

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

TONY ROGERS)	
Claimant)	
V.)	
)	AP-00-0493-235
SERVICE SUCCESS, INC.)	CS-00-0490-506
Respondent)	
AND)	
)	
SAFETY NATIONAL CASUALTY CORP.)	
Insurance Carrier)	

ORDER

Claimant requests review of the November 6, 2025, preliminary hearing Order entered by Administrative Law Judge (ALJ) Kenneth J. Hursh.

APPEARANCES

Roger D. Fincher appeared for Claimant. Meredith G. Ashley appeared for Respondent and its 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 the Preliminary Hearing held November 5, 2025, with exhibits attached, the documents of record filed with the Division, and the briefs submitted by the parties.

ISSUES

1. Did Claimant prove he sustained personal injury arising out of and in the course of his employment?
2. Did Claimant provide timely notice pursuant to K.S.A. 44-520?

FINDINGS OF FACT

Claimant worked as a plumber for Respondent (d/b/a Anthony Plumbing) for approximately two years prior to May 2025. On an unspecified date in early May 2025, Claimant sustained injury to his head. Claimant filed an Application for Benefits (E-1) on June 4, 2025, alleging an accident date of May 6, 2025. This was amended on June 5, 2025, to reflect an accident date of May 3, 2025. Claimant worked his last shift with Respondent on May 3, 2025.

Claimant testified he was performing maintenance on his work truck when the injury occurred. Claimant described unloading a machine from his truck to do repairs while between jobs. A cable snapped, causing Claimant to be struck in the head by a metal rod. Claimant continued:

Next thing you know, I am on the floor, and there must have been a baseball game going on or something like that, because they came over, and they were looking at me, and they said, Are you okay? And for a minute, I didn't know what was going on. They got me up, Are you okay? I was like, Yes, I'm fine. They're like, Well, how do you get your machine loaded up? So I was like, Well, the cable is broke, so let's tie it in a knot, and so then we loaded it back up.¹

Claimant believed he was parked at a gas station in Overland Park at the time of the incident. Claimant stated he tied the cable into a knot before driving back to Respondent.

On Tuesday, May 6, 2025, Claimant did not show up for work prior to his 8:00 a.m. shift. Lead dispatcher Ashlie Stewart testified she attempted to contact Claimant that morning with no response. Ms. Stewart stated Claimant arrived at the shop at 7:45 p.m. that evening ready to work:

7:45, right before 8 p.m., he entered dispatch and asked us if he had a call on him. And I told him, I was like, Tony, it's 7:45 at night, we're done for the day. He thought that it was in the morning time and he needed his first call for the day. Technicians start, most of them start at eight. So he was looking for his first call. That's the interaction. I told him that it was the end of the day. He said that three 17-year-olds had hit him in the head with a baseball bat and he was confused. I told him that he needed to probably contact the police and the doctor and Katie Burns.²

Ms. Stewart indicated she was worried about Claimant due to his disorientation and confusion. Ms. Stewart said Claimant told her the incident occurred the day before.

¹ P.H. Trans. at 13.

² *Id.* at 91-91.

Claimant never told Ms. Stewart his head injury occurred while he was working. Claimant told her he was "in the street" when he was hit in the head with a baseball bat by three teenagers.³ Ms. Stewart testified it was not her place to determine Claimant's credibility, but he was obviously confused and had a piece of medical tape above his left eye.

Chelsea Thompson, dispatcher, recalled the interaction with Claimant on May 6, 2025. Ms. Thompson described Claimant as disheveled and confused with a piece of medical tape on the left side of his forehead. Ms. Thompson testified Claimant said a teenager hit him in the back of the head with a baseball bat on Sunday night, in a parking lot.

Shanna "Katie" Burns is Respondent's manager of safety, fleet, and field support. Ms. Burns received a call from dispatch on May 6, 2025:

So I got a call from our dispatcher, our dispatchers who were frightened by his erratic behavior. And they said that he had made a claim that he had gotten jumped the day before by three teenage boys, and was hit in the head at a grocery store and he was confused, and so he went home. The next day we had him come in and we took him for a drug and alcohol test because of the behavior.⁴

Ms. Burns accompanied Claimant to Concentra on the morning of May 7, 2025, to obtain a urine analysis and breathalyzer screening. Claimant's results were negative. Ms. Burns testified Claimant told her he was jumped in a grocery store parking lot by three teenagers, and he repeated this story to her several times over the following weeks. Claimant never reported a work-related injury to Ms. Burns. Ms. Burns is unaware of any coworkers reporting Claimant's incident as a work injury. Ms. Burns stated she first became aware Claimant alleged a work injury after receiving a psychological report in August 2025.

Ms. Burns instructed Claimant to see a doctor. She explained:

A. We requested that he go see a medical doctor so that he could be cleared to come to work due to his claims of having a concussion from being hit by three 17-year-olds, impairing his ability to drive and know what time it was and what day it was. And him not, you know, doing a no-call, no-show, basically for the majority of that day. We needed something that said it was safe for him to come back to work if that's what we were going to do.

Q. But you didn't tell him to go anywhere, specifically?

³ *Id.* at 93.

⁴ *Id.* at 45-46.

A. We didn't tell him to go anywhere, specifically.⁵

James Mincher, Respondent's director of operations for plumbing, was Claimant's manager in May 2025. Mr. Mincher received an email and phone call from dispatch on May 6, 2025, reporting Claimant's confusion and his story about an attack by teenagers. Mr. Mincher heard directly from Claimant on May 7, 2025, "that he was jumped by three teenagers, hit in the head with a baseball bat while he was trying to get food for his parents."⁶ Following his conversation with Claimant, Mr. Mincher and Ms. Burns decided Claimant required medical attention. Mr. Mincher testified he was unaware Claimant was claiming a work injury until approximately October 2025.

Shawn Williams is currently Respondent's plumbing manager. He was the senior field supervisor of plumbing at the time of Claimant's incident. Claimant spoke with Mr. Williams on the morning of May 7, 2025, "when he told [Mr. Williams] or recanted the incident that happened where he was walking to a gas station and he was assaulted by three 17-year-olds with a baseball bat."⁷ Claimant later told Mr. Williams the same story, except the weapon had changed to a hammer. Claimant never told Mr. Williams the incident occurred while working. Mr. Williams noted no issues with Claimant's work truck were reported to him. Any problems with a work vehicle should be reported to a supervisor and then taken to fleet, who performs the repairs. Truck repair was not one of Claimant's job duties.

Claimant went to CareNow Urgent Care on May 7, 2025, because he did not have a primary doctor. Claimant was instructed to see his personal physician by Ms. Burns to determine if it was safe for him to come back to work. Claimant was diagnosed with a head contusion, a head laceration, and concussion with loss of consciousness of 30 minutes or less. Claimant was taken off work beginning May 6 through May 9, 2025. There is no causation opinion in this record.

Claimant was seen at the University of Kansas Health System Olathe Hospital Emergency Department on May 16, 2025. Claimant reported being struck in the head by his truck door on May 7, 2025, and then hit in the head by his dog a few days later, causing a headache. A CT scan of Claimant's head, without contrast, revealed no evidence of acute intracranial abnormality. Claimant was released with no restrictions and instructed to follow up with his primary physician.

⁵ *Id.* at 60-61.

⁶ *Id.* at 69.

⁷ *Id.* at 105.

Respondent terminated Claimant on May 21, 2025, for unsafe driving. Camera footage from May 6, 2025, showed Claimant driving erratically, including over traffic cones on the highway. Ms. Burns noted Claimant was driving a company vehicle with GPS. She said Claimant “drove around in a loop for an hour and 30 minutes without stopping, drove past the shop three times, finally stopping at 7:45 at the shop.”⁸

Dr. Pedro Murati examined Claimant at his counsel’s request on July 11, 2025. Claimant reported being struck on the right side of his head when a wrench broke while unloading a machine. Claimant said he lost consciousness and awoke on the ground, when he was told by three people playing baseball he was hit in the head by the wrench. Dr. Murati reviewed Claimant’s available records and performed a physical examination, finding Claimant sustained traumatic brain injury (TBI) with post-concussion syndrome and depression while at work. Dr. Murati imposed temporary restrictions of working indoors with no bright lights and recommended additional treatment.

Dr. Robert Barnett conducted a psychological evaluation of Claimant on August 11, 2025, at his counsel’s request. Claimant reported getting hit in the head with a rod when a cable snapped on the machine he was unloading. Claimant stated he was knocked out for five or ten minutes. Claimant complained of memory problems since the incident, with some improvement. After the psychological examination, Dr. Barnett concluded Claimant suffers from adjustment disorder with mixed features (anxiety/depression) and moderate cognitive disorder, possibly secondary to TBI. Dr. Barnett found the work incident to be the prevailing factor for Claimant’s psychological injury. He noted Claimant could benefit from psychotherapy/counseling and possible medications from a clinical psychologist, clinical social worker, or psychiatrist.

Claimant has not worked anywhere since May 3, 2025. Claimant testified he had no problems working or functioning prior to May 1, 2025.

The ALJ found Claimant failed to prove by a preponderance of credible evidence he sustained an injury arising out of and in the course of his employment. The ALJ explained:

Evidence near the time of the alleged work injury – witness statements and ER records – less supported than contradicted the claimant’s testimony. A consistent work injury story appeared weeks later, with the E-1, then to be repeated to medical providers.⁹

⁸ *Id.* at 54-55.

⁹ ALJ Order (Nov. 6, 2025) at 3.

PRINCIPLES OF LAW AND ANALYSIS

Claimant argues his injury arose out of and in the course of his employment. Claimant argues the traumatic head injury he sustained caused confusion and memory loss, both of which improve over time, and he was clear about injuring himself at work within approximately one month of his injury.

Respondent maintains the ALJ's Order should be affirmed because Claimant failed to prove his injury arose out of and in the course of his employment. Alternatively, Respondent argues Claimant did not provide timely notice of a work injury. Respondent argues the only date Claimant could have been injured while working is May 3, 2025, and he did not file his E-1 until June 4, 2025.

1. Did Claimant prove he sustained personal injury arising out of and in the course of his employment?

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.¹⁰ The provisions of the Workers Compensation Act shall be applied impartially to all parties.¹¹

K.S.A. 44-501b(c) states:

The burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends. In determining whether the claimant has satisfied this burden of proof, the trier of fact shall consider the whole record.

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

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

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

(1) "Personal injury" and "injury" mean any lesion or change in the physical structure of the body, causing damage or harm thereto. Personal injury or injury may occur

¹⁰ See K.S.A. 44-501b(a).

¹¹ See *id.*

only by accident, repetitive trauma or occupational disease as those terms are defined.

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

. . .

(B) An injury by accident shall be deemed to arise out of employment only if:

- (I) There is a causal connection between the conditions under which the work is required to be performed and the resulting accident; and
- (ii) the accident is the prevailing factor causing the injury, medical condition and resulting disability or impairment.

Claimant testified a cable snapped, causing him to be struck in the head by a metal rod on May 3, 2025. His testimony is refuted by the testimony of several of Respondent's employees. Ms. Stewart stated, on May 6, 2025, Claimant showed up for work 12 hours late and confused, saying three 17-year-olds had hit him in the head with a baseball bat. Ms. Thompson testified Claimant said a teenager hit him in the back of the head with a baseball bat in a parking lot on Sunday night. Ms. Burns also testified Claimant told her he was jumped in a grocery store parking lot by three teenagers, and repeated this story to her several times over the following weeks. Mr. Mincher was told by Claimant on May 7, 2025, he was jumped by three teenagers and hit in the head with a baseball bat while trying to get food for his parents. Claimant told Mr. Williams he was assaulted by three 17-year-olds with a baseball bat while walking to a gas station.

The medical records are also in conflict with Claimant's testimony. The emergency room records are silent on the cause of Claimant's injuries. University of Kansas Health System Olathe Hospital Emergency Department records show on May 16, 2025, Claimant reported being struck in the head by his truck door on May 7, 2025, and then hit in the head by his dog a few days later.

The weight of the evidence does not support Claimant's version of an alleged injury on May 3, 2025. Based on the contradictory evidence in the record, Claimant did not prove by the greater weight of the credible evidence he was involved in a work-related accident or sustained a corresponding work-related injury.

2. Did Claimant provide timely notice pursuant to K.S.A. 44-520?

The issue of timely notice was raised in Respondent's brief to the Board. The issue was not addressed by the ALJ in his November 6, 2025, Order. The Board, citing *Scamahorn*,¹² has frequently held that under K.S.A. 44-555c(a), issues not raised before the judge cannot be raised for the first time on appeal.¹³ The undersigned finds the issue is not ripe for review.

DECISION

WHEREFORE, it is the finding, decision and order of the undersigned Board Member the Order of ALJ Kenneth J. Hursh dated November 6, 2025, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of January, 2026.

SETH G. VALERIUS
BOARD MEMBER

c: Via OSCAR

Roger D. Fincher, Attorney for Claimant
Meredith G. Ashley, Attorney for Respondent and its Insurance Carrier
Hon. Kenneth J. Hursh, Administrative Law Judge

¹² *Scamahorn v. Gibraltar Savings & Loan Assn.*, 197 Kan. 410, 415, 416 P.2d 771 (1966).

¹³ See *Miller v. General Motors Corp.*, Nos. 1,048,350 & 1,048,351, 2013 WL 1384377 (Kan. WCAB Mar. 13, 2013); see also *Woodward v. Beech Aircraft Corp.*, 24 Kan.App.2d 510, 949 P.2d 1149 (1997).