

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

SHARMAINE ELZINGA)	
Claimant)	
V.)	
)	AP-00-0493-314
TRINITY NURSING STAFF LLC)	CS-00-0490-722
Respondent)	
AND)	
)	
STONETRUST COMMERCIAL INSURANCE)	
Insurance Carrier)	

ORDER

Claimant appealed the November 10, 2025, preliminary hearing Order entered by Administrative Law Judge (ALJ) Bruce E. Moore. Roger D. Fincher appeared for Claimant. Thomas G. Munsell 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 October 1, 2025, with exhibits attached; the transcript of the Evidentiary Deposition of Sherry Reagan, taken October 22, 2025, with exhibits attached; the transcript of the Evidentiary Deposition of Amy Kelly, taken October 22, 2025; and, the documents of record filed with the Division, including the parties' briefs.

ISSUE

Did Claimant sustain an occupational disease arising out of and in the course of her employment to her right eye?

FINDINGS OF FACT

Respondent is a nursing and healthcare staffing agency contracting with multiple Kansas facilities, mainly nursing homes. Claimant was hired by Respondent in August 2024 as a Certified Medication Aide (CMA). Claimant set her own schedule and took shifts as available. She continued working for other agencies as well. Claimant worked solely for Respondent in 2025.

According to Claimant, she developed an MRSA infection in her right eye while working at Presbyterian Manor in Salina, through Respondent, sometime at the end of March 2025. Claimant explained she helped a coworker change a resident and her bed. It was her understanding the resident "was covered in MRSA."¹ Claimant wore protective gear, including a gown, mask, shield, goggles, gloves, booties, and hat. She was informed the resident's status was cleared, or off precaution, after an MRSA infection. Claimant was informed later by a coworker at Presbyterian Manor the resident had MRSA.

According to Claimant, she began experiencing symptoms in her right eye close to a week after working with the resident at Presbyterian Manor:

My eye started swelling up, and I started getting some severe pain where it was pulsating and throbbing and then shooting to the back of my eye. And I started getting these terrible, terrible migraine headache things that just was not going away. And I literally was throwing up at times. But then I started seeing like some yellow spots, or I would see blank spots, or just not see at all.²

Claimant sought treatment, initially at Urgent Care, where she received ointment for her eye but no diagnosis. She was examined by two physicians before she was referred to Dr. Kansal, an eye specialist, who examined her on April 10, 2025. According to Claimant, Dr. Kansal diagnosed Claimant with MRSA on or about April 13, 2025. None of these medical records are in evidence, and no physicians testified in this matter.

Upon learning she had an MRSA infection, Claimant immediately advised Respondent she contracted the infection from working with a resident from Presbyterian Manor. Prior to this time, Claimant's communications with Respondent were limited to the eye symptoms she was experiencing and her attempts at receiving medical treatment. Claimant was informed by Respondent she was off the work schedule and would need a complete release before she could return to work. Respondent has not provided authorized medical treatment.

Claimant filed an Application for Benefits (E-1) with the Division on June 20, 2025, claiming an accident date of April 1, 2025. At the preliminary hearing, Claimant indicated her date of exposure was March 22, 2025. Claimant testified:

Q. And is it the best of your estimation it was April 1st when this happened, or do you believe it was a different date than that?

¹ P.H. Trans. at 12.

² *Id.* at 14.

A. I want to say it was the March 22nd, into the last week of April, with just a specific resident at that Presbyterian Manor.

THE COURT: Okay, you said March, then you said the last week in April. Did you mean the last week in March?

A. Oh, I'm sorry, the last week in March.³

Claimant insisted she was “a hundred percent positive” she interacted with the resident at Presbyterian Manor.⁴ Claimant explained her CMA position required her to distribute medications, not have direct hands-on contact with residents. In this instance, Claimant came into direct contact with the resident.

Employment records from Respondent show Claimant last worked at Presbyterian Manor on March 16, 2025. Claimant worked at Reflections Retirement Resort on March 22, 2025, and at Salem Home on March 23, 2025, which was the last shift Claimant worked for Respondent. Claimant was scheduled to work two shifts for Respondent on April 7 and April 8, 2025, but declined to work the shifts because of eye symptoms and vomiting.

According to Sherry Reagan, Respondent’s HR manager, Claimant called her on May 1, 2025, and advised she believed she was exposed to MRSA while working at Presbyterian Manor. Ms. Reagan denied Claimant attributed her eye symptoms to her work activities prior to May 1, 2025.

Claimant was evaluated by Daniel D. Zimmerman, M.D., at her attorney’s request on July 16, 2025. Claimant reported she developed an MRSA infection on April 1, 2025, when she was assisting a co-worker change the bed of a patient who had the infection. Symptoms began in her right eye approximately 5-6 days following the incident. Claimant described treating with Drs. Wetter, Putin, and Kansal related to her right eye. Dr. Zimmerman did not have these records to review. He wrote, “The records from these care providers inclusive of Dr. Wetter, Dr. Putin, and Dr. Kansal should be obtained for a better understanding of what has been done and what the findings were that were made by these providers.”⁵

Dr. Zimmerman opined the prevailing factor causing Claimant’s right eye MRSA infection was the injury event occurring on April 1, 2025. Dr. Zimmerman opined Claimant

³ *Id.* at 13.

⁴ *Id.* at 36.

⁵ *Id.*, Cl. Ex. 3 at 4.

was not at maximum medical improvement and recommended she continue care with her providers.

Claimant testified she had no eye issues prior to coming into contact with the resident at Presbyterian Manor, and did not believe she contracted MRSA anywhere else. Claimant described her current condition:

Currently right now I'm having double and triple vision. I'm still having a lot of pain. And I'm still having a lot of optical migraines. And then very, very specificity to any type of light. My eye constantly drains. If it doesn't drain, nothing's happening. And then when I look at somebody's face, or just like certain objects, sometimes I can't see their face, it's just not clear enough for me. And just still completely struggling with these migraines that are just constant.⁶

Claimant has not worked anywhere since her last shift with Respondent. Claimant is currently considered "inactive" with Respondent. Ms. Reagan stated Claimant could return to active status following a doctor's release, provided her credentials are current.

The ALJ determined Claimant failed to sustain her burden of proving personal injury by accident arising out of and in the course of her employment. In addition, the ALJ found Claimant failed to establish she suffered an occupational disease. In so doing, the ALJ noted he simply did not have sufficient evidence to reach any conclusions and described Claimant's testimony as "very uncertain."⁷ Specifically, the ALJ noted Claimant did not provide medical evidence in support of her contention she contracted an MRSA infection as a result of her work activities. In addition, Claimant described a specific incident where she was exposed to MRSA, but employment records show she did not work on the dates she provided.

Claimant appealed and argued it is more probably true than not she contracted an occupational disease arising out of and in the course of her employment when she assisted a coworker in changing a patient with the MRSA infection and her bed. Claimant argued her employment in healthcare put her at an increased risk of contracting an MRSA infection, and there is no medical evidence contradicting her testimony or Dr. Zimmerman's opinions. Respondent maintains the ALJ's Order should be affirmed.

PRINCIPLES OF LAW AND ANALYSIS

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

⁶ P.H. Trans. at 21-22.

⁷ *Id.* at 48.

and to prove the various conditions on which the right to compensation depends.⁸ The Board possesses authority to review *de novo* all decisions, findings, orders and awards of compensation issued by administrative law judges.⁹ A *de novo* hearing is a decision of the matter anew, giving no deference to findings and conclusions previously made by the ALJ.¹⁰

An employer is liable to pay compensation to an employee incurring personal injury by occupational disease arising out of and in the course of employment.¹¹ "Occupational disease" shall mean only a disease arising out of and in the course of the employment resulting from the nature of the employment in which the employee was engaged under such employer, and which was actually contracted while so engaged. "Nature of the employment" means the employment the employee is engaged in creates an increased hazard of disease in excess of the hazard of disease in general due to a special employment-related risk. Ordinary diseases of life and conditions to which the general public may be exposed outside of the particular employment are not compensable as occupational diseases.¹²

The ALJ found Claimant failed in her burden of proving she suffered an occupational disease from exposure while employed with Respondent. In so doing, he noted Claimant did not provide sufficient evidence to reach any conclusions. This Board Member agrees with the ALJ.

Claimant testified she has an MRSA infection. There is no medical evidence supporting this conclusion. Dr. Zimmerman opined Claimant has an MRSA infection, but his opinion is based solely on Claimant's representation to him that she has this condition. Dr. Zimmerman did not have the benefit of reviewing the medical records of the treating physicians. Moreover, he notes the importance of review of these records to better understand her condition to form a treatment plan.

Claimant is adamant she was exposed to the MRSA infection by a patient "covered with MRSA" at Presbyterian Manor. She can not, however, identify a date when this occurred. Claimant alleged two dates of exposure: March 22 and April 1, 2025. She did

⁸ See K.S.A. 44-501b(c) and K.S.A. 44-508(h).

⁹ See K.S.A. 44-555c(a).

¹⁰ See *Rivera v. Beef Products, Inc.*, No. 1,062,361, 2017 WL 2991555 (Kan. WCAB June 22, 2017).

¹¹ K.S.A. 44-501b(b).

¹² K.S.A. 44-501(b); see also *Casey v. Dillon Companies, Inc.*, 34 Kan App. 2d 66, 72-73, 114 P.3d 182, *rev. denied* (2005).

not work at Presbyterian Manor on either date. Claimant's last shift worked at Presbyterian Manor was on March 16, 2025. She alleges her symptoms began approximately one week after her exposure, but she was not diagnosed with MRSA until April 13, 2025, by Dr. Kansal. It is unknown when Claimant sought medical treatment from Urgent Care or the other two physicians prior to Dr. Kansal because those records, including the records of Dr. Kansal, are in not evidence. It is important to note Claimant worked in two different facilities through Respondent after her last shift at Presbyterian Manor on March 16.

It is Claimant's burden of proof to establish her right to medical treatment based on the entire record. Based on the current evidentiary record, there are too many unanswered questions. The lack of credible evidence fails to establish Claimant's exposure at work exposed her to an increased hazard of disease in excess of the hazard of disease in general, constituting an occupational disease.

DECISION

WHEREFORE, it is the finding, decision and order of the undersigned Board Member the Order of ALJ Bruce E. Moore, dated November 10, 2025, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of January, 2026.

CHRIS A. CLEMENTS
BOARD MEMBER

c: Via OSCAR

Roger D. Fincher, Attorney for Claimant
Thomas G. Munsell, Attorney for Respondent and its Insurance Carrier
Hon. Bruce E. Moore, Administrative Law Judge