

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

TIMOTHY SMITHE

Claimant

v.

AP-00-0493-190

CS-00-0491-742

VILLAGE TOURS LLC

Respondent

and

TRIUMPHE CASUALTY COMPANY

Insurance Carrier

ORDER

Respondent and Insurance Carrier (Respondent) appeal the October 30, 2025, Order issued by Administrative Law Judge (ALJ) Gary K. Jones.

APPEARANCES

Claimant appeared *pro se*. Kevin M. Johnson appeared for Respondent.

RECORD AND STIPULATIONS

The Appeals Board adopted the same stipulations and considered the same record as the ALJ, consisting of the transcript of Preliminary Hearing, held October 28, 2025, including Claimant's Exhibits 1-2, and the pleadings and orders contained in the administrative file. The Board also reviewed the parties' briefs.

ISSUES

1. Did Claimant sustain personal injury from an accident arising out of and in the course of his employment with Respondent, including whether Claimant proved the alleged accident was the prevailing factor causing the alleged injury or medical condition?
2. Does the Board possess authority to address the issue of entitlement to temporary total disability (TTD) compensation at this time?
3. If the Board possesses authority to address the issue, is Claimant entitled to TTD compensation?

4. Does the Board possess authority to address Claimant's request for penalties and attorney fees at this time?

FINDINGS OF FACT

Claimant worked for Respondent as a bus driver. Claimant's work involved loading luggage and gear into a passenger bus, and driving the bus on chartered routes. Claimant was hired in Wichita, his instructions came from Respondent's office in Wichita, and his routes originated from Wichita.

On June 27, 2025, Claimant was driving a bus on a return route from Chicago, Illinois. While driving in Missouri, Claimant's bus broke down. Claimant arranged for the passengers to be transferred to another bus in Springfield, Missouri. While moving luggage and equipment to the new bus, Claimant felt pain in his abdomen. Claimant reported his injury to Respondent, and returned to Wichita. On June 29, 2025, Claimant completed a written report of the accident for Respondent.

Claimant's medical history is notable for a prior hernia repaired forty years ago. Claimant denied having ongoing problems between the prior hernia and June 27, 2025.

Respondent initially authorized medical treatment, and Claimant received treatment at Wesley Healthcare on June 28, 2025. The chart notes of the visit are not in evidence, but it appears Claimant reported abdominal pain. A CT scan of the abdomen was performed, but the report of the radiologist's impressions is illegible. Claimant was told to see his primary care physician for an endoscopy after his abdominal inflammation reduced. Claimant was restricted from heavy lifting, pushing or pulling.

On July 2, 2025, Claimant was seen at Via Christi Occupational Health, which was also authorized by Respondent. Claimant reported an accident occurring on June 27, 2025. Claimant was diagnosed with a left-sided inguinal hernia. Claimant was referred to a surgeon, Dr. Grantham, and work restrictions were imposed. On July 11, 2025, Respondent issued a letter to Claimant offering him an unpaid leave of absence while the work restrictions remained in effect. Respondent also advised Claimant the issue of temporary total disability was between Claimant and Insurance Carrier.

Dr. Grantham subsequently evaluated Claimant. On September 1, 2025, Dr. Grantham issued a letter to Insurance Carrier advising Claimant sustained an injury on June 27, 2025, while lifting heavy objects at work. Dr. Grantham also stated Claimant was diagnosed with an inguinal hernia following the event. Surgery was recommended. Dr. Grantham also stated, "It is my medical opinion, to a reasonable degree of medical

certainty, that the lifting injury sustained on June 27, 2025, was the precipitating cause of this inguinal hernia.”¹

Respondent denied further workers compensation benefits. Respondent advised Claimant he could apply for FLMA leave, which he declined to do. On October 20, 2025, Respondent advised Claimant his employment was terminated effective October 31, 2025, because he missed four months of work and did not provide an estimated return to work date.

Claimant continues to experience abdominal pain daily. It does not appear Claimant received additional medical treatment since Dr. Grantham issued the September 1, 2025, letter. Claimant is not working.

Claimant sought medical treatment and TTD under workers compensation. On October 28, 2025, a preliminary hearing was held. During the hearing, Claimant requested penalties for alleged retaliatory actions by Respondent and for the delay in receiving benefits, although no application for penalties was filed. Respondent initially advised prevailing factor was denied based on Dr. Grantham’s report. During the hearing, however, Respondent announced it was also disputing notice, Kansas jurisdiction and an injury caused by an accident arising out of and in the course of employment. Respondent admitted the employment relationship and coverage under the Act. Apart from Claimant’s testimony and Claimant’s exhibits, no additional evidence was admitted at the hearing.

On October 30, 2025, ALJ Jones issued the Order. ALJ Jones reviewed all the relevant evidence concerning the cause of Claimant’s hernia, and whether Claimant established a new change in the structure of his body on account of the accident. ALJ Jones also noted physicians need not understand legal concepts, and the use of “precipitating cause” was not necessarily intended to convey a legal meaning. ALJ Jones concluded the relevant evidence established a change in Claimant’s physical structure, and the accident was the prevailing factor causing Claimant’s hernia. ALJ Jones also concluded Claimant proved all the other necessarily elements of a compensable claim. Dr. Grantham was designated the authorized treating physician and TTD compensation was awarded. These proceedings follow.

PRINCIPLES OF LAW AND ANALYSIS

Respondent contends the Order is erroneous because Dr. Grantham stated the accident was the precipitating cause of the hernia. Respondent argues Claimant did not prove the accident was the prevailing factor causing his condition, and compensation should be denied. Respondent also argues TTD compensation should not be awarded

¹ Claimant’s Ex. 1, p.15.

because Claimant did not sustain a compensable injury. In its application for review, Respondent listed “all other issues” for review, but did not argue or brief the issues of notice or Kansas jurisdiction, and they appear abandoned by Respondent. Moreover, the record clearly establishes timely notice and Kansas jurisdiction.

Claimant argues the Order should be affirmed. Claimant contends the record establishes he proved the accident was the prevailing factor causing his hernia. Claimant also argues Respondent has not complied with the Order, and he seeks penalties and attorney fees.

It is the intent of the Legislature the Workers Compensation Act be liberally construed only for the purpose of bringing employers and employees within the provisions of the Act.² The provisions of the Workers Compensation Act shall be applied impartially to all parties.³ 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.⁴

1. CLAIMANT PROVED HE SUSTAINED PERSONAL INJURY FROM AN ACCIDENT ARISING OUT OF AND IN THE COURSE OF HIS EMPLOYMENT WITH RESPONDENT.

The primary issue is whether Claimant met his burden of proving he sustained personal injury from an accident arising out of and in the course of his employment on June 27, 2025. 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.⁵ The accident must be the prevailing factor in causing the injury, and “prevailing factor” is defined as the primary factor compared to any other factor, based on consideration of all relevant evidence.⁶ An accidental injury is not compensable if work is a triggering or precipitating factor, if the injury solely aggravates, accelerates or exacerbates a preexisting condition, or renders a preexisting condition symptomatic.⁷ A

² See K.S.A. 44-501b(a).

³ See *id.*

⁴ See K.S.A. 44-501b(c).

⁵ See K.S.A. 44-508(d).

⁶ See K.S.A. 44-508(d), (g).

⁷ See K.S.A. 44-508(f)(2).

compensable injury is present, however, if a work-related accident produces a change in the structure of the body.⁸

It is uncontested the event of June 27, 2025, occurred. Claimant testified he was performing work in service to Respondent when he felt a sudden onset of pain consistent with an injury on June 27, 2025. No evidence was submitted suggesting the event did not occur. The undersigned concludes Claimant proved the occurrence of an accident on June 27, 2025.

The parties dispute whether the June 27, 2025, accident was the prevailing factor causing Claimant's inguinal hernia. The issue is resolved by considering all relevant evidence in the record. Claimant testified he felt a sudden onset of pain consistent with an injury while working on June 27, 2025. Claimant also testified he was symptom-free for the forty-year period before June 27, 2025. Claimant's testimony was uncontested, and is credible.

The medical records of Wesley Healthcare and Ascension Via Christi confirm Claimant experienced abdominal pain or an inguinal hernia, and the record of Via Christi notes an accident date of June 27, 2025. Dr. Grantham stated the accident was the precipitating cause of Claimant's hernia, but he also stated Claimant sustained an injury on June 27, 2025, while lifting heavy objects at work and was diagnosed with an inguinal hernia. Dr. Grantham did not explain the basis for the "precipitating cause" opinion. Dr. Grantham's opinion Claimant sustained an injury while lifting heavy objects is supported by the other medical records. The undersigned finds the medical evidence establishes Claimant sustained a change in the structure of his body, namely an inguinal hernia, while working on June 27, 2025.

Ultimately, whether the accident was the prevailing factor, a precipitating factor, or a mere aggravation, of Claimant's inguinal hernia is an issue for the Court to decide. The undersigned finds on June 27, 2025, Claimant was performing heavy lifting as part of his employment. As a result of that activity, Claimant sustained a change in the structure of his body, producing an immediate onset of pain consistent with an injury. Claimant's inguinal hernia is consistent with this history. The medical evidence also supports finding the injury compensable. The undersigned concludes Claimant proved he sustained an inguinal hernia from an accident arising out of and in the course of his employment with Respondent.

⁸ See K.S.A. 44-508(f)(1); see also *Cramer v. Presbyterian Manors*, No. 119,581, 2019 WL 4558050, at *5 (unpublished Kan. App. opinion filed Sept. 20, 2019).

2. THE BOARD DOES NOT POSSESS AUTHORITY TO REVIEW WHETHER CLAIMANT IS ENTITLED TO A PRELIMINARY AWARD OF TTD COMPENSATION AT THIS TIME, AND RESPONDENT'S APPLICATION FOR REVIEW IS DISMISSED IN PART.

Respondent also argues the award of TTD compensation should be vacated because Claimant did not sustain a compensable injury. The Board possesses the authority to review preliminary orders on disputed issues of whether the employee suffered an accident, repetitive trauma or resulting injury; whether the injury arose out of and in the course of employment; whether notice was given; or whether certain defenses apply.⁹ "Certain defenses" are issues concerning the compensability of the injury under the Workers Compensation Act.¹⁰ If jurisdiction under K.S.A. 44-534a is not present, it is appropriate to dismiss the appeal.¹¹

Whether the preliminary award of TTD was improvidently made is not an issue listed in K.S.A. 44-534a(a) pertaining to the compensability of the injury. In the absence of authority to independently review the award of TTD compensation, Respondent's request for review of the issue is dismissed.

3. CLAIMANT'S REQUEST FOR PENALTIES AND ATTORNEY FEES IS DISMISSED FOR LACK OF JURISDICTION.

Finally, the undersigned addresses Claimant's request for penalties and attorney fees. These proceedings involve review of a preliminary order for compensation issued under K.S.A. 44-534a. Under the plain language of K.S.A. 44-534a, medical compensation and temporary disability compensation may be awarded, but there is no provision for awarding penalties or attorney fees in a preliminary hearing.¹² Claimant's request for penalties and attorney fees is dismissed for lack of jurisdiction.

DECISION

WHEREFORE, it is the finding, decision and order of the undersigned Board Member the Order issued by ALJ Gary K. Jones, dated October 30, 2025, is affirmed. Respondent's application for review of the TTD award is dismissed. Claimant's request for penalties and attorney fees is dismissed.

⁹ See K.S.A. 44-534a(a)(2).

¹⁰ See *Carpenter v. National Filter Service*, 26 Kan. App. 2d 672, 675, 994 P.2d 641 (1999).

¹¹ See *id.* at 676.

¹² See K.S.A. 44-534a(a)(1).

IT IS SO ORDERED.

Dated this _____ day of December, 2025.

WILLIAM G. BELDEN
APPEALS BOARD MEMBER

c: Via OSCAR and U.S. Mail

Timothy J. Smithe
Kevin M. Johnson
Hon. Gary K. Jones