BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

LORRAINE BISHOP	)	
Claimant	)	
V.	)	
	)	AP-00-0493-188
KANSAS TURNPIKE AUTHORITY	)	CS-00-0463-575
Self-Insured Respondent	)	

ORDER

Respondent appealed the October 28, 2025, Award by Administrative Law Judge (ALJ) Gary K. Jones. The Board heard oral argument on April 9, 2026. Phillip B. Slape appeared for Claimant. Matthew S. Crowley appeared for Self-Insured Respondent.

RECORD AND STIPULATIONS

The Board adopted the same stipulations and considered the same record as the ALJ, consisting of the documents of record filed with the Division, including the parties' briefs and the following:

1. Independent Medical Examination (IME) report from Dr. Danny Gurba, dated April 4, 2023;[1]
2. Transcript of the Preliminary Hearing, held on July 19, 2023;
3. Transcript of the Regular Hearing with an exhibit, held on March 19, 2025;
4. Stipulation to average weekly wages and fringe benefits, filed June 16, 2025;
5. Evidentiary Deposition of Dr. Pedro Murati, with exhibits, taken August 22, 2025; and
6. Evidentiary Deposition of Dr. Michael Johnson, with exhibits, taken September 10, 2025.

ISSUES

1. Was Claimant's conversion hip replacement surgery and resulting functional impairment compensable as a result of the January 15, 2022, accident?

[1] While listed as part of the evidentiary record and discussed under the facts, this report was not considered by the Board.

a. Was Claimant's work accident the prevailing factor causing her injury, medical condition, and resulting disability or impairment?
b. Was the hip replacement reasonably necessary to cure and relieve Claimant from the effects of her injury?

2. What is the nature and extent of Claimant's disability?

3. Is Claimant entitled to future medical benefits?

FINDINGS OF FACT

Claimant worked for Respondent as a toll collector from October 2006 until she retired on July 1, 2024. She alternated sitting/standing all day to collect toll tickets and money. Claimant was able to sit for cars and trucks, but had to stand for larger vehicles like semi-tractor trailers.

On January 15, 2022, Claimant stepped out of her booth to collect money from a large truck. When she went to reenter the booth, she fell backwards with her left hip landing on a 4-inch curb. Coworkers and her supervisor were unable to return Claimant to the booth. She was taken by ambulance to Via Christi St. Francis where she spent the night. The next day, Christopher Halphen, D.O., performed an open reduction internal fixation of a left hip fracture, which included the implementation of hardware. The implanted hardware included a cephalomedullary gamma nail (gamma nail). On January 24, 2022, Claimant was transferred to the Via Christi Rehabilitation Hospital where she received physical therapy until her release on February 10, 2022. She continued with physical therapy until her release, without restrictions, by Dr. Halphen on March 29, 2022.

Claimant has a history of osteoarthritis of her hips. On March 5, 2019, Tarun Bhargava, M.D., diagnosed Claimant with bilateral greater trochanteric bursitis and injected Claimant's hips. Claimant received hip injections from Dr. Bhargava on June 26, 2019, October 3, 2019, July 1, 2020, October 15, 2020, March 23, 2021, and August 26, 2021. On August 26, Claimant reported her hip pain was worsening and her left hip was worse than the right. She discussed total hip replacement surgery with Dr. Bhargava. Pending surgical clearance, including weight loss, surgery was to be scheduled in March 2022. This allowed Claimant time to accumulate more hours to qualify for FMLA leave. Claimant canceled her left hip replacement surgery, scheduled for March 7, 2022, because she did not lose enough weight as discussed with Dr. Bhargava and because of her work-related accident.

On April 13, 2022, Claimant saw Dr. Bhargava for followup on her left hip osteoarthritis. She reported her left hip symptoms were worsening due to her January 15, 2022, work accident and subsequent treatment. Claimant wanted to reschedule her left hip replacement surgery, but was advised she could not until her fracture healed. Dr. Bhargava

advised Claimant to return in three months and to have a CT scan just prior to her appointment.

Claimant had a CT scan on April 30, 2022, which revealed internal fixation of the proximal left femur with no hardware complication seen and advanced degenerative changes in the left hip joint.

On June 30, 2022, Dr. Halphen evaluated Claimant and performed pre-op testing. Claimant was using a cane and reported she could not return to work while using an assistive device. X-rays revealed Claimant's hardware was well-aligned and the fracture fully healed. Claimant was scheduled for hardware removal and a total hip arthroplasty on July 20, 2022. Respondent was willing to authorize the hardware removal, but not the hip arthroplasty.

On February 22, 2023, the ALJ appointed Danny M. Gurba, M.D., to perform an independent medical evaluation (IME) pursuant to K.S.A. 44-516. Dr. Gurba was instructed to address his diagnosis, treatment recommendations, temporary work restrictions, "whether the Claimant's alleged accident or repetitive trauma is the prevailing factor in causing the Claimant's injury, need for treatment or resulting impairment or disability, if any," and address issues specified by the parties in their joint letter to him. Claimant was evaluated by Dr. Gurba on April 4, 2023. She reported severe left groin pain, ambulated with a severe limp and used a cane. Claimant believed her left leg was shorter than the right and rated her pain at an 8 out of 10 with most activities. She used Naproxen and Tylenol for pain relief.

Dr. Gurba noted Claimant's work injury and subsequent treatment. He also noted prior to the work injury, Claimant had undergone bilateral knee replacements and was later seen for left hip pain, which was diagnosed as a degenerative arthritic left hip joint. She was in the process of scheduling a left total hip arthroplasty prior to the work injury, but was trying to lose weight first. He stated:

> When last evaluated by Dr. Halphen, he felt the fracture had healed satisfactory, and because of her increasing hip pain, which he felt was now due to the arthritic hip changes, she was at the point that she could proceed with hardware removal and conversion total hip arthroplasty. This was tentatively scheduled on 7/20/22 at St. Francis Hospital.[2]

Dr. Gurba recommended Conversion Total Hip Replacement, with removal of the internal fixation hardware. He released Claimant to return to sedentary work only, with use

[2] Gurba COIME Report (April 4, 2023) at 2.

of a cane, walker, or wheelchair. Dr. Gurba opined the prevailing factor for the hip fracture and the treatment recommended was the January 15, 2022, work injury.

> I do feel that the work injury on 1/15/2022 is the prevailing factor for the hip fracture as described, as well as the treatment recommendation provided above. Clearly, she had pre-existing osteoarthritis of the hip requiring hip replacement. Unfortunately, the surgery now required is significantly more complicated and has higher risks. Hardware removal is not always straight forward and entails a risk of intraoperative fracture and added soft tissue dissection. Likewise, component placement on the femoral side may be compromised by altered anatomy.
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> While the prevailing factor for a Primary Total Replacement prior to her injury was Ostearthritis, I believe the prevailing factor for her current surgery requirement of Conversion Total Hip Replacement is the work related injury of 1/15/2022. In my experience this is a much different surgery.[3]

This matter went to preliminary hearing on July 19, 2023 to address Claimant's request for benefits and Respondent's Motion to Strike Dr. Gurba's report. Respondent's Motion to Strike was filed in response to Dr. Gurba's refusal to schedule his deposition because he retired. The ALJ denied Respondent's Motion to Strike and granted Claimant's request for benefits. In so doing, the ALJ found the prevailing factor for Claimant's injury, medical condition and need for treatment, including the hardware removal and conversion total hip replacement, was the January 15, 2022, work accident. He stated:

> Dr. Gurba was clearly aware of the Claimant's preexisting osteoarthritis. But he notes that she now requires a different type of hip replacement surgery that is significantly more complicated and has higher risks than before the accident. This is not an aggravation, acceleration or exacerbation of the Claimant's preexisting osteoarthritis.[4]

Respondent appealed the ALJ's July 21, 2023, Order to the Board requesting a denial of Claimant's request for benefits and renewing their motion to strike Dr. Gurba's report. The Board dismissed Respondent's motion for lack of jurisdiction noting the ALJ did not exceed his jurisdiction. The Board affirmed the ALJ's award of benefits to Claimant.

Dr. Halphen performed a left conversion hip replacement surgery on September 11, 2023.

At her attorney's request, Claimant was evaluated by Pedro A. Murati, M.D., on October 1, 2024. Dr. Murati is a certified independent medical examiner, board-certified

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[3] *Id.* at 3.

[4] ALJ Order (July 21, 2023) at 3.

in pain and electrodiagnostic medicine, physical medicine and rehabilitation. He is also an adjunct clinical assistant professor. Claimant reported issues with bathing, showering, eating, standing, sitting, reclining, walking, climbing stairs, housework, shopping lifting/carrying groceries, meal prep/cleanup, and driving/traveling in a vehicle. Claimant walks with a cane, is unable to sleep and perform vigorous activities.

Dr. Murati diagnosed Claimant with:

1. Status/post left femoral cephalomedullary nail, gamma on January 16, 2022, with Dr. Halphen;
2. Status/post left total hip arthroplasty performed on September 11, 2023, by Dr. Halphen; and,
3. Mild depression.

Using the AMA *Guides to the Evaluation of Permanent Impairment,* 6th edition (*Guides,* 6th ed.), as a starting point and based on competent medical evidence, Dr. Murati opined Claimant has a combined functional impairment of 19% to the whole body (37% to the left lower extremity for the left total hip replacement, which converts to 15% functional impairment to the whole body and 5% functional impairment to the whole body for the mild depression). Dr. Murati testified his 19% functional impairment rating to the whole body was actually based entirely on the *Guides,* 6th ed., not simply as a starting point. Although the 15% rating was based on a strict interpretation of the *Guides,* 6th ed., Dr. Murati used the worksheet for hip replacements from the *Guides,* 4th ed. (and also found in the *Guides,* 5th ed.), because the 6th does not contain a worksheet. The *Guides,* 6th ed., notes poor, fair or good results, but does not provide any guidance on how to define the results. The worksheet in the *Guides,* 4th ed., utilizes a point system revealing a point total, which then categorizes the results as poor, fair or good. Dr. Murati likes the worksheet because it provides an objective analysis or way to measure the injured worker's post-surgery status. Based on the worksheet, Dr. Murati opined Claimant had a fair result.

At Claimant's request, Dr. Murati did not provide permanent work restrictions, but opined Claimant would require future medical treatment. He recommended at least yearly follow ups on her left hip with conservative treatment options should complications ensue. He recommended Celebrex as the anti-inflammatory of choice. Dr. Murati testified given Claimant's age (62), she will at some time in the future need to replace the hardware from her hip replacement.

Dr. Murati testified the conversion total hip replacement was necessary to cure and relieve Claimant from the effects of her injury. He opined the prevailing factor for the total conversion hip replacement was the femur fracture from the January 15, 2022, work injury. He acknowledged Claimant had degenerative joint disease preexisting this injury. However, she sustained an injury to the hip during her work which resulted in anatomical structural

change to her anatomy which necessitated a different total hip replacement than what was originally scheduled. Dr. Murati testified:

> A No, she needed a regular total hip replacement before this.
>
> Q Okay.
>
> A She got a conversion hip replacement because of the fracture. She would not have needed the conversion hip replacement but for the fracture which happened at the accident at work.[5]
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> . . .
>
> Q Okay. Just so I have this right. You are saying that it was absolutely necessary that that
> gamma nail came out –
>
> A Yes.
>
> Q -- prior to surgery?
>
> A Yes.
>
> Q And it has to be done with the total hip replacement?
> A At the same time, because you're not going to have a person undergo prolonged surgery – . . .[6]

Dr. Murati noted the gamma nail had to be removed before hip replacement surgery. He testified:

> Q If she had the gamma nail removed outside of having the hip replacement, does that still require conversion? Or do you know?
>
> A She would not have needed to have the gamma nail removed. You don't remove the gamma nails. You carry on those for the rest of your life unless you have complications, such as infection or loosening, and then you have to do something about it. You usually keep them inside. You don't want to mess with them because, again, it's a royal pain in the behind to be removing nails. I mean, you have to

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[5] Murati Depo. at 19.

[6] *Id.* at 22.

> understand this nail kind of fuses to the bone so it's a very tough surgery to perform.[7]

Dr. Murati testified he has training in depression as part of his board certification in pain medicine and as a certified independent medical evaluator. He testified Claimant's depression could not be tied to anything else. Regarding his qualifications to provide a diagnosis for depression, he testified:

> Q Do you have any expertise in the diagnosis and treatment of mental or behavioral disorders?
>
> A Yes. As a physiatrist a great deal of our patients are depressed because of their condition and we train in treating them. Okay? We suggest that they get treated with antidepressants, okay? If the problem is a lot more serious than that and uncontrollable then I refer them to psychologists and/or psychiatrists to see why is this depression not being controlled by the medication.[8]

Dr. Murati acknowledged the medical records did not provide any diagnosis of depression, but stated Claimant was "obviously depressed."[9]

At Respondent's request, Claimant was evaluated by Michael J. Johnson, M.D., a board-certified orthopedic surgeon, on April 1, 2025. Claimant reported continued left hip pain (6/10), increased with activity and weight bearing, getting in/out of vehicles and affecting her sleep. She used a cane to assist with ambulation. Claimant takes pain medication, which helps, but has concluded her treatment. Dr. Johnson noted Claimant's history of severe and disabling left hip pain diagnosed as bilateral osteoarthritis and trochanteric bursitis. He was aware Claimant was attempting to lose weight to have total left hip arthroplasty prior to her work-injury.

Dr. Johnson diagnosed Claimant with:

1. Preexisting obesity;
2. Bilateral hip advanced osteoarthritis;
3. Left interochanteric femur fracture 1/15/22;
4. Status post left femur cephalmedullary gamma nail 1/16/22;
5. Left hip hardware removal and total hip arthroplasty 9/11/23;
6. Lumbar degenerative disc disease, spondylosis, facet arthroplasty,

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

[8] *Id.* at 24.

[9] *Id.* at 24.

unrelated.

Using the *Guides,* 6th ed., as a starting point and based on competent medical evidence, Dr. Johnson opined Claimant had 7% impairment to the left lower extremity for the left intertrochanteric femur fracture, which converts to 3% to the whole body. Noting Claimant had a good result, he opined Claimant had 25% functional impairment to the left lower extremity for the left total hip arthroplasty based on a good result, which converts to 10% to the whole body. Dr. Johnson testified his functional impairment ratings were based on a strict interpretation of the *Guides,* 6th ed. Regarding rating depression, he stated:

> Of note, myself and Dr. Murati are not psychiatrists or psychologists. Providing a rating on "depression" is not standard or appropriate. Therefore, performing a rating opinion is outside the scope of an orthopedic surgeon or a physical medicine physician. Of note, Ms. Bishop has not had a diagnosis of depression opined by her PCP or mental health provider based on the records I reviewed.[10]

Dr. Johnson opined Claimant would not need future medical benefits for her femur fracture, but did not offer an opinion regarding future medical for the total hip replacement. He opined the prevailing factor for the left hip introchanteric fracture, which was healed by March 22, 2022, was the January 15, 2022, work-injury suffered by Claimant. He opined the prevailing factor for the left hip arthroplasty on September 11, 2023, was Claimant's age, degeneration, and genetics, including obesity. Dr. Johnson stated:

> In other words, she had severe left hip osteoarthritis, needing a total hip arthoplasty, before the injury of 1/15/22, and, has severe left hip osteoarthritis needing eventually a total hip arthroplasty in 2023, after the injury. The injury of 1/15/22 did not change this fact.
>
> She needed a total hip arthroplasty in March 2022, and, had a total hip arthoplasty in September 2023. This surgery was delayed by her work related injury, but, did not change he fact that she needed it.
>
> It was not for the presence of her advanced left hip osteoarthritis, present for years before 1/15/22, she would not have need the total hip 9/11/23. You simply do not ever need a total hip arthroplasty due to an intertrochanteric fracture and ORIF, if you do not have arthritis. It was the presence of her left hip arthritis that needed the 911/23 THA.[11]

Dr. Johnson testified:

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[10] Johnson Depo., Ex. 2 at 7.

[11] *Id.*, Ex. 2 at 8.

> A. No, I mean she had severe hip arthritis before the accident, she had severe hip arthritis after the accident. The accident didn't change that fact.[12]
>
> . . .
>
> A. Well, the conversion, the taking out the hardware and converting to a total hip, the prevailing factor is age, degeneration and genetics. These were things that were predating the accident. I would also add, based on my review, and was contributed to by possibly some obesity. But the prevailing factor is not the work injury that occurred on 1/15/22, it's things that basically predated 1/15/22.[13]

Dr. Johnson testified the difference between the hip replacement surgery scheduled prior to her injury and the one actually performed was the removal of the hardware, a bigger incision, longer surgery and healing. He testified, "it is a more complicated surgery to take the nail out and then do the total hip as opposed to just doing a primary total hip."[14] Dr. Johnson noted the cephalomedullary nail and screws implanted as a result of the fracture are rarely removed, but must be removed prior to a hip replacement procedure. Regarding whether two procedures could have been performed, one to remove the hardware followed by the hip replacement, Dr. Johnson testified:

> Q. I asked him that if the plan of care could involve removing the gamma nail in a separate procedure and then performing a total hip replacement later on. And Dr. Murati said that plan of care would fall below the standard of care and result in medical malpractice. Do you believe that?
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> A. No, I wouldn't consider it medical malpractice. Dr. Murati is not a surgeon, so I'm not sure what his bases are. Now, typically, I would tell you that in general as an orthopedic surgeon, we would not typically take hardware out unless in general we were planning on doing something such as a total hip. So you would say that it's probably not a standard outcome that you take the hardware out and then don't do anything else because if you don't plan on doing anything else, you would just leave the hardware in. So he is sort of correct in that it's not a standard protocol or procedure to take it out, leave it out and then come back later to do the total hip, but there are times that things can't be done for whatever reason. I'm not sure of Dr. Murati's opinion of a malpractice case, so part of his opinion is correct that I would agree with.[15]

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[12] *Id.* at 12.

[13] *Id.* at 20.

[14] *Id.* at 36.

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

. . .

> . . . So yes, that could have been done separately. It's not typically in this context with these particular details that that would have been done that way. But could it have been done where you have two surgeries as opposed to one? Absolutely.[16]

Dr. Johnson acknowledged Claimant's use of a cane to ambulate following her work accident when she didn't use one prior, was a "slight change in her functional capacity."[17] The surgery performed on Claimant was different from the standard procedure discussed before her work injury. He opined a person can have leg length discrepancies from a hip fracture, but also from severe osteoarthritis. He did not believe you could place the entire leg length discrepancy on the hip fracture itself.

Claimant described her hip pain following the work accident as "extremely painful."[18] According to Claimant, sometime during physical therapy, she noticed her left leg was shorter, causing her to walk with an altered gait. She can still perform household chores, but it takes longer because she can not stand as long as she could before her accident. Claimant attributes her depression to the workers compensation process taking so long and her desire to walk like a normal person.

The ALJ found the work injury was the prevailing factor for claimant's left hip injury and the left hip replacement surgery based on the opinions of Dr. Gurba. Accordingly, he awarded functional impairment based on the results of the total hip replacement. The ALJ was not persuaded by Dr. Murati's 5% whole body rating for depression because there was nothing in the record to support it. This reduced Dr. Murati's rating to 15% to the body. He then averaged Dr. Murati's 15% rating with Dr. Johnson's 10% rating and awarded Claimant 12.5% functional impairment to the whole body. Because of the prevailing factor finding, there was not an overpayment of TTD. The ALJ awarded Claimant future medical benefits based on Dr. Murati's opinion.

Respondent appealed arguing Dr. Gurba's report should be stricken because of his refusal to submit to a deposition and thus violating Respondent's right to due process. At oral argument, Respondent's counsel was asked if a subpoena was issued to Dr. Gurba. It was not. Counsel noted the difficulty in issuing a subpoena in Missouri (Dr. Gurba's residence) as the reason for not doing so. In the alternative, Respondent argued Dr. Gurba's opinions are not credible because his prevailing factor opinion focuses on the medical treatment needed by Claimant and not his medical condition. Respondent made

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[16] *Id.* at 24.

[17] *Id.* at 27.

[18] R.H. Trans. at 24.

the same argument regarding Dr. Murati's prevailing factor opinion. Respondent argued Claimant's injury is limited to a left femur fracture and therefore, his functional impairment should be limited to Dr. Johnson's 7% rating to the left lower extremity, they should be reimbursed for the temporary total disability and medical compensation paid in connection with the hip replacement procedure. Lastly, Respondent argued future medical benefits should be denied based on Dr. Johnson's opinion.

Claimant argues the Board should award 15% functional impairment to the whole body and affirm the award of future medical benefits.

PRINCIPLES OF LAW AND ANALYSIS

Before addressing the issues presented, the Board must first address Respondent's Motion to Strike Dr. Gurba's report, court-ordered by the ALJ pursuant to K.S.A. 44-516. In his July 21, 2023, Order, the ALJ denied Respondent's motion to strike citing K.S.A. 44-516 and K.A.R. 51-9-6. The Board Member in his September 19, 2023, Order dismissed Respondent's appeal regarding the motion citing a lack of jurisdiction and finding the ALJ did not exceed his jurisdiction in denying the motion. Respondent renewed their objection to Dr. Gurba's report being included at the Regular Hearing. Respondent's objection was overruled by the ALJ.

Pursuant to K.S.A. 44-516, the ALJ is required to consider the Court-ordered report of Dr. Gurba. Respondent argued Dr. Gurba's refusal to make himself available for a deposition violated their right to due process and asks the Board to exclude it from the evidentiary record.

In *Bergstrom,* the Kansas Supreme Court held:

> When a workers compensation statute is plain and unambiguous, this court must give effect to its express language rather than determine what the law should or should not be. The court will not speculate on legislative intent and will not read the statute to add something not readily found in it, if the statutory language is clear, no need exists to resort to statutory construction. *Graham v. Dokter Trucking Group, 284, Kan.547, 554, 161 P.3d 695 (2007).*[19]

The Workers Compensation Act requires parties to a claim be afforded a reasonable opportunity to be heard and present evidence. K.S.A. 44-523(a) provides:

> The director, administrative law judge or board shall not be bound by technical rules of procedure, but shall give the parties reasonable opportunity to be heard and to

[19] *Bergstrom v. Spears Manufacturing Company*, 289 Kan. 605, 607-608, 214 P.3d 676 (2009).

> present evidence, insure the employee and the employer an expeditious hearing and act reasonably without partiality.

The constitutional requirements of due process are applicable to proceedings held before an administrative body acting in a quasi-judicial capacity.[20] The Kansas Supreme Court has recognized in numerous cases the right to cross-examine witnesses testifying at administrative hearings of a quasi-judicial character is an important requirement of due process.[21]

In *Adams*, the Kansas Supreme Court held:

> In 73 C.J.S., Public Administrative Bodies and Procedure s 132, pp. 456-458, we find the essential elements of an administrative hearing summed up in this way:
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> 'An administrative hearing, particularly where the proceedings are judicial or quasi-judicial, must be fair, or as is frequently stated, full and fair, fair and adequate, or fair and open. The right to a full hearing includes a reasonable opportunity to know the claims of the opposing party and to meet them. In order that an administrative hearing be fair, there must be adequate notice of the issues, and the issues must be clearly defined. All parties must be apprised of the evidence, so that they may test, explain, or rebut it. They must be given an opportunity to cross-examine witnesses and to present evidence, including rebuttal evidence, and the administrative body must decide on the basis of the evidence....'[22]

In addition to applying the law as written, the Board is duty bound to follow binding precedent.[23]

Here, Respondent was advised Dr. Gurba had retired and was unwilling to make himself available for a deposition. His refusal denied Respondent the opportunity to question or challenge the opinions contained in his report. The Board finds the Respondent being denied the opportunity to cross-examine the Court-ordered evaluator violated their right to due process. Respondent's Motion to Strike Dr. Gurba's report is granted. Dr. Gurba's report was not considered by the Board in rendering this decision.

The burden of proof shall be on the employee to establish the right to an award of compensation, based on the entire record under a "more probably true than not" standard

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[20] *Diaz v. Quikrete Co., Inc.*, No. 1,056,994, 2013 WL 6382906 (Kan. WCAB Nov. 26, 2013).

[21] *Wulfkuhle v. Kansas Dept. Of Revenue*, 234 Kan. 241,671 P.2d 547 (1983).

[22] *Adams v. Marshall*, 212 Kan. 595, 601-602, 512 P.2d 365 (1973).

[23] *Gadberry v. R.L. Polk & Co.*, 25 Kan. App. 2d 800, 808, 975 P.2d 807 (1998).

and to prove the various conditions on which the right to compensation depends.[24] The Appeals Board possesses authority to review *de novo* all decisions, findings, orders and awards of compensation issued by administrative law judges.[25] 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.[26]

1. Was Claimant's conversion hip replacement surgery and resulting functional impairment compensable as a result of the January 15, 2022, accident?

a. Was Claimant's work accident the prevailing factor causing her injury, medical condition, and resulting disability or impairment?
b. And/or, was the hip replacement necessary to cure and relieve Claimant from the effects of her injury?

a. The January 15, 2022, work accident was the prevailing factor causing the Claimant's injury, medical condition and resulting impairment.

An accident is an undesigned, sudden and unexpected traumatic event, usually of an afflictive or unfortunate nature and often, but not necessarily, accompanied by a manifestation of force. To be compensable, an accident must be identifiable by time and place of occurrence, produce at the time symptoms of an injury and occur during a single work shift.[27] The accident must be the prevailing factor causing the injury. An injury is any lesion or change in the physical structure of the body, causing damage or harm.[28] Prevailing factor is defined as the primary factor compared to any other factor, based on consideration of all relevant evidence.[29] An accidental injury is not compensable if work is a triggering factor or if the injury solely aggravates, accelerates or exacerbates a preexisting condition or renders a preexisting condition symptomatic.

The essential facts of this case are undisputed. Claimant suffered a compensable injury on January 15, 2022. Claimant suffered a significant injury which necessitated her being taken by ambulance to a medical facility where she underwent surgery within 24

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[24] *See* K.S.A. 44-501b(c) and K.S.A. 44-508(h).

[25] *See* K.S.A. 44-555c(a).

[26] *See Rivera v. Beef Products, Inc.,* No. 1,062,361, 2017 WL 2991555 (Kan. WCAB June 22, 2017).

[27] *See* K.S.A. 44-508(d).

[28] *See* K.S.A. 44-508(f)(1).

[29] *See* K.S.A. 44-508(g).

hours. Since her surgery, Claimant has used a cane of other assistive devices to ambulate. During Claimant's post-surgery, she noticed her left leg was shorter causing her to walk with an altered gait. Claimant continues to use a cane to ambulate.

Two physicians offered opinions regarding the prevailing factor for Claimant's medical condition. Dr. Johnson opined the prevailing factor was the existing osteoarthritis for which Claimant received treatment prior to her injury. Dr. Murati opined the prevailing factor was Claimant's January 15 work injury noting a structural change to her anatomy. There is nothing in the record documenting Claimant had leg length discrepancies prior to her work injury or disputing Claimant's testimony it began during her physical therapy post-surgery for the fracture. Claimant did not require the use of a cane prior to her work-injury. She has been dependent on a cane to ambulate since the fracture surgery. Dr. Johnson acknowledged leg length discrepancies can occur following a fracture, but also from osteoarthritis. He did not believe Claimant's leg length discrepancy could be blamed entirely on the fracture itself.

Based on Dr. Murati's opinion and Claimant's testimony, the Board finds Claimant's left leg length discrepancy is the result of the work injury and constitutes a change in the physical structure of the body. The prevailing factor of Claimant's medical condition is the work accident sustained on January 15, 2022.

b. The conversion hip replacement surgery was necessary to cure and relieve Claimant from the effects of her injury?

Dr. Johnson and Dr. Murati agreed the gamma nail and surrounding hardware had to be removed before hip replacement surgery could be performed. They also agreed the conversion hip replacement procedure was more complicated, was more painful and increased the recovery time. Respondent argued their responsibility should be limited to the removal of the hardware. In other words, two surgical procedures should have been performed, one to remove the hardware and a second to perform the hip replacement surgery contemplated by Claimant prior to the work injury. The Board rejects this argument.

Dr. Murati stated two procedures would deviate from the standard of care. Dr. Johnson didn't think it reached this level, but conceded it was not standard protocol to remove the hardware in one procedure and come back and do the hip replacement in a second procedure. The Board finds it is unreasonable to require Claimant to submit to two separate procedures to accomplish a hip replacement. Claimant's work-injury required the implementation of a gamma nail and associated hardware that had to be removed prior to a hip replacement. The conversion hip replacement surgery Claimant received was necessary to cure and relieve her from the effects of her fracture.

2. Claimant has 12.5% functional impairment to the whole body as a result of her January 15, 2022, work accident.

There are two physicians who offered opinions regarding the nature and extent of Claimant's functional impairment. Based strictly on the fracture, Dr. Johnson opined Claimant has 7% functional impairment to the left lower extremity which converts to 3% to the whole body. Dr. Johnson opined Claimant has 25% functional impairment to the left lower extremity which converts to 10% functional impairment as a result of the hip replacement, stating Claimant had a good result. Dr. Murati opined Claimant has 37% functional impairment to the left lower extremity which converts to 15% functional impairment to the whole body, stating Claimant had a fair result. He opined Claimant has an additional 5% functional impairment to the whole body for depression.

The ALJ found Claimant did not establish she had impairment for depression, leaving him with two ratings (10% and 15%), which he split and awarded 12.5% functional impairment to the whole body. The Board agrees with the ALJ's approach to determine Claimant's functional impairment and affirms the award of 12.5% to the whole body.

Dr. Murati acknowledged Claimant's medical records did not contain any diagnosis of depression, but stated Claimant was "obviously depressed." His report and testimony do not set forth how much, if any, inquiry was made regarding Claimant's life situation at the time he evaluated her, which may have contributed to or caused her depression. The question was not was Claimant depressed, but rather is the work accident and/or the subsequent medical condition the prevailing factor causing her depression. Lacking Claimant's personal information, Dr. Murati's opinion Claimant has 5% functional impairment to the whole body is not credible.

3. Claimant is entitled to future medical benefits.

The employer's liability for compensation includes the duty to provide medical treatment as may be reasonably necessary to cure or to relieve the effects of the injury.[30] It is presumed the employer's obligation to provide medical treatment terminates upon the employee's reaching maximum medical improvement. The presumption may be overcome with medical evidence it is more probably true than not additional medical treatment will be necessary after maximum medical improvement.[31]

The ALJ awarded Claimant future medical treatment based upon the opinions of Dr. Murati. Dr. Murati opined future medical treatment was required. Specifically, Claimant's

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[30] *See* K.S.A. 44-510h(a).

[31] *See* K.S.A. 44-508h(e).

hardware from the hip replacement will need replaced and Claimant would benefit from Celebrex. Dr. Johnson opined Claimant would not need future medical treatment for the fracture, but he did not offer an opinion regarding future medical for the hip replacement.

Dr. Murati's opinion Claimant will require future medical is the most credible. His report and testimony are medical evidence. Under K.S.A. 44-510e, Claimant provided sufficient medical evidence showing it is more probably true than not additional medical treatment will be necessary after she was placed at MMI, thereby overcoming the presumption Respondent's obligation to provide medical treatment upon her reaching MMI terminated. The Award of future medical benefits for Claimant's injuries is affirmed.

AWARD

WHEREFORE, it is the finding, decision and order of the Board the Award of Administrative Law Judge Gary K. Jones, dated October 28, 2025, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of May, 2026.

_____
BOARD MEMBER

_____
BOARD MEMBER

_____
BOARD MEMBER

c: (Via OSCAR)

Phillip B. Slape, Attorney for Claimant
Matthew S. Crowley, Attorney for Self-Insured Respondent
Hon. Gary K. Jones, Administrative Law Judge