

**BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD**

**SONIA TAMAYO** )  
Claimant )  
V. )  
 ) AP-00-0493-033  
**TYSON FRESH MEATS, INC.** ) CS-00-0451-614  
Self-Insured Respondent )

**ORDER**

Claimant appealed the October 29, 2025, Award by Administrative Law Judge (ALJ) Larry Gurney. The Board heard oral argument on March 5, 2026.

**APPEARANCES**

Randy S. Stalcup appeared for the Claimant. Seth M. Jurcyk appeared for Self-Insured Respondent.

**RECORD AND STIPULATIONS**

The Board has adopted the same stipulations and considered the same record as did the ALJ, consisting of the transcript of Regular Hearing dated July 15, 2025; Evidentiary Deposition of Daniel Zimmerman, M.D., taken on July 21, 2025, with exhibits; Evidentiary Deposition of Sonya Tamayo, taken on August 18, 2025, with exhibits; Evidentiary Deposition of Pat Do, M.D., taken on September 15, 2025, with exhibits; Independent Medical Examination Report of Vito Carabetta, M.D., dated April 4, 2025, the documents of record filed with the Division and the parties' briefs.

**ISSUES**

1. Was Claimant's repetitive trauma the prevailing factor causing her bilateral shoulder and right upper extremity complaints?
2. What is the nature and extent of Claimant's impairment?
3. Is Claimant entitled to future medical treatment?

**FINDINGS OF FACT**

Claimant began working for Respondent on October 16, 2001, as a trimmer and

layer. Her job duties have not changed since she started working for Respondent, except for temporary reassignment of job duties after her left hand surgery.

On October 9, 2017, Claimant underwent a whole body nuclear bone scan while she was being treated for breast cancer. The results of the scan were mild signal increase in multiple joints including the wrist, knees, shoulders, elbows, ankles and toes consistent with moderate polyarthritis.

On February 21, 2020, Claimant went to Tyson Medical with complaints to her neck, shoulders and fingers. Claimant had pain in her bilateral shoulders and neck and locking of the left third and left fourth fingers. She attributed this to a reported work injury on February 21, 2020. The right shoulder pain was worse than the right. Claimant experienced neck pain when she turned her head to the right. Claimant's conditions were identified as tenosynovitis for the left third and left fourth digits; chronic acute neck pain from spondylosis of the cervical spine; and chronic acute pain in both shoulders from moderate polyarthritis. Respondent attributed Claimant's job duties for the left hand complaints, but the bilateral shoulders and neck complaints were personal medical conditions and not work-related.

Her shoulder complaints are described as a discomfort or numbness, more on the left than the right. These issues occur every day or at least three to four times a week. Claimant testified it is like there is something in her left shoulder and sometimes it feels like it pops. She testified this sometimes lasts all day. With the right being worse than the left, Claimant also had a constant burning sensation. Her right shoulder complaints go down into her fingers, but the left shoulder complaints do not.

Claimant was referred to Dr. Pat Do, an orthopedic surgeon. On August 28, 2020, he performed a left long and ring finger trigger release surgery. Claimant was moved temporarily to a different position, performing light duty until she recovered and was then moved back to her original position. Dr. Do found Claimant at maximum medical improvement (MMI) on December 3, 2020. On December 16, 2020, Dr. Do assigned a 2 percent impairment to the left upper extremity at the level of the forearm based on *The American Medical Association Guides for the Evaluation of Permanent Impairment 6<sup>th</sup> Edition (The Guides)*. He did not feel future medical treatment was anticipated.

Dr. Do did not provide treatment to Claimant's shoulders as no complaints were reported. Dr. Do was asked if arthritis could be determined from a bone scan, and he answered "you can see the joint filling increase, uptick, but it would be what we call nonspecific lighting up. You could have various different reasons why a bone scan might light up in a joint, with arthritis being one of the causes."<sup>1</sup>

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<sup>1</sup> Do Depo. at 13.

Dr. Daniel Zimmerman examined Claimant on September 27, 2024, at the request of Claimant's attorney. Claimant presented with complaints of pain and discomfort in both shoulders. Claimant was unable to lie on her right or left side for lengthy periods due to pain and discomfort in her shoulders. She also reported feeling heaviness in both arms from her shoulders to her fingers. She had numbness and tingling in her fingers, but she was not sure as to the cause. Claimant reported having these symptoms while performing her work duties through February 21, 2020.

Dr. Zimmerman noted range of motion deficits in both shoulders. He performed sensory testing in the upper extremities throughout the arms, forearms, hands and digits and results were unremarkable on both sides. His diagnosis was chronic repetitive tendonitis.

Dr. Zimmerman opined the prevailing factor for the right and left shoulder chronic tendonitis is the repetitive work duties performed by Claimant through February 21, 2020.

Dr. Zimmerman used *The Guides* as a starting point in assigning his impairment rating. *The Guides* showed a 5 percent rating each for the right upper extremity and left upper extremity at the shoulder level. Converting these ratings to a body as a whole rating results in 6 percent for body as a whole.

Dr. Zimmerman opined *The Guides* ratings were inadequate and did not represent the nature and extent of Claimant's impairment. Based on his training, background, and experience, Claimant's current history and physical examination findings, the severity of the range of motion limitations, pain and discomfort, and weakness affecting both shoulders, justify a higher impairment rating than *The Guides* provided. Dr. Zimmerman noted these symptoms would impact Claimant's ability to perform activities of daily living and work-related tasks.

Dr. Zimmerman found the impairment rating was 11 percent of the right upper extremity at the shoulder level, which converts to 7 percent body as a whole impairment. The left shoulder impairment was 11 percent to the left upper extremity which converts to 7 percent body as a whole. The whole person impairments were combined for a 14 percent impairment to the body as a whole.

Dr. Zimmerman found Claimant's condition to be stable and did not believe further diagnostic or therapeutic intervention was warranted. Claimant was found to be at MMI, but it is more probably true than not additional medical treatment provided or prescribed by a licensed physician will be necessary in the future.

Dr. Zimmerman's recommendations for future medical treatment were, if permitted by a care provider, a therapeutic dosing schedule of a proprietary nonsteroidal anti-inflammatory medication such as Celebrex or Mobic. Such management should be

continued as long as the use of a proprietary nonsteroidal anti-inflammatory medication does reduce the pain and discomfort affecting the right and left shoulders. For the pain and discomfort affecting the right and left shoulders, that could be treated with injections of a steroid and a local anesthetic into the soft tissue structures about the right and left shoulder joint capsules. Such injections can be repeated up to three times a year if the injections do reduce the pain and discomfort. If the injections do not reduce the pain and discomfort, the injections should be discontinued.

Dr. Zimmerman assigned the following restrictions: lift 20 pounds on an occasional basis and 10 pounds on a frequent basis; avoid work activities at shoulder height or above on the right and left sides; and avoid frequent flexion, extension, twisting, torquing, pushing, pulling, hammering, handling, holding, and reaching activities using the right and left upper extremities.

Dr. Vito J. Carabetta examined Claimant on April 4, 2025, at the request of the Court. Claimant presented with a chief complaint of right shoulder and left shoulder pain, the pain greater on the right than the left. Claimant described the symptoms as a deep, constant, variable aching pain with a burning sensation at times. There has been no improvement over time and the symptoms are worse than ever. Claimant could not state what aggravated or alleviated her pain. Claimant complained of numbness on the right side in the morning for ten minutes. Claimant believed her grip strength was reduced on the right side in comparison to the left, despite being right hand dominant. Claimant could not state what aggravated or alleviated her pain. Claimant also experiences a minimal degree of tightness in the flexor tendons of the left fourth and fifth digits. There has been no triggering of these digits since surgery.

Claimant reported her complaints gradually began a week or two prior to February 21, 2020. She continued to work while having these symptoms and with a change in supervisors, production was sped up.

Dr. Carabetta examined Claimant and diagnosed status-post flexor tendon release, left ring and middle fingers and polyarthritis. Dr. Carabetta opined the polyarthritis preceded the work injury, and has been documented by an October 2017 bone scan as impacting on a fair number of joints throughout Claimant's body. He opined although Claimant's work activities may aggravate her symptomatology, they are not the cause of the development of Claimant's arthritic complaints. Dr. Carabetta opined the prevailing factor for the left hand flexor triggering was repetitive trauma due to her work duties.

He found Claimant to be at MMI for several years with no future medical treatment anticipated. He went on to assign a combined impairment of 2 percent impairment of the left upper extremity (6 percent impairment of the left ring finger, as well as a 6 percent impairment of the left middle finger, which converts to a 1 percent impairment of the left upper extremity at the level of the forearm for the ring finger and a 1 percent impairment

of the left upper extremity at the level of the forearm for the middle finger). This rating was based on *The Guides*. It is fully apportioned to the February 21, 2020, injury.

The ALJ found Claimant suffered repetitive trauma culminating in an accidental injury to the left upper extremity sustained on February 21, 2020. The ALJ found there was 2 percent impairment to the left upper extremity at the level of the forearm based on Dr. Do's and Dr. Carabetta's ratings. The ALJ ruled the complaints to both shoulders were due to preexisting arthritis, a condition noted on a October 2017 bone scan. Two doctors opined, including the Court-ordered doctor, Claimant's compensable injury was limited to the left upper extremity. The request for future medical treatment was denied as Claimant failed to prove entitlement to an award of future medical treatment and failed to overcome the presumptions and statutory provisions.

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

Claimant argues the opinions of Dr. Do and Dr. Carabetta should not be given much consideration and a 14 percent permanent impairment to the body as a whole should be awarded as found by Dr. Zimmerman.

Respondent argues the ALJ's order should be affirmed. Respondent contends Claimant's repetitive work activities were not the prevailing factor in causing the Claimant's bilateral shoulders and right upper extremity complaints. Respondent argues Claimant sustained no more than a 2 percent permanent partial impairment to the left upper extremity. Respondent also argues Claimant is not entitled to future medical treatment.

K.S.A. 44-508(h) states:

"Burden of proof" means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record unless a higher burden of proof is specifically required by this act.

#### **1. The repetitive trauma was not the prevailing factor for Claimant's bilateral shoulders and right upper extremity complaints.**

K.S.A. 44-508(f)(2) states in part:

An injury is compensable course only if it arises out of and in the course of employment. An Injury is not compensable because work was a triggering or precipitating factor. An injury is not compensable solely because it aggravates, accelerates or exacerbates a preexisting condition or renders a preexisting condition symptomatic.

K.S.A. 44-508(f)(2)(A)(iii) states:

An injury by repetitive trauma shall be deemed to arise out of employment only if the repetitive trauma is the prevailing factor in causing both the medical condition and resulting disability or impairment.

K.S.A. 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.

Three physicians testified as to what injuries were caused by Claimant's repetitive trauma at work. Two of the doctors, one the treater and the other was a Court-ordered evaluator, opined the repetitive trauma was the prevailing factor for only the left upper extremity complaints and did not cause the complaints in the right upper extremity of the shoulders.

There was a bone scan performed on Claimant in October 2017 showing Claimant had polyarthritis which included arthritis in her shoulders and right upper extremity.

For these reasons, Claimant's right upper extremity and bilateral shoulder complaints did not arise out of and in the course of Claimant's employment.

**2. The nature and extent of Claimant's impairment is 2 percent the left upper extremity.**

Two of the three doctors who testified found Claimant's impairment caused by her work accident is 2 percent to the left upper extremity.

The 2 percent impairment was based on *The Guides*. The injury resulting in Claimant's impairment was due to a surgical procedure, flexor tendon release for each finger. *The Guides* showed a 6 percent impairment for each finger. Converting the 6 percent impairment to the left upper extremity results in a 1 percent impairment for each finger, resulting in a global rating of 2 percent to the left upper extremity. It is found and concluded Claimant's impairment due to her work accident is 2 percent to the left upper extremity.

**3. Claimant is not entitled to future medical treatment.**

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

It is presumed that the employer's obligation to provide the services of a health care provider, and such medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, ambulance, crutches, apparatus and transportation to and from the home of the injured employee to a place outside the community in which such employee resides, and within such community if the director, in the director's discretion, so orders, including transportation expenses computed in accordance with subsection (a) of K.S.A. 44-515, and amendments thereto, 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. The term "medical treatment" as used in this subsection (e) means only that treatment provided or prescribed by a licensed health care provider and shall not include home exercise programs or over-the-counter medications.

The only physician who recommended future medical treatment did so for treatment for the shoulders. The shoulders are not compensable under this claim. No future medical treatment was recommended by any of the doctors who testified for the left upper extremity. Therefore, the request for future medical treatment is denied.

**AWARD**

**WHEREFORE**, it is the finding, decision and order of the Board the Award of ALJ Larry Gurney dated October 29, 2025, is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of March 2026.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: (Via OSCAR)

Randy S. Stalcup, Attorney for Claimant  
Seth M. Jurcyk, Attorney for Self-Insured Respondent  
Hon. Larry Gurney, Administrative Law Judge