

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

JASON WEAVER

Claimant

v.

DUCOMMUN INC.

Respondent

AP-00-0493-206

CS-00-0472-976

and

STARR INDEMNITY AND LIABILITY CO.

Insurance Carrier

ORDER

Claimant appealed the November 10, 2025, Award issued by Administrative Law Judge (ALJ) Brian Brown. The Appeals Board heard oral argument on April 9, 2026.

APPEARANCES

William L. Phalen appeared for Claimant. Kevin M. Johnson and Madison L. Ilseman appeared for Respondent and Insurance Carrier (Respondent).

RECORD AND STIPULATIONS

The Board adopted the same stipulations and considered the same record as the ALJ, consisting of the Transcript of Regular Hearing via Zoom Video Conference, held March 26, 2025; the transcript of Regular Hearing by Deposition of Jason Weaver, taken April 8, 2025; the transcript of Evidentiary Deposition of Pedro A. Murati, M.D., taken July 31, 2025, including Exhibits 1-3; the transcript of Remote Evidentiary Deposition of David J. Clymer, M.D., taken April 21, 2025, including Exhibits 1-4; the narrative report of Dr. Vito Carabetta, dated June 11, 2024, concerning his Court-ordered independent medical examination; and the pleadings and orders contained in the administrative file. The Board also reviewed the parties' briefs.

ISSUES

1. Did Claimant sustain personal injuries from repetitive trauma arising out of and in the course of his employment with Respondent from August 3, 2015, through December 27, 2022?
2. What is the nature and extent of Claimant's disability or impairment?

3. Is Claimant entitled to an award of future medical treatment?
4. Is the hernia provision of the Kansas Workers Compensation Act constitutional?

FINDINGS OF FACT

Claimant is employed by Respondent as a CNC Machinist. Claimant runs two CNC machines fabricating metal parts. Claimant's work requires him to repetitively lift and carry parts weighing forty to fifty pounds. Claimant occasionally deburs the parts, which requires additional lifting. Claimant's work station is located on an elevated platform, and the floor is "springy" and "bouncy" in places.¹ Claimant testified he engages his core muscles to maintain his balance while working in a bent, stooping position.

While loading and unloading parts, Claimant initially felt pain in his hips, and later felt pain in his low back, groin and left leg. Claimant denied experiencing his symptoms suddenly. Rather, Claimant's symptoms manifested while working for Respondent from August 3, 2015, through December 27, 2022. Claimant reported his symptoms to Respondent on December 27, 2022, and he completed an incident report. Respondent did not refer Claimant to a health care provider, and Claimant obtained medical treatment on his own.

Claimant initially treated with Dr. Thomen, his family physician. Claimant testified he told Dr. Thomen about the pain in his back, hips, abdomen and left leg. Claimant also testified a visible bulge in his left abdomen was present. Dr. Thomen referred Claimant to a surgeon, Dr. Law, to address an inguinal hernia. It does not appear Dr. Thomen provided treatment for other injuries. Dr. Thomen's records are not in evidence, and Dr. Thomen did not testify.

Claimant rested at home for five days during the Christmas holiday break before seeing Dr. Law. Claimant testified his hernia reduced on its own while he was resting. Claimant also testified the affected area remained puffy with fat and fluid. Claimant testified he told Dr. Law about his back, hip, groin and left leg pain. Treatment only focused on the hernia. According to Claimant, Dr. Law did not recommend proceeding with surgery because the hernia had reduced on its own, and it was best to avoid surgery. Claimant understood he was prone to the hernia recurring. Dr. Law's records are not in evidence, and Dr. Law did not testify.

Following the Christmas holiday break, Claimant returned to work for Respondent performing his usual work. Claimant works at a slower pace. Claimant reported constant low back, groin, hip and left leg pain. Claimant also reported left leg numbness. Claimant

¹ R.H. by Dep. of Claimant Trans., at 13.

can stand for one hour, and takes a five-minute break at work after standing for an hour. Claimant performs some exercises and stretches. Claimant also reported it is hard for him to sit for a long time. Claimant has difficulty going up and down stairs, and he reported sexual dysfunction, problems urinating and defecating, and problems sleeping. Claimant has not undergone hernia repair surgery, and denied taking prescription medication. Claimant missed no time from work, and currently earns more money than he did in December 2022.

Dr. Murati, a physical medicine and pain management physician, evaluated Claimant at his attorney's request on March 6, 2023. Claimant reported fatigue and discomfort in the left groin area, discomfort at both hips, occasional right buttock pain, difficulty lifting and difficulty performing strenuous activities. Examination was notable for depressed jerk reflexes bilaterally, tenderness to palpation at the L5 spine with spasms on the left side, tenderness of both trochanteric regions, and weakness of the left abdominal wall. No radiologic studies were reviewed, and Dr. Murati did not review the records of Dr. Law or Dr. Thomen. Dr. Murati diagnosed an abdominal hernia, lumbar radiculopathy based on the depressed jerk reflex, and bilateral trochanteric bursitis. Dr. Murati opined Claimant's work each day was the prevailing factor causing his symptoms and diagnoses. Additional treatment was recommended. No work restrictions were imposed.

Dr. Clymer, an orthopedic surgeon, evaluated Claimant at Respondent's request on July 25, 2023. Claimant completed an intake form with a medical history. Claimant reported he sustained a hernia, intermittent hip pain and low back pain from repetitive work activities. Claimant also completed a pain diagram on the intake form indicating stabbing hip pain, but no back or abdominal pain. Claimant denied experiencing radiating pain. Dr. Clymer also reviewed medical records from Dr. Thomen and Dr. Murati. Physical examination was notable for full range of motion of the left hip, with tenderness over the left trochanter, and pain to the groin and low back. No radiating pain to either leg was noted. No objective evidence of a hernia was found, but Claimant reported pain during palpation of the left groin consistent with a hernia. No objective evidence of radiculopathy was found from clinical tests. Dr. Clymer thought Claimant's initial pain complaints to Dr. Thomen could be consistent with an initial strain/sprain injury. Dr. Clymer also thought Claimant's left hip tenderness could be consistent with mild trochanteric bursitis, which he did not find significant.

Dr. Clymer diagnosed a possible inguinal hernia caused by Claimant's work, resulting in 3% functional impairment to the body as a whole based on the *AMA Guides to the Evaluation of Permanent Impairment*, Sixth Edition (*AMA Guides*). Dr. Clymer did not believe competent medical evidence supported deviating from the *AMA Guides*. On cross-examination, Dr. Clymer testified it was possible to have residual symptoms, but it would be unusual for a strain/sprain to result in chronic or permanent injuries. Dr. Clymer also testified trochanteric bursitis could be caused by repetitive work activities, but he would not expect trochanteric bursitis to result from the mechanism of injury reported by

Claimant. If Dr. Clymer had to rate for trochanteric bursitis, he would have rated 1% of the body as a whole. Dr. Clymer also confirmed on cross-examination he found no objective evidence of a chronic back injury, notwithstanding Claimant's report of back pain.

On June 11, 2024, Dr. Carabetta, a physical medicine physician, performed a Court-ordered independent medical examination of Claimant. Dr. Carabetta's report was admitted into evidence without deposition testimony. Claimant reported intermittent, aching pain in the left groin and intermittent pain at the right iliac crest region. Claimant stated his symptoms were better than before. Examination was notable for a normal gait and movements, no pain to palpation of the sacroiliac joint, no spasm or tenderness of the lumbar region and intact sensation of both legs. Reflexes were present and symmetric at both legs. No tenderness to palpation was present at the trochanteric region, but Claimant confirmed he experienced symptoms on the right side. Soft swelling without tenderness was noted at the left lower groin, and pain to palpation was noted at the inguinal ring.

Dr. Carabetta diagnosed a left inguinal hernia, and left hip girdle pain. Dr. Carabetta believed the hernia was caused by work. Dr. Carabetta thought Claimant would require monitoring by a surgeon because there would be a point where surgery would be needed. Until Claimant required surgery, Dr. Carabetta recommended using a truss. With regard to the right hip girdle pain, Dr. Carabetta could not diagnose a specific injury, and hoped Claimant's condition would continue to improve over time. Dr. Carabetta thought a corticosteroid injection could be considered if the right hip girdle pain flared up. Dr. Carabetta did not issue an impairment rating.

Dr. Murati reevaluated Claimant on September 30, 2024. Claimant voiced the same complaints he made in the earlier examination, as well as fullness and soreness of the left groin; inability to lift over five pounds; difficulty bending over and stooping; difficulty sleeping; and feelings of guilt, helplessness, irritability, feeling on edge and loss of interest in things. Dr. Murati understood Claimant was offered hernia surgery, but declined it because his hernia reduced and Claimant did not experience significant pain. Examination was notable for a depressed ankle jerk reflex bilaterally, tenderness to palpation of the L5 spinous process, tenderness of the left inguinal canal, and no tenderness at the trochanteric region bilaterally. No psychological or psychiatric examination was performed. Dr. Murati is not a psychiatrist, but he testified he encounters mental health issues as a pain management physician.

Dr. Murati diagnosed a mostly resolved left inguinal hernia, lumbar radiculopathy, resolved bilateral trochanteric bursitis, and moderate depression. Dr. Murati related these conditions to work activities. Using the *AMA Guides* as a starting point, and based on competent medical evidence, Dr. Murati rated Claimant's impairment at 7% of the body as a whole for the hernia, 11% of the body as a whole for the lumbar radiculopathy, and 5% of the body as a whole for depression. The total impairment for Claimant's physical injuries was 17% of the body as a whole, and the total impairment for all the diagnoses was 21%

of the body as a whole. Dr. Murati recommended future medical, including medical monitoring of the hernia, an MRI scan of the low back and treatment, and a psychological referral for depression. No work restrictions were imposed.

On cross-examination, Dr. Murati confirmed he did not review Dr. Thomen's or Dr. Law's records. Dr. Murati also conceded no radiographs were reviewed, and other clinical tests did not indicate radiculopathy was present. The radiculopathy diagnosis was based on the depressed ankle jerk finding and Claimant's subjective complaints. Dr. Murati conceded he was not board-certified in psychiatry.

On October 10, 2025, ALJ Brown issued the Award. ALJ Brown found Claimant sustained a compensable left inguinal hernia due to repetitive trauma arising out of and in the course of his employment, but Claimant did not sustain other compensable injuries. ALJ Brown noted all the medical evidence established a compensable hernia, but Claimant did not prove by a greater weight of the credible evidence he sustained a compensable low back injury or radiculopathy. ALJ Brown also found Claimant did not prove he sustained permanent hip injuries, and Dr. Murati stated Claimant's trochanteric bursitis resolved. Finally, ALJ Brown concluded Claimant did not prove by a greater weight of the credible evidence he sustained a compensable psychological injury. With regard to nature and extent, ALJ Brown concluded Claimant was not entitled to receive permanent partial disability compensation for the hernia. Future medical treatment was awarded based on the opinions of Drs. Murati and Carabetta. These proceedings follow.

PRINCIPLES OF LAW AND ANALYSIS

Claimant argues the Award is erroneous and should be modified. Claimant maintains he sustained compensable injuries to the back, hips and depression, as well as the hernia, and should receive permanent partial disability compensation for the additional injuries. Claimant also argues the hernia statute does not apply because Claimant's hernia was caused by repetitive trauma, rather than by accident, and he is not barred from receiving permanent partial disability compensation for the hernia. Claimant also argues he is entitled to twelve weeks of permanent partial disability compensation because his hernia was inoperable. Finally, Claimant alleges the hernia statute is unconstitutional because it violates equal protection. Respondent argues the Award should be affirmed, but seeks review of the future medical award.

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

² See K.S.A. 44-501b(a).

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

The Appeals Board possesses authority to review *de novo* all decisions, findings, orders and awards of compensation issued by administrative law judges,⁵ and the Board possesses the authority to grant or refuse compensation, or to increase or diminish an award of compensation.⁶ 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.⁷

1. THE BOARD DOES NOT POSSESS AUTHORITY TO CONSIDER THE CONSTITUTIONALITY OF THE WORKERS COMPENSATION ACT, AND THE ISSUE IS RESERVED FOR THE APPELLATE COURTS.

Claimant argues the provision of the Kansas Workers Compensation Act pertaining to hernias, K.S.A. 44-510d(b)(22), is unconstitutional. The Board does not possess the authority to review the constitutionality of the Kansas Workers Compensation Act.⁸ In the absence of legal authority to address Claimant's argument, the Board reserves the issue for a court of competent jurisdiction.

2. CLAIMANT'S COMPENSABLE INJURIES ARE LIMITED TO THE LEFT INGUINAL HERNIA.

The Board next determines whether Claimant sustained compensable injuries from repetitive trauma arising out of and in the course of his employment with Respondent. An injury by repetitive trauma shall be compensable only if employment exposes the worker to an increased risk of injury, the employment is the prevailing factor in causing the repetitive trauma and the repetitive trauma is the prevailing factor in causing the medical

³ See *id.*

⁴ See K.S.A. 44-501b(c).

⁵ See K.S.A. 44-555c(a).

⁶ See K.S.A. 44-551(l)(1).

⁷ See *Rivera v. Beef Products, Inc.*, No. 1,062,361, 2017 WL 2991555, at *4 (Kan. WCAB June 22, 2017).

⁸ See, e.g., *Pardo v. United Parcel Service*, 56 Kan. App. 2d 1, 10, 422 P.3d 1185 (2018).

condition.⁹ Moreover, the repetitive nature of the injury must be demonstrated by diagnostic or clinical tests.¹⁰

Having reviewed the record, the Board finds and concludes Claimant proved he sustained a left inguinal hernia by repetitive trauma. Claimant testified he experienced the gradual onset of groin pain and symptoms consistent with a hernia while performing his usual work activities. The medical records from Dr. Thomen and Dr. Law are not in evidence, and those physicians did not testify. Drs. Murati, Clymer and Carabetta all opined Claimant has a left inguinal hernia caused by his work for Respondent. Claimant proved he sustained his left inguinal hernia from repetitive trauma arising out of and in the course of his employment with Respondent.

The Board next considers whether Claimant proved he sustained compensable injuries to the back, hips and psyche. With regard to the back, Dr. Murati believed Claimant sustained radiculopathy based on a reduced reflex and Claimant's subjective complaints. Dr. Murati conceded on cross-examination other clinical tests did not reveal radiculopathy. Dr. Clymer, an orthopedic surgeon, did not identify radiculopathy and found no objective evidence of a back injury. Dr. Carabetta, the Court-ordered physician, did not identify reduced reflexes or evidence of a back injury. The greater weight of the credible evidence establishes Claimant did not sustain a compensable back injury.

With regard to the hips, Claimant did not prove by the greater weight of the credible evidence he sustained permanent hip injuries resulting in permanent impairment. Dr. Murati initially diagnosed bilateral trochanteric bursitis based on complaints of tenderness, but stated Claimant's condition resolved when he evaluated Claimant on September 30, 2024. Dr. Clymer did not diagnose hip injuries, and noted Claimant's hip complaints were not significant. Dr. Clymer indicated if he had to rate for trochanteric bursitis he would rate Claimant at 1% of the body as a whole. Dr. Clymer, however, also testified he would not expect trochanteric bursitis from Claimant's mechanism of injury. Similarly, Dr. Carabetta identified right hip complaints, but was unable to diagnose a specific injury. Based on the greater weight of the evidence, the Board concludes Claimant did not prove he sustained permanent hip injuries.

Finally, Claimant alleges he sustained a psychological injury based on Dr. Murati's second evaluation. To prove a compensable psychiatric or psychological injury, the employee must prove (1) a work-related physical injury, (2) symptoms of a traumatic

⁹ See K.S.A. 44-508(f)(2).

¹⁰ See K.S.A. 44-508(e).

neurosis, and (3) the neurosis is directly traceable to the physical injury.¹¹ Dr. Murati did not identify a psychological injury when he first evaluated Claimant, and Dr. Murati did not perform a psychological evaluation of Claimant when he evaluated Claimant the second time. Neither Dr. Clymer, nor Dr. Carabetta, identified a psychological injury or noted complaints from Claimant consistent with psychological injuries. The Board concludes the greater weight of the credible evidence does not establish Claimant sustained a compensable psychological or psychiatric injury.

3. CLAIMANT IS NOT ELIGIBLE TO RECEIVE PERMANENT PARTIAL DISABILITY COMPENSATION FOR THE LEFT INGUINAL HERNIA.

The Board next addresses Claimant's entitlement to permanent partial disability compensation for the compensable left inguinal hernia. According to the Act,

For traumatic hernia, compensation shall be limited to the compensation under K.S.A. 44-510h and 44-510i, and amendments thereto, compensation for temporary total disability during such period of time as such employee is actually unable to work on account of such hernia, and, in the event such hernia is inoperable, weekly compensation during 12 weeks, except that, in the event that such hernia is operable, the unreasonable refusal of the employee to submit to an operation for surgical repair of such hernia shall deprive the employee of any benefits under the workers compensation act.¹²

In this case, Claimant sustained a compensable left inguinal hernia. Surgery was initially recommended and Claimant was referred to a surgeon. Claimant's hernia subsequently reduced while Claimant rested at home while on Christmas break. Because the hernia reduced there was no need to proceed with surgery. There is no medical evidence stating Claimant's hernia was inoperable. Claimant testified he missed no time from work on account of the hernia. Claimant continues to work for Respondent in his usual position, albeit with modification and with residual symptoms. Under K.S.A. 44-510d(b)(22), Claimant is not eligible to receive permanent partial disability compensation.

Claimant argues K.S.A. 44-510d(b)(22) does not apply because he did not sustain a hernia by accident, but by repetitive trauma. The statute states it applies "[f]or traumatic hernia."¹³ When the plain language of a statute is clear and unambiguous, a court must

¹¹ See *Heyen v. City of Wichita*, No. 1,064,079, 2013 WL 2455722, at *3 (Kan. WCAB May 29, 2013)(citing *Love v. McDonald's Restaurant*, 13 Kan. App. 2d 397 (1989), rev. denied 245 Kan. 784 (1989); K.S.A. 44-508(d)).

¹² K.S.A. 44-510d(b)(22).

¹³ K.S.A. 44-510d(b)(22).

apply the statute as written.¹⁴ The plain language of the statute does not limit its application to hernias caused only by accidents, and the Board cannot add language to the statute. Moreover, interpreting K.S.A. 44-510d(b)(22) to apply only to acute hernias caused by accidents would essentially create two benefit classes for hernias, which is arguably an illogical result. Claimant's first argument fails.

Claimant also argues he is eligible to receive twelve weeks of compensation because his hernia is inoperable. No medical evidence states Claimant's hernia is inoperable. The record indicates Claimant did not undergo hernia repair surgery because the hernia reduced on its own, and not because the hernia was inoperable. Dr. Murati and Dr. Carabetta indicated Claimant would require hernia repair surgery in the future, which would not be recommended for an inoperable hernia. Because Claimant did not sustain an inoperable hernia, he is not eligible to receive twelve weeks of compensation under K.S.A. 44-510d(b)(22).

4. THE AWARD OF FUTURE MEDICAL TREATMENT IS AFFIRMED.

Finally, Respondent requests review of the future medical award. The employer's liability to pay compensation attaches when an employee suffers personal injury by accident, repetitive trauma or occupational disease arising out of and in the course of employment.¹⁵ 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.¹⁶ 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. "Medical treatment" means treatment provided or prescribed by a licensed health care provider and not home exercises or over-the-counter medication.¹⁷

Although the treating physicians did not testify and their records are not in evidence, it is undisputed surgery was recommended but not performed because the hernia reduced on its own. Three physicians gave evidence concerning future medical treatment. Dr. Murati believed Claimant would require future medical treatment for the left inguinal hernia, including monitoring by a physician. Similarly, Dr. Carabetta recommended a surgeon monitor Claimant's left inguinal hernia, and surgery would ultimately be required at some

¹⁴ See *Bergstrom v. Spears Mfg. Co.*, 289 Kan. 605, 607-08, 214 P.3d 676 (2009).

¹⁵ See K.S.A. 44-501b(b).

¹⁶ See K.S.A. 44-510h(a).

¹⁷ See K.S.A. 44-510h(e).

point. Dr. Clymer testified, however, it was unlikely future medical treatment would be required. Having considered the entire record, the Board concludes Claimant met his burden of producing medical evidence it is more probably true than not additional medical treatment by a physician will be necessary after maximum medical improvement. The award of future medical treatment in the Award is affirmed.

AWARD

WHEREFORE, it is the finding, decision and order of the Board the Award issued by Administrative Law Judge Brian Brown, dated November 10, 2026, is affirmed in all respects.

IT IS SO ORDERED.

Dated this _____ day of April, 2026.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: (Via OSCAR)

William L. Phalen
Kevin M. Johnson
Hon. Brian Brown