

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

DOUGLAS PEARISH)	
Claimant)	
V.)	CS-00-0480-572 > AP-00-0493-062
)	CS-00-0480-572 > AP-00-0493-063
MM RANCH POLLED HEREFORDS LLC)	CS-00-0480-571 > AP-00-0493-064
Respondent)	CS-00-0480-571 > AP-00-0493-065
and)	CS-00-0480-570 > AP-00-0493-066
)	CS-00-0480-570 > AP-00-0493-067
FARM BUREAU PROPERTY & CASUALTY INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

The claimant, through Patrick C. Smith, requested review of Administrative Law Judge (ALJ) Brian Brown's Award, dated October 22, 2025, and Nunc Pro Tunc Award, dated November 3, 2025. Matthew S. Crowley appeared for the respondent and its insurance carrier (respondent). The Board heard oral argument on April 9, 2026.

RECORD AND STIPULATIONS

The Board adopted the same stipulations and considered the same record as the ALJ, consisting of the:

1. Regular hearing transcripts, held April 16, 2025 and May 27, 2025;
2. Deposition of Daniel Zimmerman, M.D., taken March 28, 2025, with exhibits 1-4;
3. Deposition of Paul Hardin, taken June 17, 2025, with exhibits 1-3;
4. Deposition of Brad Meister, M.D., taken July 22, 2025, with exhibits 1-6¹;
5. Deposition of Bryan Vopat, M.D., taken August 12, 2025, with exhibits 1-6;
6. Deposition of Steve Benjamin, taken August 7, 2025, with exhibits 1-2;
7. Deposition of Alison Mih, taken August 25, 2025, with exhibits 1-4;
8. Deposition of Alexander Mih, taken August 25, 2025;
9. Documents of record filed with the Division; and
10. parties' briefs.

¹ While the ALJ's Award only lists exhibits 1-4, it is evident from the Award he also considered exhibits 5-6.

Additionally, the Board accepted the claimant's attorney's letter of April 28, 2026, wherein he waived or withdrew his appeal regarding the ALJ's computations and findings relating to temporary disability and permanent partial disability benefits.

ISSUES

1. Was the claimant's accidental left knee injury of October 6, 2022, the direct and natural result, or the natural and probable consequence, of his August 9, 2022, accidental injury to his right knee, or did he injure both knees on October 6, 2022?
2. What is the nature and extent of the claimant's impairment or disability as a result of his work injuries, including whether the claimant is entitled to a work disability award or a permanent total disability award?
3. Is the claimant entitled to future medical treatment?

FINDINGS OF FACT

This appeal involves three separate claims. In CS-00-0480-570/AP-00-0493-066/AP-00-0493-067, the claimant sustained a compensable left knee injury on April 24, 2021. In CS-00-0480-571/AP-00-0493-064/AP-00-0493-065, the claimant allegedly sustained a right knee injury on August 9, 2022. In CS-00-0480-572/AP-00-0493-062/AP-00-0493-063, the claimant allegedly sustained bilateral knee injuries on October 6, 2022, or he asserts he injured his left knee as a direct and natural result, or natural and probable consequence, of his previously injured right knee.

The claimant, 55 years old, completed the 10th grade but did not finish high school nor obtain a GED. From 1992 through 2000, the claimant trained horses, worked cattle and took care of livestock. In 1997, he completed a one week training course in artificial insemination.

In 2000, the claimant began working cattle for the respondent. He testified the respondent's range is one of the largest Hereford ranches in the world and they oversee 1,400 cows, bulls, and their offspring. The ranch covers thousands of acres and hundreds of miles. The claimant was responsible for catching, feeding, tagging, tattooing and weighing cattle. He worked on uneven terrain consisting of mud, holes, rock and gravel, with the barn being a concrete floor covered in manure. The claimant worked seven days a week, as a general rule, and anywhere from 8-12 hours per day. He was paid hourly and did not get paid overtime. After about ten years of working for the respondent, he was provided health insurance.

On April 24, 2021, the claimant injured his left knee while putting a pregnant heifer within a gate inside the barn (CS-00-0480-570). The heifer became mad, turned around and tried to fight, kicking the claimant several times and ramming him against the gate.

The claimant initially treated with Brian Neely, M.D.,² who referred him to Brad Meister, M.D., a board-certified orthopedic surgeon. Pursuant to his testimony, on June 4, 2021, Dr. Meister performed a left knee arthroscopy with partial lateral meniscectomy. The claimant was released to return to work without restrictions on July 6, 2021. The claimant was placed at maximum medical improvement (MMI) on August 24, 2021. Such report is not in evidence. Dr. Meister opined the claimant would not need further medical treatment for his left knee. The claimant returned to full duty, but testified his left knee was “never the same” and would hurt and swell from time to time.³ The claimant’s application for benefits for this injury concerned the left knee.

Using the *Guides*, 6th Edition, Dr. Meister assigned the claimant 1% to the left lower extremity or 1% whole person impairment. The doctor opined the 6th Edition adequately quantified the claimant’s permanent impairment for the April 24, 2021, accident.

On August 9, 2022, the claimant injured his right knee when a pregnant heifer pinned him against a gate and repeatedly kicked him in the legs (CS-00-0480-571). The claimant returned to Dr. Neely, who referred him back to Dr. Meister. The claimant’s application for benefits for this injury concerned the right knee and all other body parts affected.

On September 27, 2022, the claimant returned to Dr. Meister complaining of right knee pain. Dr. Meister administered an injection. The claimant returned to full duty work for the respondent.

On October 3, 2022, the claimant was working when a coworker showed him a text from Alison Mih (Alison), co-owner of the respondent, asking employees not to visit while working cattle. The claimant took offense to this text. The next day, he sent a group text stating, “Due to a text that was sent concerning me to another employee[.] After giving myself 24 hours to reach my decision I feel as though it is time to formally give my notice.”⁴ The claimant continued working for the respondent.

Alex Mih (Alex) is a co-owner of the respondent and works as the manager. Alex testified he did not discuss rescinding the text with the claimant nor did the claimant ever rescind it, either orally or in writing, stating:

I called [the claimant] either the day he gave his notice or the next day and I said I understand you quit, I said I don’t know if we need two weeks notice, but we could use a few days. And he said he would help out and not leave us hanging. That was

² Dr. Neely’s records are not in evidence.

³ R.H. Trans. (May 27, 2025) at 17.

⁴ Alison Mih Depo., Ex. 4.

the extent of that conversation. It was either the day of or the day after he gave his notice. So I did discuss with him about since he wasn't giving - - normally a place looks for a two-week notice - - I do know I said I didn't know that I needed two weeks, but a few days. . . .⁵

On October 6, 2022, the claimant reinjured his left knee while attempting to retrieve a cow (CS-00-0480-572). The claimant testified he was herding cows toward a pen by trailing them in a pickup truck. He said one of the cows tried to get by him. He stepped out of the truck to turn the cow. There was a little gravel hill turned up by a road grader. He testified, "When I jumped to - - went to jump out in front of her, I landed on that and twisted this - - twisted my right knee again. Or - - or my left knee. I'm sorry."⁶ The claimant clarified he jumped out of the truck and into the pile of gravel, and his left knee popped at such time.⁷ The claimant's application for benefits for this injury concerned the left knee and all other body parts affected.

According to the claimant, he was favoring his right knee when he exited the vehicle. When asked how his right and left knee were doing the day before this incident, the claimant testified:

A. Well, my right knee still was nowhere - - I mean, it was giving me all kinds of issues, I mean, as far as swelling, limping. Just kind of trying to nurse it along so I could do the best I could. And - -

Q. Were - - at that point in time, were you favoring your right knee?

A. Yes, sir.

Q. And in favoring your right knee, were you using your left leg - - your left extremity more and putting more weight on it than you usually would?

A. Yes, sir. I mean, I had to. I had - - had to carry - - carry myself more trying - - just trying to get through the day.⁸

The claimant added he was favoring and protecting his right knee when he was exiting the pickup truck on October 6, 2022.

⁵ Alexander Mih Depo. at 12.

⁶ R.H. Trans. (May 27, 2025) at 20.

⁷ See *id.* at 51, 54.

⁸ *Id.* at 21.

On or about October 11, 2022, the claimant saw Dr. Neely who took him off work until October 17, 2022. When he returned to Dr. Neely on October 17, 2022, Dr. Neely continued the off work restriction until October 31, 2022. According to the claimant, Alex called him that night and terminated his services. Alex denied calling the claimant on October 17, 2022. Alison testified the last day the claimant actually turned in hours was October 11, 2022. The respondent contributed \$500 per month towards the claimant's health insurance with the last premium being paid until November 1, 2022.

On November 3, 2022, the claimant returned to Dr. Meister. The corresponding medical record states:

Mr. Pearish presents to the orthopedic clinic. He now has complaints of bilateral knee pain. The left knee had prior arthroscopy with partial lateral meniscectomy. He did great for a period of time. He then recently had another injury to that knee. In addition to this, he has had an injury to his right knee. His situation is getting a bit complicated. I have given him an injection in the right knee. He got along pretty well, but now he has recurrence of some symptoms there. The injury on the right knee was on 8/9/2022. The left knee was apparently re-injured recently.⁹

Dr. Meister diagnosed the claimant with right knee lateral meniscus cyst with mild degenerative disease and recommended anti-inflammatories, possible bracing, weight loss and activity modification. For the left knee, the doctor diagnosed probable new lateral meniscus tear and recommended the claimant be evaluated by a knee specialist.

Dr. Meister testified he reviewed a recent MRI of the claimant's left knee at the November 3, 2022, visit and believed it showed a tear. According to the claimant, he asked Dr. Neely to refer him for a second opinion because he was uncomfortable with the treatment provided by Dr. Meister, because Dr. Meister ate dinner with the Mihs. The claimant did not return to Dr. Meister for treatment.

When asked if the claimant suffered three separate injuries, Dr. Meister testified:

Q. Okay. Doctor, as of 11-3 of '22, the last time that you visited with Mr. Pearish, going back to the original injury of 4-24 of 2021, is it your opinion that he suffered three separate injuries, the first to the left knee, the second of 8-9 of '22 to the right knee, and the third of 10-6 of 2022 to the left knee?

A. It is. The only exception is I'm not sure where you're getting 10-6.

Q. I know it's not listed. It's -- it's what Mr. Pearish is asserting as the date of accident.

⁹ Meister Depo., Ex. 6.

A. Okay. So that's the only thing I - - but yes, three separate injuries.¹⁰

Dr. Meister testified he did not know how the October 6, 2022, accidental injury occurred, but he viewed the third injury as a reinjury to the left knee. He testified his November 3, 2022, report did not reflect the claimant had an additional injury to his right knee, but reflected the natural history of a cortisone injection being helpful initially, but tapering in effectiveness. The doctor also testified he was not in a position to say if the claimant reinjured or aggravated his right knee at the same time of the second left knee injury, or if "there's causation of his left knee injury related to his right knee problem."¹¹

On December 6, 2022, the claimant saw Bryan Vopat, M.D., a board-certified orthopedic surgeon, for a second opinion. The claimant reported injuring his right knee on August 7, 2022, and subsequently injuring his left knee while working. No details concerning the subsequent left knee injury, such as mechanism of injury or date of injury, were listed in the doctor's report. Dr. Vopat diagnosed the claimant with a medial meniscus tear of the left knee and hamstring tendinitis of the right thigh. Dr. Vopat recommended surgery for the left knee and physical therapy with dry needling of the biceps femoris tendon and Voltaren gel for the right knee. The claimant was taken off work until after the left knee surgery.

On January 18, 2023, Dr. Vopat performed a left partial lateral meniscectomy, leaving about 35-40% of the meniscus intact. The doctor testified between the initial visit and January 18, 2023, the claimant continued to complain of right knee pain. On May 17, 2023, Dr. Vopat performed a partial lateral meniscectomy on the claimant's right knee. Dr. Vopat placed the claimant at maximum medical improvement on September 18, 2023. The doctor opined the claimant did not require permanent restrictions or future medical treatment for either knee.

In a letter dated October 23, 2023, Dr. Vopat stated the claimant injured both knees at work on August 7, 2021 [sic]. Dr. Vopat's letter indicated his ratings were based on using the *Guides* as a "guide" and medical certainty. Dr. Vopat assigned the claimant a combined 2% whole body disability rating, using both the 4th and 6th Editions of the *Guides*. Under the 4th Edition, he assigned a 2% rating for the left knee and a 2% rating to the right knee, which each convert to 1% to the body as a whole. Under the 6th Edition, he assigned a 1% rating for the left knee and a 1% rating to the right knee, which each convert to 1% to the body as a whole. Dr. Vopat opined the claimant did not require any permanent restrictions nor did he need any future medical treatment for his meniscus injuries.

¹⁰ *Id.* at 15-16.

¹¹ *Id.* at 31.

In a document prepared by the respondent's counsel, on April 11, 2025, Dr. Vopat clarified the claimant suffered three separate injuries as follows:

Upon reviewing the Application for Benefits filed in Mr. Pearish's workers compensation claims and the prior records of Dr. Meister, I would like to make the following clarifications to my report of 10/23/2023.

- 1) Douglas Pearish apparently suffered an injury to his left knee from an accident occurring on 04/24/2021 and was treated by Dr. Meister.
- 2) As it concerns the accidents resulting in injury for which I provided treatment, I would state:

My treatment of Mr. Pearish for his knee complaints began 12/06/2022.

Mr. Pearish suffered an accident on 08/09/2022 resulting in an injury only to his right knee.

Further, Mr. Pearish suffered another accident on 10/06/2022 resulting in injury only to his left knee.¹²

Dr. Vopat testified to his belief the claimant was hit by a cow in the accident of October 6, 2022. He testified he or his office asked how the accident occurred, but it was never recorded in office notes.

On May 8, 2024, the claimant saw Daniel Zimmerman, M.D., at his attorney's request. Dr. Zimmerman was certified as an independent medical examiner by the American Board of Independent Medical Examiners through 2014. The claimant complained of pain and discomfort affecting the right and left knees, with the left knee being more symptomatic. The claimant told Dr. Zimmerman he injured his left knee on April 24, 2021. He told Dr. Zimmerman he injured his right knee on August 9, 2022. The report mentions nothing about an injury to the left knee on October 6, 2022, because it was not discussed, but did mention the knee surgeries performed by Dr. Vopat in 2023.

Using the *Guides*, 6th Edition, as a starting point, and competent medical evidence, Dr. Zimmerman assigned the claimant 20% of the right lower extremity at the knee level or 8% body as a whole for the right knee and 10% of the left lower extremity at the knee level or 4% body as a whole for the left knee, for a combined impairment of 12% body as a whole.

¹² Vopat Depo., Ex. 6.

Subsequently, on March 5, 2025, Dr. Zimmerman had a telehealth consultation with the claimant. Regarding October 6, 2022, the claimant told Dr. Zimmerman he had reinjuries affecting both knees on that date when moving cattle. The claimant reported favoring his right knee due to pain and “stepped out” to block a cow, thereby injuring his left knee.¹³ Dr. Zimmerman opined the incident of October 6, 2022, “clearly” caused a recurrence of symptoms affecting both knees.¹⁴

Dr. Zimmerman was asked if the last incident caused the claimant to incur any permanent impairment. The doctor testified:

A. Well, I don't know how to pull it out of the ratings I've offered. The conditions in the knees were rated using the Guides, the Sixth Edition AMA Guides, on the date I saw him at, and I wouldn't know how to apportion the decision that I made regarding the Sixth Edition and the ratings that I offered subsequently, based on the more reasonable severity of the impairments.

I don't - - I don't know how I would apportion it, frankly. I believe that the knee conditions as I set forth were the ratings that were appropriate on the date that I saw him in this office, which was - - what was it - - May 8th, 2024.

Q. Yes, and I - - and I apologize. I wasn't asking for an apportionment. I'm just asking that do you have an opinion as to whether he sustained some impairment from the injury on October 6th of 2022?

A. Yes.

Q. And in addition to sustaining some permanent impairment in his left knee on October 6 of 2022, do you have an opinion as to whether that incident, that accident, also caused injury to his right knee?

MR. CROWLEY: Object to the form of the question. Leading. Also that there's no evidence that the doctor specified which knee was factually injured on October 6th.

MR. SMITH: Well, okay.

THE WITNESS: My answer would be, according to Dr. Meister's note that I reviewed, that he said that he had injured the right and left knees due to that date of injury event, so that's the best I can with it.

¹³ Zimmerman Depo., Ex. 3 at 1.

¹⁴ *Id.*, Ex. 3 at 2.

BY MR. SMITH:

Q. Okay. And just to clean up the record here, when we were talking previously about your opinion that he injured his knee and there was impairment on October 6th, 2022, you're referring to the left knee?

A. That's the question you asked, so that was my answer.

Q. Yes. And then you've also given the opinion that that event or accident also caused injury impairment to the right knee?

A. According to Dr. Meister's input, that would be - - that would be my opinion, yes.

Q. And is - - do you - - is it your understanding that at the time of the final accident date of October 6th of 2022, that where he tore his meniscus in the left knee, that he was presently - - or excuse me - - was actively treating at that time for symptoms to his right knee?

A. I believe so.

Q. And did Mr. Pearish indicate that he, because of that, was favoring his right knee?

A. I believe so.

Q. And do you have an opinion as to whether or not the favoring of his right knee on October 6 of 2022 caused or contributed to cause his injury to the left knee?

A. I do.

Q. And what is your opinion in that regard?

A. It did.

Q. Another way of asking that, Doctor, do you have an opinion as to whether the - - the injury to the left knee on October 6 of 2022 was a natural and probable consequence of the right knee injury and continuing symptoms?

A. I think that's a fair statement, yes.¹⁵

¹⁵ *Id.* at 13-16.

Dr. Zimmerman opined the claimant will require future medical treatment, including nonsteroidal anti-inflammatory medication, injections, viscosupplementation, orthopedist referral, and pain modulator drug.

On cross-examination, Dr. Zimmerman acknowledged his initial report stated the claimant had a left knee injury on April 24, 2021, and a right knee injury on August 9, 2022. He acknowledged having no evidence of the claimant injuring any body part other than his right knee on August 9, 2022. Dr. Zimmerman testified stepping out of a truck on October 6, 2022, and having a twisting injury to the left knee was sufficient to cause meniscal damage. He also testified he was not asked to address whether repetitive trauma was part of the claimant's injuries.

Paul Hardin, a vocational consultant, conducted a phone interview of the claimant on March 5, 2025, at his attorney's request. The medical reports reviewed by Mr. Hardin were from Dr. Vopat dated October 23, 2023, and Dr. Zimmerman dated May 8, 2024.

Mr. Hardin prepared a list of 12 non-duplicative tasks the claimant performed for the five years preceding his accident. Out of the 12 tasks on Paul Hardin's task loss assessment, Dr. Zimmerman opined the claimant is unable to perform 9 of them for a 75% task loss.

Mr. Hardin opined the claimant is essentially and realistically unemployable based on Dr. Zimmerman's restrictions, resulting in 100% wage loss. Based on Dr. Vopat's restrictions, Mr. Hardin testified the claimant would not have any wage loss. Dr. Zimmerman agreed the claimant is not realistically able to be substantially gainfully employed based on his physical health and age.¹⁶

Steve Benjamin, a vocational rehabilitation consultant, conducted a phone interview of the claimant on July 2, 2025, at the respondent's request. Mr. Benjamin reviewed the medical reports of Dr. Meister dated June 29, 2021, Dr. Vopat dated October 23, 2023, and Dr. Zimmerman dated May 8, 2024.

Mr. Benjamin prepared a list of 16 non-duplicative tasks the claimant performed for the five years preceding his accident. Mr. Benjamin opined the claimant is capable of earning a wage comparable to or exceeding the three stipulated average weekly wages based on the restrictions of Drs. Meister and Vopat. Based on Dr. Zimmerman's restrictions, Mr. Benjamin testified the claimant would be unable to reenter the open labor market.

The claimant currently has difficulty standing for more than 30 minutes, going up and down stairs, and rising from a low sitting chair or small car. He experiences loss of

¹⁶ See *id.* at 20.

range of motion, swelling, pain and discomfort in his bilateral knees and numbness from his right knee to right foot. He testified he can no longer work livestock because he is not fast enough, causing him to be a danger to others around him. The claimant obtained a license to smoke and sell barbecue.

Pre-award, the respondent paid \$1,234.16 in permanent partial disability benefits for his left leg injury of April 24, 2021, and \$967 for permanent partial disability benefits for the accidental injury of August 9, 2022.

On October 30, 2025, the respondent's attorney filed a Motion for Award Nunc Pro Tunc to correct errors in the Award's calculation. As a result, a Nunc Pro Tunc Award was issued by the ALJ incorporating the contents of the respondent's motion.

The ALJ found:

1. The August 9, 2022 accident was the prevailing factor for the claimant's right knee injury only;
2. The October 6, 2022, accident was the prevailing factor for the claimant's left knee injury only and not as a natural and probable consequence of his August 9, 2022 right knee injury;
3. The claimant sustained 18% of the right lower extremity for the August 9, 2022 accident;
4. The claimant sustained 2% of the left lower extremity for the April 24, 2021 accident and 8% of the left lower extremity for the October 6, 2022 accident;
5. The claimant is not permanently and totally disabled;
6. The claimant did not sustain a work disability; and
7. The claimant is entitled to unauthorized and future medical treatment for his knees.¹⁷

PRINCIPLES OF LAW AND ANALYSIS

The claimant argues he is entitled to permanent total disability based on Dr. Zimmerman's opinion. The claimant also argues Dr. Zimmerman's restrictions are reasonable and he is realistically unemployable. The claimant maintains the award of future medical should be affirmed. The respondent argues other than a denial of an award of future medical, the Nunc Pro Tunc Award should be affirmed.

¹⁷ ALJ Nunc Pro Tunc Award (filed Nov. 3, 2025).

An employer is liable to pay compensation to an employee incurring personal injury by accident arising out of and in the course of employment.¹⁸ The burden of proof is on the claimant.¹⁹

The Legislature intended the Workers Compensation Act be liberally construed only for the purpose of bringing employers and employees within the provisions of the Act.²⁰ The provisions of the Workers Compensation Act shall be applied impartially to all parties.²¹ 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.²²

The Board possesses authority to review all decisions, findings, orders and awards of compensation issued by administrative law judges.²³ Board review of an order is de novo on the record.²⁴ A de novo hearing is a decision of the matter anew, giving no deference to findings and conclusions previously made by the judge.²⁵ On de novo review, the Board makes its own factual findings.²⁶

1. Was the claimant's accidental left knee injury of October 6, 2022, the direct and natural result, or the natural and probable consequence, of his August 9, 2022 accidental injury to his right knee, or did he injure both knees on October 6, 2022?

Employees are entitled to compensation for secondary injuries which are the natural and probable result of the primary injury.²⁷ “[A]ll injuries, including secondary injuries, must be caused primarily by the work accident.”²⁸ Under the law in effect from May 15, 2011,

¹⁸ See K.S.A. 44-501b(b).

¹⁹ See K.S.A. 44-501b(c).

²⁰ See K.S.A. 44-501b(a).

²¹ See *id.*

²² See K.S.A. 44-501b(c).

²³ See K.S.A. 44-555c(a).

²⁴ See *Helms v. Pendergast*, 21 Kan. App. 2d 303, 899 P.2d 501 (1995).

²⁵ See *In re Tax Appeal of Colorado Interstate Gas Co.*, 270 Kan. 303, 14 P.3d 1099 (2000).

²⁶ 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).

²⁷ See *Casco v. Armour Swift-Eckrich*, 283 Kan. 508, 515-16, 154 P.3d 494 (2007).

²⁸ *Buchanan v. JM Staffing, LLC*, 52 Kan. App. 2d 943, 951, 379 P.3d 428 (2016).

forward, secondary injuries are compensable if caused primarily by the original work accident and are the natural and probable consequence of the original injury.²⁹

The claimant sustained a traumatic injury to his right knee on August 9, 2022. He sustained a traumatic injury to his left knee on October 6, 2022. The claimant did not prove he developed a left knee injury due to his August 9, 2022, accidental injury, or as a consequence of favoring, guarding or protecting his right knee.

The claimant reported his left knee was still symptomatic after the first accident. The claimant testified his right knee was painful after August 9, 2022. He testified he had right leg swelling and he would limp on his right leg. He testified he would put more weight on his left leg as a result. This testimony does not, however, mean the claimant's left knee injury was the direct and natural result of his right knee injury. Rather, the facts prove a singular and traumatic injury. The claimant jumped out of a truck on October 6, 2022. He landed in a pile of gravel. His left knee twisted. He twice testified he heard his left knee pop. These facts point to a traumatic injury, not a left knee that was injured due to overcompensating for an already-injured right knee. There is nothing inherent in getting out of a pickup truck leading the Board to conclude the left knee injury was due to favoring the claimant's right knee.

Both Drs. Meister and Vopat testified the claimant's August 9, 2022, and October 6, 2022, accidental injuries were separate events. Dr. Zimmerman did not mention a third accident in his initial report, but later documented this third instance.

The claimant's last accidental injury of October 6, 2022, stands alone as an injury to his left knee. It was not the direct and natural result, or natural and probable consequence, of his August 9, 2022, right knee injury. Both knees were not simultaneously injured either on August 9, 2022 or October 6, 2022, or the period in between or thereafter.

2. What is the nature and extent of the claimant's impairment or disability as a result of his work injuries, including whether the claimant is entitled to a work disability award or a permanent total disability award?

The claimant sustained 0% permanent functional impairment to his left leg due to his work-related left knee injury on April 24, 2021.

The claimant sustained 20% permanent functional impairment to his right leg due to his work-related right knee injury on August 9, 2022.

The claimant sustained 10% permanent functional impairment to his left leg due to his work-related left knee injury on October 6, 2022.

²⁹ See *id.*

The extent of permanent partial general disability shall be the percentage of functional impairment by the employee sustained on account of the injury as established by competent medical evidence and based on the 6th Edition of the *AMA Guides*.³⁰ In *Johnson v. U.S. Food Service*,³¹ the Kansas Supreme Court held, in rating whole body impairments, the ratings calculations should begin with the *AMA Guides* as a starting point and consider competent medical evidence to modify or confirm the rating. This conclusion also applies to scheduled injuries: “So for scheduled injuries as well as for non-scheduled injuries, the key fact – the percentage of functional impairment – must always be proved by competent medical evidence.”³²

K.S.A. 44-510d states, in part:

(b) If there is an award of permanent disability as a result of the injury there shall be a presumption that disability existed immediately after the injury and compensation is to be paid for not to exceed the number of weeks allowed in the following schedule:

...

(16) For the loss of a leg, 200 weeks.

Dr. Zimmerman is the only doctor to explicitly use competent medical evidence in addressing the claimant’s impairment. Drs. Vopat and Meister simply testified the *AMA Guides*, 6th Edition, was “adequate” in addressing the claimant’s impairment. The orthopedic rating opinions must be based on the *Guides* and, more importantly, competent medical evidence. These rating opinions do not meet the standard set forth in *Weaver*.

With Dr. Zimmerman being unable to apportion the claimant’s left knee impairment as between the first and second left knee injuries, he cannot provide an opinion, within a reasonable degree of medical probability, as to the claimant’s impairment sustained due to the first left knee injury of April 24, 2021.

For the right knee injury of August 9, 2022, the Board gives more weight to Dr. Zimmerman’s opinion of a resulting 20% right leg impairment. Dr. Vopat’s opinion does not account for competent medical evidence, whereas Dr. Zimmerman explicitly did. As such, the Board finds the claimant’s second accident resulted in 20% impairment to the right leg.

³⁰ K.S.A. 44-510e(a)(2)(B).

³¹ See *Johnson v. U.S. Food Service*, 312 Kan 597, 478 P.3d 776 (2021).

³² *Weaver v. Unified Gov't of Wyandotte Cnty.*, 63 Kan. App. 2d 773, 785, 539 P.3d 617 (2023)

The claimant's first left knee injury was not as bad as his second knee injury of October 6, 2022. It is certainly problematic Dr. Zimmerman was unaware of this injury when he provided an overall impairment rating in his report dated May 8, 2024. Nevertheless, the medical records from Drs. Meister and Vopat acknowledge another left knee injury. The claimant filed an application for benefits for this third claim in January 2024. We agree with the ALJ: it is confusing why Dr. Zimmerman's initial report does not address this worse left knee injury. However, Dr. Zimmerman knew about the second left knee surgery and his opinion was the claimant's left leg rating was 10% overall.

The Board discounts the rating from Dr. Vopat of either 1% or 2% to the left knee. The opinion was based on whether the *Guides* were adequate in addressing the claimant's impairment, not whether the medical rating opinion was competent. As such, the Board views the claimant's 10% left knee impairment from Dr. Zimmerman's opinion to represent the degree of permanent impairment he sustained due to the accidental injury of October 6, 2022. The claimant is entitled to permanent partial disability benefits for the October 6, 2022, accidental injury based on a 10% rating to the left leg.

The claimant is limited to benefits based on three scheduled injuries. He is not permanently and totally disabled and not entitled to a work disability award.

Permanent total disability exists when the employee, on account of the injury, has been rendered completely and permanently incapable of engaging in any type of substantial and gainful employment. Expert evidence shall be required to prove permanent total disability.³³ Concluding an employee is permanently and totally disabled because the employee is essentially and realistically unemployable is consistent with legislative intent.³⁴ In *Wardlow*, the Court of Appeals affirmed a finding of permanent total disability by the trial court based on a totality of the evidence, including consideration of the nature of the injuries, the testifying physicians' opinions on the employees ability to work, the activities the employee can perform, the employee's age, education, vocational history and current symptoms. *Wardlow* continues to be cited by the Court of Appeals.³⁵

K.S.A. 44-510e states:

(a)(2)(A) Permanent partial general disability exists when the employee is disabled in a manner which is partial in character and permanent in quality and which is not covered by the schedule in K.S.A. 44-510d, and amendments thereto.

³³ See K.S.A. 44-510c(a)(2).

³⁴ See *Wardlow v. ANR Freight Systems*, 19 Kan. App. 2d 110, 113, 872 P.2d 299 (1993).

³⁵ See *Stark v. Atwood Good Samaritan Center*, No. 113,075, 2016 WL 4076203, at *7 (Kansas Court of Appeals unpublished opinion July 29, 2016).

...

(B) The extent of permanent partial general disability shall be the percentage of functional impairment the employee sustained on account of the injury as established by competent medical evidence and based on the 6th edition of the American medical association guides to the evaluation of permanent impairment, if the impairment is contained therein.

(C) An employee may be eligible to receive permanent partial general disability compensation in excess of the percentage of functional impairment ("work disability") if:

(i) The percentage of functional impairment determined to be caused solely by the injury is equal to or exceeds 7½% to the body as a whole or the overall functional impairment is equal to or exceeds 10% to the body as a whole in cases where there is preexisting functional impairment; and

(ii) the employee sustained a post-injury wage loss, as defined in subsection (a)(2)(E), of at least 10% which is directly attributable to the work injury and not to other causes or factors.

In such cases, the extent of work disability is determined by averaging together the percentage of post-injury task loss demonstrated by the employee to be caused by the injury and the percentage of post-injury wage loss demonstrated by the employee to be caused by the injury.

(D) "Task loss" means the percentage to which the employee, in the opinion of a licensed physician, has lost the ability to perform the work tasks that the employee performed in any substantial gainful employment during the five-year period preceding the injury. The permanent restrictions imposed by a licensed physician as a result of the work injury shall be used to determine those work tasks which the employee has lost the ability to perform. If the employee has preexisting permanent restrictions, any work tasks which the employee would have been deemed to have lost the ability to perform, had a task loss analysis been completed prior to the injury at issue, shall be excluded for the purposes of calculating the task loss which is directly attributable to the current injury.

(E) "Wage loss" means the difference between the average weekly wage the employee was earning at the time of the injury and the average weekly wage the employee is capable of earning after the injury. The capability of a worker to earn post-injury wages shall be established based upon a consideration of all factors, including, but not limited to, the injured worker's age, physical capabilities, education and training, prior experience, and availability of jobs in the open labor market. The administrative law judge shall impute an appropriate post-injury average weekly wage based on such factors. Where the employee is engaged in post-injury employment for wages, there shall be a rebuttable presumption that the average weekly wage an injured worker is actually earning constitutes the

post-injury average weekly wage that the employee is capable of earning. The presumption may be overcome by competent evidence.

(i) To establish post-injury wage loss, the employee must have the legal capacity to enter into a valid contract of employment. Wage loss caused by voluntary resignation or termination for cause shall in no way be construed to be caused by the injury.

. . .

(iii) The injured worker's refusal of accommodated employment within the worker's medical restrictions as established by the authorized treating physician and at a wage equal to 90% or more of the pre-injury average weekly wage shall result in a rebuttable presumption of no wage loss.

K.S.A. 44-510d(23)(c) states, "Whenever the employee is entitled to compensation for a specific injury under the foregoing schedule, the same shall be exclusive of all other compensation except the benefits provided in K.S.A. 44-510h and 44-510i, and amendments thereto, and no additional compensation shall be allowable or payable for any temporary or permanent, partial or total disability

Under K.S.A. 44-510d(23)(c), because the claimant is entitled to compensation for his scheduled injuries, he is not entitled to an award based on work disability or permanent total disability. Dr. Zimmerman was unable to link the claimant's purported permanent total disability to any particular accident. "The language in K.S.A. 44-510c(a)(2) requires that the disability result from a single injury."³⁶ Moreover, the claimant did not prove whole body impairment or meet the threshold for whole body impairment needed to obtain a work disability award.

3. The claimant is entitled to seek future medical treatment.

K.S.A. 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.

³⁶ *Casco v. Armour Swift-Eckrich*, 283 Kan. 508, 528, 154 P.3d 494 (2007).

The claimant is entitled to seek future medical treatment. Dr. Vopat's testimony the claimant did not need additional medical care was limited to whether the claimant needed additional treatment for the meniscus, nothing else. Dr. Meister provided a similar opinion, stating he felt it was unlikely the claimant needed further intervention for the issue addressed surgically due to the April 24, 2021, accidental injury. The last time Dr. Meister evaluated the claimant, the doctor wanted the claimant evaluated by a knee specialist. The claimant eventually came under the treatment of Dr. Vopat, and he had two more knee surgeries.

As stated above, Dr. Zimmerman opined the claimant will require future medical treatment, including nonsteroidal anti-inflammatory medication, injections, viscosupplementation, orthopedist referral, and pain modulator drug. The Board agrees with Dr. Zimmerman's testimony regarding the claimant's need for future medical treatment. As such, the claimant is awarded the right to pursue additional medical treatment under the Kansas Workers Compensation Act.

AWARD

WHEREFORE, the Board modifies the Award.

CS-00-0480-570/AP-00-0493-066/AP-00-0493-067

The claimant is entitled to no permanent partial disability benefits for his left leg based on failing to prove any permanent impairment specifically from this accidental injury.

CS-00-0480-571/AP-00-0493-064/AP-00-0493-065

For CS-00-0480-571, the claimant was originally found to be entitled to 22 weeks of temporary total disability benefits at the rate of \$619.87 totaling \$13,637.14. However, the ALJ corrected the TTD owed to reflect \$14,410, an underpayment of \$772.86.

The claimant is entitled to permanent partial disability benefits for his right leg based on 20% rating for the right knee.

Using the ALJ's calculations, this results in the respondent owing the claimant \$24,795.76 in PPD and \$14,410 in TTD totaling \$39,205.76 less benefits previously paid (200 weeks - 22 weeks of TTD = 178 weeks x 20% = 35.6 weeks x \$696.51 = \$24,795.76), which was \$967 for PPD.

CS-00-0480-572/AP-00-0493-062/AP-00-0493-063

For CS-00-0480-572, the claimant was originally found to be entitled to 22 weeks of TTD benefits at the rate of \$705.28 totaling \$13,637.14. However, the ALJ corrected the TTD owed to be \$15,342.06, to reflect an underpayment of \$1,704.92.

The claimant is entitled to permanent partial disability benefits for his left leg based on 10% rating for the left knee. Using the ALJ’s calculations, this results in the respondent owing the claimant \$11,298.59 for PPD (200 weeks - 22 weeks of TTD = 178 weeks x 10% = 17.8 weeks x \$705.28 = \$12,553.98). The total PPD (\$12,553.98) and TTD (\$15,342.06) owed is \$27,896.04, less benefits already paid.

None of the accidents resulted in whole body impairment, work disability or permanent total disability.

In all docketed cases, the claimant is entitled to pursue future medical benefits under the Kansas Workers Compensation Act.

IT IS SO ORDERED.

Dated this _____ day of May, 2026.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

DISSENTING OPINION

The undersigned respectfully disagrees with the Board’s finding of 0% permanent partial disability impairment rating for the first accidental injury of April 24, 2021.

This claim was admittedly compensable and resulted in the claimant undergoing knee surgery. The respondent argued Dr. Meister's 1% impairment rating was the only credible impairment rating in evidence. In fact, the respondent paid what it viewed as the PPD value of Dr. Meister's rating – \$1,234.16. Also, the claimant did not argue Dr. Meister's rating was invalid because he failed to use competent medical evidence in calculating an impairment rating.

There are problems with the Board's approach. First, the Board is taking up a cause not argued by the parties: nobody is arguing for a 0% impairment for the April 24, 2021, accident. The parties agreed the claimant sustained either 1% permanent impairment or more impairment. One percent impairment represented the floor of the respondent's possible liability. Second, if the Board concludes Dr. Zimmerman cannot prove an impairment rating for the first left knee injury of April 24, 2021, because he was unable to apportion his rating between the first left knee injury and the second left knee injury of October 6, 2022, the same logic should apply to dismiss Dr. Zimmerman's impairment rating opinion for the second left knee injury. Under the Board's reasoning, the claimant should get an award of no permanent partial disability benefits for either left knee injury, both of which resulted in surgeries. I am not suggesting the claimant has no provable impairment for either of his left knee injuries, simply pointing out what I view as faulty reasoning.

Finally, while the appellate courts have found impairment ratings must be based on the *Guides* and competent medical evidence to be valid, I question if a doctor failing to use the magic words "competent medical evidence" renders void the minimum amount the respondent was willing to (and did) pay for PPD based on the treating doctor's rating.

BOARD MEMBER

c: (via OSCAR)

Patrick C. Smith
Matthew S. Crowley
Hon. Brian Brown