

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

ZORAIDA AVILA)	
Claimant)	
V.)	
)	
AIRXCEL INC.)	AP-00-0493-371
Respondent)	CS-00-0482-656
AND)	
)	
SAFETY NATIONAL CASUALTY CORP.)	
Insurance Carrier)	

ORDER

The respondent and its insurance carrier (respondent), through Terry Torline, requested review of Administrative Law Judge (ALJ) Ali Marchant's preliminary hearing Order, dated November 13, 2025. Phillip Slape appeared for the claimant.

RECORD AND STIPULATIONS

The Board adopted the same stipulations and considered the same record as the ALJ, consisting of the preliminary hearing transcript, held November 6, 2025, with exhibits, the parties' briefs, and documents of record filed with the Division.

ISSUES

1. Are medical journal articles appended to the claimant's brief in evidence?
2. Did the claimant's injuries arise out of and in the course of her employment?
3. Was the work-related accident the prevailing factor causing the claimant's medical condition?
4. Is the claimant's claim barred by the Heart Amendment?
5. Is the claimant equitably estopped from receiving compensation?

FINDINGS OF FACT

The claimant worked for the respondent for two years as a “spider.” Her job duties consisted of pulling parts required to assemble a unit. On November 27, 2023, the claimant was in the process of standing up from a bent over position when a 25-pound plastic container of screws, located on a shelf above her head, fell perhaps two or three feet and struck her on the top right side of her head. The claimant had immediate pain in her head and was taken to security.

Sandra LeSage is the respondent’s safety manager. She has training as an EMT. She handles employees who have been injured at work and administers first aid. Ms. LeSage provided treatment to the claimant immediately following her accident and saw a contusion on the claimant’s thumb. The claimant denied the container struck her thumb. Ms. LeSage’s note from that day states: “had a container of screw[s] fall on her. Was at the GT sales area gathering screws for her line. Ice/ibuprofen”.¹ The claimant returned to work and finished her shift.

Ms. LeSage testified she checked on the claimant three days later on November 30, 2023, and the claimant stated she was “doing fine.”² Ms. LeSage examined the claimant’s thumb and found no bruising.

According to the claimant, she continued to experience pain in the days and weeks following her accident. She testified she started having neck and left shoulder pain in January 2024. She attributed the pain to her November 2023 accident because she had not had any problems before. The claimant testified the pain worsened in the following months.

On February 20, 2024, the claimant requested medical treatment. Ms. LeSage’s note from that day states, in part: “Back 11/27/2023 Zoraida had a container of screws fall onto her. Has had no complaints of pain since incident before today. Now states she has had increase of pain to back of left side head on left side of body.”³ Ms. LeSage testified the claimant made no complaints of pain or problems from her work-related accident between November 30, 2023, and February 20, 2024. The claimant testified she had pain the entire time and continued working until the pain became unbearable, so she requested medical treatment.

¹ P.H. Trans., Respondent Ex. 2.

² *Id.*, Respondent Ex. 2.

³ *Id.*, Respondent Ex. 2.

Respondent authorized treatment with WorkSafe Physical Therapy, where the claimant was initially evaluated on February 21, 2024. She reported immediately having neck pain at the time of her November 27, 2023, accident, and “[n]ow reports” pain down her left side into her foot, parasthesias in the left lower extremity from her knee to her foot, and left leg weakness when walking.⁴ Cervical spine x-rays were taken, and the claimant received physical therapy for her neck and left shoulder. The claimant underwent physical therapy on February 27 and March 5, 2024.

Ms. LeSage testified on March 11, 2024, the claimant came into work, worked for a short period of time, and then clocked out. Ms. LeSage testified the claimant’s lead and some coworkers were concerned about the claimant’s health, indicating the claimant did not look okay. Ms. LeSage testified she thought the claimant was having a stroke.

The same day, the claimant went on her own to GraceMed Health Clinic complaining of severe left-sided headache and facial paralysis since March 8, 2024. The reason for the appointment was: (1) facial paralysis, (2) something fell on her head at work causing the facial paralysis, (3) happened end of November, and (4) has FMLA paperwork to be completed. The nurse practitioner recommended the claimant be seen at the emergency room as soon as possible. The claimant’s daughter agreed to transport the claimant to the emergency room.

Ms. LeSage indicated the claimant and some family members came into her office following the GraceMed appointment stating the claimant had seen her doctor and was told to go to the emergency room. Ms. LeSage testified:

I actually thought [the claimant] was having a stroke. I was a certified EMT for a little over 25 years, I was very concerned. Nayeli in HR who was translating, I was even - - do we need to call an ambulance, but I strongly recommended to her family, I don’t know why she came to my office, we were, you need to get to the Emergency Room immediately, and in what my observations were at that time, I believed she was probably having a stroke.⁵

The same day, the claimant presented to Ascension Via Christi St Joseph emergency room for left-sided facial weakness. The claimant was unable to fully close her left eye and her forehead involvement was indicative of Bell’s palsy. A March 11, 2024, CT scan was negative. Laboratory testing was unremarkable. The claimant was diagnosed with Bell’s palsy and prescribed medications.

⁴ *Id.*, Respondent Ex. 3.

⁵ *Id.* at 39.

On March 13, 2024, the claimant returned to GraceMed, where her diagnosis remained Bell's palsy and she was advised to continue with prescribed medications. The claimant was told it could take up to three to six months for a full recovery.

On March 17, 2024, the claimant returned to the emergency room complaining of right-sided facial pain that started earlier that morning. The claimant was admitted to the hospital. The next day, a stroke alert was called due to altered mental status and new left-sided upper/lower weakness and severe headache. An MRI of her brain performed on March 19, 2024, showed a small amount of acute subarachnoid hemorrhage posteriorly on the right. The next day, the claimant was transferred to Ascension Via Christi St. Francis where she underwent a CT scan which showed a stable small volume of high posterior right parietal subarachnoid hemorrhage and no new intracranial abnormality.

Hospital progress notes, written by James L. Walker, Jr., M.D., dated March 21, 2024, showed the claimant's assessment/plan as:

Neurologically her headache was slightly better this morning. She has had a recurrent nonaneurysmal nontraumatic cortical subarachnoid hemorrhage that is either due to the type of autoimmune or infectious vasculitis, or regional cerebral vasoconstriction syndrome. She is currently being treated with steroids on the assumption this may be a vasculitis. She has a large calcified right thyroid nodule and significantly elevated thyroid peroxidase and thyroglobulin antibodies which point towards some autoimmune vasculitis. However, recurrent subarachnoid hemorrhage is not usually a prominent feature of that. I discussed this with the neurologist and interventional neuroradiologist. We will repeat a noncontrast MRI today to see if there is any evidence of infarct. If there is no infarct, or there is only a small infarct, we may proceed with repeat cerebral angiography and a trial of intra-arterial verapamil if there is persistent evidence of vasculitis. If the verapamil works, that would point towards regional cerebral vasoconstriction syndrome as the causative factor. If there is no change, then inflammatory vasculitis is the likely cause and will hopefully improve with steroids +/- cyclophosphamide. The neurocritical care team will follow along through tomorrow assuming there is no significant adverse interval change. If she deteriorates we will consider assuming full management.⁶

A coding summary, dated March 26, 2024, showed the claimant's final principal diagnosis was nontraumatic subarachnoid hemorrhage, unspecified. Secondary diagnoses included metabolic encephalopathy; hemiplegia, unspecified affecting left nondominant side; hypo-osmolality and hyponatremia; hypertensive emergency; reversible cerebrovascular vasoconstriction syndrome; nontoxic single thyroid nodule; hypokalemia; gastritis, unspecified, without bleeding; and Bell's palsy.

⁶ *Id.*, Respondent Ex. 6 at 2.

On April 17, 2024, the claimant followed up with Pedro Cruz, M.D., at Ascension Via Christi St. Francis Neurology. The claimant reported neck pain on the left side and left occipital area. Dr. Cruz diagnosed reversible cerebrovascular vasoconstriction syndrome (RCVS) and chronic headaches. The doctor stated, “There is no clear recurrent trigger for RCVS to control. At this time only supportive care. Needs to avoid medications associated with RCVS i/e SSRI, triptans, sympathicomimetics etc.”⁷ Dr. Cruz recommended physical therapy/occupational therapy and optometrist evaluation. The doctor noted his exam was remarkable for left-sided give way weakness suggestive of a psychogenic component.

In March or April 2024, the claimant filed for short-term disability. She testified this was at the direction of Human Resources. Ms. LeSage was not involved in the claimant’s request for short-term disability benefits, but stated to her knowledge, an employee cannot claim short-term disability benefits and workers compensation benefits at the same time. As part of her request for short-term disability benefits, the claimant had Dr. Cruz complete the “Medical Request Form” dated May 15, 2024. Dr. Cruz listed his diagnoses as chronic headache and reversible cerebrovascular vasoconstriction syndrome. Dr. Cruz checked “No” for whether the claimant’s diagnoses were work related and listed March 21, 2024, as the date of injury/illness.⁸ The claimant was unsure why Dr. Cruz checked her condition was not work related. According to the claimant, Dr. Cruz has told her since the beginning her condition was related to her work. The claimant was approved for short-term disability benefits and received payments of \$420 per week, beginning March 18, 2024, one week after her March 11, 2024, date of disability.

On June 19, 2024, Dr. Cruz wrote a letter stating he treated the claimant for chronic headaches that started after a traumatic brain injury in November 2023.

On July 1, 2024, Dr. Cruz completed an updated “Medical Request Form” for the claimant’s short-term disability benefits. His diagnoses were the same. He again marked the claimant’s condition as not work related. However, Dr. Cruz changed the date of injury/illness on the form to November 2023. The claimant continued to receive short-term disability payments until August 2024. New York Life stopped benefits on the basis the claimant did not demonstrate a functional impairment precluding her from her work duties.

Ms. LeSage believed the claimant returned to work for a very short period of time, but was unable to perform her job. She testified the claimant was on FMLA for a period of time. The claimant was terminated effective April 25, 2025, because the respondent was unable to accommodate the claimant’s work restrictions. The claimant went to work at Accion on July 18, 2025.

⁷ *Id.*, Respondent Ex. 7 at 2.

⁸ See *id.*, Respondent Ex. 9 at 3.

On August 12, 2025, the claimant saw Dr. Murati at her attorney's request. The claimant complained of headaches, being forgetful and often feeling overwhelmed, swelling to the left side of the face, left ear hearing is dull, left eye vision has been blurry since incident, left-sided neck pain, left shoulder and left arm pain with limited range of motion, left hand pain, and left hand occasionally falling asleep. The claimant reported being "paralyzed on her left side for approximately 5 months."⁹

Following physical examination, Dr. Murati diagnosed the claimant with post-concussion syndrome with acute subarachnoid hemorrhage, occipital neuralgia with headaches, decreased hearing on the left, partial anosmia, left trigeminal neuropathy, left-sided visual defects, left rotator cuff sprain, left impingement syndrome, and myofascial pain syndrome of the left shoulder girdle extending into and including the cervical and thoracic paraspinals. The doctor opined the claimant's current diagnoses were a direct result from her work-related injury on November 27, 2023, imposed temporary light duty work restrictions and recommended additional treatment. Dr. Murati opined the prevailing factor in the development of the claimant's condition was the work accident.

The claimant continues to have pain on the left side of her neck, shoulder, face and head. She also has pain and numbness in her left hand all the way to her fingers. She is not currently receiving medical treatment.

In her decision, the ALJ stated:

Claimant's testimony is uncontroverted that she has had left shoulder and neck complaints that developed after her accident at work and worsened as she continued working for Respondent in the weeks and months after her accident. Although Claimant's cerebrovascular event interrupted Claimant's medical treatment, there is no evidence that Claimant's left shoulder and neck complaints have resolved or that treatment was ever completed. Dr. Murati is the only physician to offer opinions with regard to Claimant's left shoulder and neck complaints, and he opined that Claimant's work-related accident is the prevailing factor causing her neck and left shoulder complaints.

After considering the evidence as a whole, including the medical evidence and testimony, the Court finds that Claimant has met her burden to prove that her November 27, 2023, work-related accident is the prevailing factor causing her left shoulder and neck pain complaints. As such, the Court finds that Claimant has met her burden to prove that she met with personal injury by accident to her left shoulder and neck arising out of and in the course of her employment with Respondent.

⁹ *Id.*, Claimant Ex. A at 1.

The Court further finds that Claimant is entitled to medical treatment for her work related neck and left shoulder injuries. Respondent's defenses regarding the application of the Heart Amendment or the doctrine of equitable estoppel are related to Claimant's cerebrovascular injury and thus do not apply to Claimant's neck and left shoulder injuries. Respondent is ordered to provide Claimant with a list of two physicians from which Claimant may select an authorized treating physician for her work-related left shoulder and neck injuries.

Claimant's request for medical treatment of her head complaints presents a far more complicated question. Although Claimant's accident involved her being hit on the head, the evidence is not clear that Claimant's accident led to Claimant's subarachnoid hemorrhage and reversible cerebral vasoconstrictive syndrome. Dr. Cruz confirmed on multiple medical forms that Claimant's condition was not work related, and Claimant's medical treatment records from her hospitalization do not reference a head injury or head trauma. In fact, Claimant's final principal diagnosis upon being discharged from the hospital was nontraumatic subarachnoid hemorrhage.

Although Dr. Cruz wrote a letter after the fact on June 19, 2024, that Claimant's chronic headaches followed a traumatic brain injury, the rest of Claimant's medical records, including Dr. Cruz's own reports, are not consistent with Claimant sustaining a traumatic brain injury. Rather, Claimant's treatment records all indicate a diagnosis of reversible cerebral vasoconstrictive syndrome. Additionally, Claimant's first CT scan, which was performed on March 11, 2024, was negative, and the subarachnoid hemorrhage was not detected until March 19, 2024. There is no evidence that Claimant made any complaints related to a potential traumatic brain injury at the time of her accident or in the months that followed.

After reviewing the record as a whole, the Court finds that Claimant has not met her burden to prove that her November 27, 2023, work-related accident is the prevailing factor causing her subarachnoid hemorrhage, reversible cerebral vasoconstrictive syndrome, or chronic headaches. As a result, Claimant's request for medical treatment for those conditions is hereby considered and denied. Respondent's defenses under the Heart Amendment and doctrine of equitable estoppel are therefore moot and will not be addressed herein.

Respondent is ordered to reimburse Claimant for the examination of Dr. Murati as unauthorized medical treatment subject to the statutory maximum.¹⁰

The respondent appealed. Further, the claimant attached medical journal articles to her brief. Such documents were not offered or stipulated into evidence before the ALJ.

¹⁰ ALJ Order at 8-9.

PRINCIPLES OF LAW AND ANALYSIS

The respondent argues the claimant has failed to prove the work accident was the prevailing factor causing her neck and left shoulder complaints. The respondent also argues the claimant's claim for benefits must be denied because the claimant suffers from effects of a cerebrovascular injury unrelated to her work pursuant to K.S.A. 44-501(c) (known as the "Heart Amendment"). Lastly, the respondent argues the doctrine of equitable estoppel should be invoked because the claimant is attempting to change positions in order to recover workers compensation benefits. The claimant maintains the Order should be affirmed. The claimant also argues the ALJ erred in not awarding medical treatment for her head.

An employer is liable to pay compensation, including medical treatment following an award, to an employee incurring personal injury by accident or repetitive trauma arising out of and in the course of employment.¹¹ The burden of proof is on the claimant.¹²

Board review of an order is de novo on the record.¹³ A de novo hearing is a decision of the matter anew, giving no deference to findings and conclusions previously made by the judge.¹⁴ On de novo review, the Board makes its own factual findings.¹⁵

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

"Prevailing" as it relates to the term "factor" means the primary factor, in relation to any other factor. In determining what constitutes the "prevailing factor" in a given case, the administrative law judge shall consider all relevant evidence submitted by the parties.

1. The medical journal articles appended to the claimant's brief are not in evidence and are not considered by the undersigned Board member.

The medical journal articles submitted by the claimant with her brief were not offered or stipulated into evidence. The Board is limited to review of the same record as the ALJ. The Board will not consider the medical journal articles.

¹¹ See K.S.A. 44-501b(b).

¹² See K.S.A. 44-501b(c).

¹³ See *Helms v. Pendergast*, 21 Kan. App. 2d 303, 899 P.2d 501 (1995).

¹⁴ See *In re Tax Appeal of Colorado Interstate Gas Co.*, 270 Kan. 303, 14 P.3d 1099 (2000).

¹⁵ See *Berberich v. U.S.D. 609 S.E. Ks. Reg'l Educ. Ctr.*, No. 97,463, 2007 WL 3341766 (Kansas Court of Appeals unpublished opinion filed Nov. 9, 2007).

2. The claimant's neck and left shoulder injuries arose out of and in the course of her employment, but her head condition did not arise out of and in the course of her employment.

The undersigned Board member agrees with the ALJ's analysis.

3. The work-related accident was the prevailing factor causing the claimant's neck and left shoulder medical conditions, but not her head condition.

The ALJ carefully considered the evidence and concluded the work-related accident was the prevailing factor causing the claimant's neck and left shoulder medical conditions, but not her head condition. The undersigned Board member agrees with the ALJ's thorough analysis.

4. Is the claimant's claim barred by the Heart Amendment?

As concluded by the ALJ, this issue is moot.

5. Is the claimant equitably estopped from receiving compensation?

As with issue four, issue five is also moot.

WHEREFORE, the undersigned Board member affirms the preliminary hearing Order.

IT IS SO ORDERED.

Dated this _____ day of January, 2026.

JOHN F. CARPINELLI
BOARD MEMBER

c: (via OSCAR)
Phillip Slape
Terry Torline
Hon. Ali Marchant