BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

SHELLY PFEFFER	)	
Claimant	)	
V.	)	
	)	AP-00-0493-437
STATE OF KANSAS	)	CS-00-0470-885
Respondent	)	
AND	)	
	)	
STATE SELF INSURANCE FUND	)	
Insurance Carrier	)	

ORDER

Claimant appealed the November 21, 2025, Award by Administrative Law Judge (ALJ) David J. Bogdan. The Board heard oral argument on April 9, 2026.

APPEARANCES

Bruce A. Brumley appeared for Claimant. Nathan D. Burghart appeared for Respondent and its insurance carrier.

RECORD AND STIPULATIONS

The Board has adopted the same stipulations and considered the same record as did the ALJ, consisting of Terrence Pratt, M.D., IME Report dated October 17, 2024; the transcript of Regular Hearing from February 19, 2025, with exhibits attached; Continuation of Regular Hearing by Evidentiary Deposition of Shelly Pfeffer, taken May 15, 2025, with exhibits attached; Continuation of Regular Hearing by Evidentiary Deposition of Shelly Pfeffer, taken June 30, 2025, with exhibits attached; Evidentiary Deposition of Daniel D. Zimmerman, M.D., taken April 2, 2025, with exhibits attached; Evidentiary Deposition of Michael Johnson, M.D., taken May 6, 2025, with exhibits attached; the documents of record filed with the Division and the parties' briefs.

ISSUES

1. Did Claimant's injury arise out of and in the course of employment, specifically is the claim barred by the "going and coming" rule?

2. If compensable, what is the nature and extent of Claimant's disability?

3. If compensable, is Claimant entitled to future medical treatment?

FINDINGS OF FACT

Claimant works for the Kansas Department of Revenue. The office where Claimant works is located at the eastern edge of a strip mall where other businesses, open to the general public, are located. There is a parking lot located in front of the building. The parking lot has a sign designating this parking area is for customers and employees of the Kansas Department of Revenue. There is no area in the parking lot specifically designating it for Kansas Department of Revenue employees.

Respondent leases the building and parking lot. In the leasing agreement, the Lessor is responsible for (a) Grounds Maintenance, landscaping, parking areas, entrances and sidewalks; (b) Snow Removal; and (c) Pest Control. "The First Party [the Lessor] will pay the costs and maintain in good repair the walls, windows, floor coverings, shell, structure, elevators, stairs, roof, grounds, sidewalk and off-street parking area of the lease facility. Such items shall be maintained at a condition not less than the condition of the said items at initial lease signing."[1]

Claimant testified there is a marked area of the parking lot where the customers are supposed to park. Employees are told to park in the same area as customers. Employees have hang tag parking permits for their vehicles to show who works for the department and that they are cleared to park in the spots. There is an entrance to the building restricting the entry to Kansas Department of Revenue employees. Employees, including Claimant, usually park in the designated parking area closest to the employee entrance.

On May 3, 2022, while leaving work for the day, Claimant was coming around the front of her car located in the parking lot to get into the driver's seat when she fell. Her car was parked in the designated parking area. Claimant landed on both knees, pelvis, hip and lower back on the right side. She had instant nausea and was not sure she could get up, but she did, called her husband and went to Express Care in North Topeka.

At Express Care, x-rays were taken of the right knee. Claimant was instructed to alternate heat and ice. She reported her pelvis, hip and back pain, but it was more stiffness and soreness, so it was not focused on at that time. The next day the pelvis, hip and back soreness turned into pain.

Claimant sought additional medical treatment on her own after reporting the accident to Respondent. Respondent told Claimant they were not liable for workers compensation benefits because Respondent is not responsible for the maintenance of the parking lot according to their lease.

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[1] R.H. by Depo. (May 15, 2025), Ex. 6 at 3.

Claimant contacted her personal doctor's office. Claimant was sent for x-rays of the hip and pelvis and referred to an orthopedic physician. Claimant was referred for physical therapy and continued ice and heat.

Claimant continues to have left knee pain, and it has gotten worse. She continues to receive treatment through her private insurance. Claimant has had some improvement with knee injections. She has trouble sleeping due to hip and back pain.

Claimant admits to a prior back strain while working for a previous employer 25 to 30 years ago. She received a settlement for that claim.

Dr. Daniel Zimmerman examined Claimant on October 28, 2022, at her attorney's request. Claimant had complaints of pain and discomfort affecting the lumbosacral spine and lower extremities. Dr. Zimmerman noted Claimant had an accident on May 3, 2022, and August 23, 2022. He noted the August 23, 2022, accident caused injury to her right ankle. Claimant was scheduled for an MRI of the right knee and right ankle on November 30, 2022.

Dr. Zimmerman reviewed Claimant's prior medical records from Urgent Care and upon examination diagnosed right hip tendonitis, right knee capsulitis, and right ankle tendonitis and acute lumbar paraspinous myofascitis. He opined the prevailing factor for the right hip tendonitis, right knee capsulitis, and right ankle tendonitis are the accidents of May 3, 2022, and August 23, 2022. The injury to the right ankle occurring on August 23, 2022, was settled in separate claim.

Dr. Zimmerman found Claimant had not reached maximum medical improvement (MMI). He agreed Claimant should have an MRI of the right knee and right ankle as scheduled. He recommended continued physical therapy and a therapeutic dosing schedule of anti-inflammatory medication a proprietary nonsteroidal anti-inflammatory medication. For the pain and discomfort affecting the right knee and right ankle, injections of a steroid and a local anesthetic were recommended.

Dr. Zimmerman examined Claimant again on March 7, 2025. He found Claimant to be at MMI. Claimant continued to have pain and discomfort affecting the lumbosacral spine, right hip, and bilateral knees. Dr. Zimmerman opined Claimant had pain and discomfort in palpation over the right lumbar paraspinous musculature; sensory symptoms in the right lower extremity consistent with a lateral femoral cutaneous nerve entrapment syndrome; sensory symptoms in the toes consistent with discal pathology at the lumbar levels; radicular weakness in the right and left 2nd through 5th toes. In the right hip, she had pain and discomfort consistent with trochanteric bursitis associated with a right sided limp. She had range of motion limitations affecting the right knee; pain and discomfort in palpation about the right knee. She had pain and discomfort in palpation about the left

knee. Dr. Zimmerman opined the prevailing factor for the diagnosis and impairment is the May 3, 2022, accident.

Based strictly on the *American Association Guides to the Evaluation of Permanent Impairment 6th Edition* (*The Guides*), Dr. Zimmerman found impairment to be 15 percent to the body as a whole. Using *The Guides* as a starting point and competent medical evidence, he went on to assign a 26 percent whole person impairment (15 percent to the body as a whole for the lumbar spine diagnosis; 10 percent to the right lower extremity for the right hip diagnosis; and 20 percent of the right lower extremity for the right knee. The right lower extremity impairments rating combine for a 28 percent and converted for a 11 percent whole body impairment. The lower extremity impairment of 5 percent for the left lower extremity at the knee, converted to a 2 percent body as a whole impairment).

Dr. Zimmerman opined he deviated from *The Guides* because the limitations Claimant had were more significant than what the grid rating would permit using *The Guides*. Dr. Zimmerman opined the 26 percent impairment rating is more equitable because it considers the severity of the pain and discomfort, range of motion limitations, weakness in the lower extremities and the pain and discomfort affecting the lumbosacral spine as these factors would impact on her ability to perform activities of daily living and work related tasks.

Dr. Zimmerman opined it is more probably true than not additional medical treatment will be necessary in the future. He recommended a therapeutic dosing schedule of anti-inflammatory medication a proprietary nonsteroidal anti-inflammatory medication. For the pain and discomfort affecting the lumbar paraspinous musculature, injections of a steroid and a local anesthetic are recommended. For pain and discomfort affecting the right hip, injections of a steroid and a local anesthetic are recommended. Injections of a steroid and a local anesthetic for the right and left knees are recommended.

Dr. Michael Johnson completed a medical records review for Claimant on July 5, 2023, at Respondent's request. Claimant's complaints were right knee, left knee, right hip, low back and right knee pain from a May 2022 accident.

Dr. Johnson confirmed the following diagnoses: right hip trochanteric bursitis, gluteus tendinitis, an abrasion on both knees and signs of bilateral knee osteoarthritis, preexisting, and other inflammatory degenerative changes, such as tendinitis, collateral ligament swelling, impingement syndrome.

Dr. Johnson assigned a 7 percent impairment to the right lower extremity (3 percent whole person impairment) for the May 2022 accident injuries based on *The Guides*. He found no evidential reason to deviate from *The Guides*.

Dr. Johnson did not recommend any permanent work restrictions for Claimant. He did not recommend future medical treatment.

Dr. Terrence Pratt examined Claimant on October 17, 2024, at the request of the Court. Claimant's chief complaints were low back, right hip and right knee pain.

Claimant denied left lower extremity symptoms. She reported performing her normal job tasks and is independent in mobility and activities of daily living. She is able to do household tasks.

Dr. Pratt examined Claimant and reviewed her Cotton O'Neil medical records. He diagnosed the following: history of right knee contusion with findings consistent with a strain and degenerative joint disease; history left knee contusion and degenerative joint disease with resolution of symptoms; right hip/groin discomfort with history of degenerative joint disease of the hip and tendinitis; lumbosacral syndrome with a history of degenerative disc disease and facet arthropathy, with no significant evidence of radiculopathy, and right ankle syndrome with a peroneal brevis tear.

Dr. Pratt opined the prevailing factor for the right knee contusion/sprain, right hip tendinitis and lumbosacral soft tissue involvement was the May 3, 2022, accident. There were degenerative findings that he did not relate to the event.

Dr. Pratt assigned a 7 percent body as a whole impairment based on *The Guides* with some reference to the *American Medical Association Guides to the Evaluation of Permanent Impairment, 4th Edition*.

The ALJ found the claim not compensable under the “going and coming” rule. He found Respondent was not in control of the parking lot and therefore not liable to pay any compensation. Although the ALJ found the claim not compensable he additionally found Claimant’s permanent impairment is 7 percent to the body as whole based on Dr. Pratt’s rating and he did not award future medical treatment.

PRINCIPLES OF LAW AND ANALYSIS

Claimant argues the Respondent exerted control over the parking lot and exposed Claimant to risk causing her fall. Claimant also argues Respondent had exclusive control over her by controlling where she was allowed to park. Claimant requests the Board find the claim compensable and award the 26 percent impairment assigned by Dr. Zimmerman along with payment of medical bills and entitlement to future medical treatment.

Respondent argues the ALJ should be affirmed.

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.

Claimant's injury did not arise out of and in the course of her employment because the claim is barred under the "going and coming" rule.

Claimant was injured when she exited the building where she worked and fell in the parking lot located near the building. Once Claimant exited the building the determination on whether her claim is compensable is based on the "going and coming" rule. This rule is defined in K.S.A 44-508(f)(3)(B) which states:

> The words "arising out of and in the course of employment" as used in the workers compensation act shall not be construed to include injuries to the employee occurring while the employee is on the way to assume the duties of employment or after leaving such duties, the proximate cause of which injury is not the employer's negligence. An employee shall not be construed as being on the way to assume the duties of employment or having left such duties at a time when the worker is on the premises owned or under the exclusive control of the employer or on the only available route to or from work which is a route involving a special risk or hazard connected with the nature of the employment that is not a risk or hazard to which the general public is exposed and which is a route not used by the public except in dealings with the employer. An employee shall not be construed as being on the way to assume the duties of employment, if the employee is a provider of emergency services responding to an emergency.

Respondent leases the premises where Claimant works. Under the lease agreement, the owner of the premises (the lessor) was responsible for paying the costs and maintaining among other things, the sidewalks and off-street parking are of the leased facility.

The building where Claimant works is in an area where other businesses are located and those businesses are open to the public. There is an area near the building where employees and customers are allowed to park. There is no specific designation in this area for Respondent's employees. However, there is an entrance to the building designated for employees and many employees choose to park in the parking area closest to the employee entrance.

The area of the parking lot where Claimant was injured is not under the exclusive control of Respondent according to the lease agreement. Under the provisions of K.S.A. 44-508(f)(3)(B) the claim is not compensable.

Claimant argues the compensability of the claim should not be analyzed in terms of location but as to whether Claimant is controlled by Respondent where she parks. This is a unique argument but runs counter to previous law which is based on the location where the injury occurred and not the control Respondent exercises over the location of their employees. This argument would require inserting language into the plain language of K.S.A. 44-508. Inserting language where plain language exists runs contrary to the case of *Bergstrom v. Spears Manufacturing*.[2] The Supreme Court held when a statute is plain and unambiguous, the Court must give effect to it express plain language rather determine what the law should or should not be.

Because Claimant's injury did not arise out of and in the course of her employment, the other issues raised by Claimant are moot and will not be addressed.

AWARD

WHEREFORE, it is the finding, decision and order of the Board the Award of ALJ David J. Bogdan dated November 21, 2025, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of April, 2026.

_____
BOARD MEMBER

_____
BOARD MEMBER

_____
BOARD MEMBER

c: (Via OSCAR)

Bruce A. Brumley, Attorney for Claimant
Nathan D. Burghart, Attorney for Respondent and its Insurance Carrier
Hon. David J. Bogdan, Administrative Law Judge

[2] See *Bergstrom v. Spears Manufacturing Company*, 289 Kan. 605, 214 P.3d 676 (2009).