-award orders shall be subject to review under K.S.A. 44-556, and amendments thereto.

1. The respondent's motion to terminate medical treatment is denied.

The Act mentions, but does not define "medical evidence." As discussed in *Weaver*,[19] several cases have discussed what constitutes "competent medical evidence":

- The Kansas Supreme Court held the opinion of a health care provider stated with a reasonable degree of medical certainty is sufficient competent medical evidence of causation.[20]

- The Board held "'competent medical evidence' is the opinion of a physician given within a 'reasonable degree of medical probability'".[21]

- An expert medical opinion requires at least professional probability.[22]

- In *Clayton*,[23] the parties agreed "the term 'competent medical evidence' in the context of workers compensation would normally mean an opinion asserted by a health care provider that is expressed in terms of 'reasonable degree of medical probability' or similar language."

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[19] *Weaver v. Unified Gov't of Wyandotte Cnty.*, 63 Kan. App. 2d 773, 539 P.3d 617 (2023).

[20] See *Webber v. Automotive Controls Corp.*, 272 Kan. 700, 704-05, 35 P.3d 788 (2001).

[21] See *Mulder v. Menard, Inc.*, No. AP-00-0458-678, 2021 WL 6275018, at *5 (Kan. WCAB Dec. 29, 2021).

[22] See *Bacon v. Mercy Hosp. of Ft. Scott*, 243 Kan. 303, 307-08, 756 P.2d 416 (1988).

[23] *Clayton v. University of Kansas Hosp. Auth.*, 53 Kan. App. 2d 376, 382, 388 P.3d 187 (2017).

- *Garcia* states competent medical evidence "contemplates the use of an array of sources the medical expert considers professionally appropriate," at least in the context of providing an impairment rating.[24]

Clayton provides guidance. There, the worker settled her workers compensation claim against her employer in 2013, leaving future medical treatment open. Attached to the settlement hearing transcript was a 2013 letter from Dr. Shah. Regarding future medical treatment, Dr. Shah stated he believed Clayton would likely need future medical treatment due to her injury, including injections and/or surgery.

More than two years later, in 2015, Clayton's employer filed an application to terminate future medical benefits pursuant to K.S.A. 44-510k(a)(3). The ALJ found Dr. Shah's letter was competent medical evidence to overcome the presumption no further medical care was needed and denied the application. The Board affirmed. The Court of Appeals disagreed.

The Court of Appeals noted once the respondent proves the claimant's medical treatment should be terminated because the claimant had not had medical treatment for two years, the burden of proving the need for future medical treatment shifts to the claimant. The Court stated "further" treatment means additional to what has already been provided and "needed" concerns necessity or a requirement. Often, new evidence is needed to prove the claimant's need for future medical treatment, but it is done on a case-by-case basis. The Court concluded Dr. Shah's five-year old opinion did not address the claimant's current need for medical care.

Here, Dr. Murati's more-recent opinion is more probative than the more stale opinions of Dr. Frimpong. Dr. Frimpong's prevailing factor opinion is closer to not knowing the prevailing factor for the claimant's neck injury. Dr. Murati's 2025 opinion is consistent with his 2021 opinion. The claimant's testimony about having neck pain from his 2021 injury is consistent based on the entire record. The claimant overcame his burden of proving the need for additional medical treatment. The respondent's motion to terminate medical treatment is declined.

2. The claimant is entitled to an award of future medical treatment because he proved additional medical treatment is necessary after he reached maximum medical improvement.

While medical treatment for the claimant's thoracic spine was at issue, the parties mainly focused arguments on the claimant's cervical spine. The Appeals Board affirms the ALJ's granting of additional medical treatment for the claimant's thoracic spine. Again, this

[24] *Garcia v. Tyson Fresh Meats*, 61 Kan. App. 2d 520, 529, 506 P.3d 283 (2022).

is based on a recent report from Dr. Murati in 2025 and the claimant's post-Award testimony.

Similarly, the Appeals Board agrees with the ALJ's conclusions regarding awarding treatment for the claimant's cervical spine. The claimant complained of neck pain before the underlying claim was settled. It is inaccurate the claimant just developed cervical spine complaints in the last year or so before Dr. Frimpong's testimony. Rather, the claimant testified he had chronic and progressive neck pain, which he primarily noticed after his thoracic spine surgery. Dr. Murati's findings of neck complaints in 2021 and 2025 correlate with the claimant's testimony, which the ALJ believed. The ALJ is in a good position to assess witness credibility.[25] The claimant did not sustain an intervening neck injury from an assault shortly before being released by Dr. Frimpong. The claimant's work for Metro Xpress was not an intervening injury. The Board agrees with the ALJ's award of cervical spine treatment. Claimant proved the work-related accident of July 12, 2021, was the prevailing factor causing his cervical injury/pathology, and additional medical treatment is reasonably necessary to cure or relieve the effects of the cervical injury.

AWARD

WHEREFORE, the Board affirms the Post-Award Medical Award.

IT IS SO ORDERED.

Dated this _____ day of December, 2025.

_____
BOARD MEMBER

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BOARD MEMBER

_____
BOARD MEMBER

c: (via OSCAR)
Phillip Slape
Kirby Vernon
Hon. Ali Marchant

[25] See *Garner v. Kitselman Construction, LLC*, No. 1,069,084, 2016 WL 3208233 (Kan. WCAB May 31, 2016).