

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

STEVEN FIKES

Claimant

v.

AP-00-0493-444

MCPHERSON CONCRETE PRODUCTS INC.

CS-00-0491-163

Respondent

and

ARCH INSURANCE COMPANY

Insurance Carrier

ORDER

Respondent and Insurance Carrier (Respondent) appeal the November 21, 2025, Order issued by Administrative Law Judge (ALJ) Thomas Klein.

APPEARANCES

Brian D. Pistotnik appeared for Claimant. Aaron J. Greenbaum appeared for Respondent.

RECORD AND STIPULATIONS

The Appeals Board adopted the stipulations made at the preliminary hearing and considered the following record: the transcript of Preliminary Hearing, held October 7, 2025, including Claimant's Exhibits 1-15 and Respondent's Exhibits B-F, the written statements of Mr. Valencia and Mr. Box from Respondent's Exhibit G, and Respondent's Exhibits H-I; the transcript of Evidentiary Deposition of Arturo Reyes del Rio, taken October 7, 2025, with Exhibits A-C; the transcript of Evidentiary Deposition of Juan Barron Ortega, taken October 7, 2025, with Exhibit D; and the pleadings and orders contained in the administrative file. The Board also reviewed the parties' briefs.

ISSUES

1. Did Claimant prove he sustained personal injury from an accident arising out of and in the course of his employment with Respondent on June 30, 2025?
2. Does the Board possess authority to review Claimant's entitlement to temporary total disability compensation (TTD) at this time?

3. If the Board possesses authority to review the issue, is the preliminary award of TTD erroneous?

FINDINGS OF FACT

Claimant worked for Respondent as a laborer. Claimant worked as part of a three- or four-person team involved in the manufacture of concrete manhole tubes. The manhole tubes are made with forms, including steel rings measuring forty-eight and sixty inches in diameter. The forty-eight-inch rings were estimated to weigh 200-250 pounds each. After a manhole is fabricated, the forms and rings are removed with the help of a crane operated by Claimant's lead, Mr. Barron, and moved to a different area. After the manhole tubes were cleaned by Claimant and moved to a different area by the crane, Claimant rolled the forty-eight-inch rings to a different area. The rings are also called "pallets."

Claimant testified he was performing his usual work duties on June 30, 2025. Claimant also testified at approximately 12:00 p.m., he was rolling a forty-eight-inch ring along a pathway to the fabrication area. Claimant testified the pathway was two to three feet wide, and was next to the "pit" area. The pit area was approximately two to three feet lower than the rest of the warehouse, and was the area where the manholes were fabricated.

According to Claimant, the ring he was rolling started falling to one side, and Claimant tried to stop the ring by pushing forward. Claimant was thrown through the ring approximately four to five feet, and fell into a manhole tube in the pit. Claimant struck the tube with his neck. Claimant testified the ring did not make a loud sound when it struck the concrete, and the workplace was noisy. Claimant did not believe coworkers would have heard the ring fall. Claimant did not make a sound during the accident, and no one was present in the pit when the accident occurred.

Claimant testified the accident was unwitnessed and no one came to his assistance afterwards. Claimant got up and continued working. Claimant testified he tried to lift items, but was unable to do so. Claimant was in pain, and had abrasions and black and blue marks on his back. Despite this, Claimant did not notify management of the accident because he thought his injuries would improve on their own, but he told a coworker what happened. Claimant went home after his shift ended. Claimant asked his fiancee to take photographs of his back, which displayed abrasions and bruising.

The following day, Claimant woke up in pain. Claimant texted Respondent's office manager, reported he hurt himself while working the prior day, and was unable to work. Claimant testified he thought the office manager was the contact to report work-related accidents, and he provided a description of the accident. Claimant did not request medical treatment.

The next day, Claimant was still in pain from his neck to his mid-section. Claimant described the pain as a stabbing sensation. Apparently Claimant did not return to work. On July 3, Claimant contacted the office manager, and requested medical treatment. Claimant was told to go wherever he wanted to go for treatment.

On July 6, 2025, Claimant was seen at the Emergency Department of Ascension Via Christi St. Teresa. Claimant stated he was in pain and unable to breathe. Claimant also reported bilateral hand numbness. Claimant stated he was injured while working on June 30, when he was struck in the chest and fell into a pit. An x-ray was interpreted as negative, but a CT scan was interpreted as showing minimally displaced fractures of the left fourth, fifth and sixth ribs. Scans of the thoracic and cervical spines were interpreted as negative. Claimant was transported via EMS to Ascension Via Christi St. Francis for further treatment.

The records from Ascension Via Christi St. Francis confirm Claimant was treated for a Level 2 crush injury on July 6. According to the records, Claimant reported chest pain after sustaining a blunt trauma to the chest after a pallet fell on him a week ago. Claimant also reported bilateral finger tingling and low back pain. The CT scan confirming the rib fractures was reviewed, and no evidence of bleeding or vertebral injury was noted. Claimant was diagnosed with rib fractures, and was prescribed medication and an incentive spirometer. Claimant was also referred to Via Christi Specialty Clinic to address the tingling in the fingers. Claimant was taken off work until July 14, 2025.

Claimant testified he was called into Respondent's location on July 7 for a written statement. Claimant and his fiancee went to the meeting, and Respondent's Safety Manager and the office manager were present. Claimant completed the written statement by dictation to the office manager. The description of the accident in Claimant's statement is consistent with his testimony. Claimant reported the ring struck his back, and he fell face-first into the pit, striking a manhole. Claimant was told his claim would be submitted to Insurance Carrier, who would refer Claimant to a healthcare provider.

On July 14, Claimant was seen by Nurse Practitioner Del Rio at Via Christi Specialty Clinic for a follow-up appointment. Claimant reported ongoing pain, arm and hand numbness, and popping in the shoulder while turning his neck. Claimant was prescribed pain medication, told to continue using the spirometer, and was taken off work until he was cleared by an occupational medicine physician.

Claimant was seen at Via Christi Occupational Medicine on July 16. Claimant reported chest wall pain and numbness running from his neck to his hands after he was struck by a pallet weighing 250 pounds. Claimant was diagnosed with a cervical strain, paresthesia of both upper extremities, and healing fractures of the left fourth through sixth ribs. Claimant was prescribed pain medication, and an EMG/NCT study was ordered to evaluate the paresthesia. Claimant was instructed to return after the EMG/NCT was

completed. Work restrictions of no use of ladders, no use of power or vibrating tools, no repetitive pushing or pulling, no reaching overhead and no lifting over five pounds were imposed.

Claimant provided the work restrictions from Via Christi Occupational Health to Respondent. No accommodated work was provided. Claimant subsequently received a letter from Insurance Carrier advising his claim was denied. Claimant received no further medical treatment. Respondent subsequently informed Claimant he could not return to work until he was released to return to work full-duty. Claimant was later terminated by Respondent.

Currently, Claimant has popping in his neck, numbness in both arms, and occasional numbness in the index and rings fingers. Claimant testified his chest and rib pain resolved. Claimant testified he was unable to work since he was seen at the Emergency Department on July 6, and he did not believe he was capable of working due to his hand and finger numbness.

Respondent's Plant Supervisor, Carlos Valencia, testified Claimant was terminated by Respondent on July 21 due to job abandonment. According to Mr. Valencia, rings are not normally moved on the pathway Claimant testified he used because the path is too narrow. Mr. Valencia also testified the rings make a lot of noise when they drop, and other coworkers would have heard the ring drop if Claimant's accident occurred as he described. While rings are normally moved with the crane, they can be moved by hand. Mr. Valencia confirmed the work area was loud due to activities in the production area. Mr. Valencia also testified Respondent's policy requires all accidents and near-misses to be reported to management immediately, and he would have known if an accident actually occurred.

On cross-examination, Mr. Valencia conceded Claimant was terminated four days after the Safety Manager told Claimant not to return to work until he was cleared to work full-duty. Mr. Valencia was not with Claimant when the accident occurred, but his enclosed office is sixty to seventy feet from the area where manholes are made. Mr. Valencia generally walks around the plant as part of his job. Mr. Valencia heard rings fall two or three times before, and testified the rings make a lot of noise when dropped. Mr. Valencia was first aware Claimant alleged he was hurt on July 7.

A coworker, Mr. Box, completed a written statement on July 7 stating he saw a mark on Claimant's back, and Claimant told him he fell into a manhole. Mr. Box did not see the accident.

Mr. Reyes, a coworker who fabricated the manholes, testified the rings are normally moved by one person rolling them. Mr. Reyes did not witness the accident, and his view of Claimant was obstructed. Mr. Reyes wore hearing protection when working. According to Mr. Reyes, if a ring fell, people in close proximity would have heard a noise. However,

if a ring hit concrete, less sound would be produced and would sound like a thud. Mr. Reyes confirmed the work area was a very loud environment, but the area around the pit was not as noisy. Approximately seventy-five percent of Mr. Reyes' work was performed far away from Claimant. As part of Respondent's investigation, Mr. Reyes completed a written report in Spanish confirming he did not see an accident and was not told of an accident. Mr. Reyes also testified rings are usually not rolled in the path Claimant used because it is too narrow.

Mr. Barron testified the rings are never rolled in the pathway Claimant used, and are rolled in another area with more space. Mr. Barron also testified forty-eight-inch rings are rolled by one person, are never dropped while rolling, and would make a loud sound if dropped. Mr. Barron, however, never heard a ring drop. Mr. Barron did not see Claimant fall into the pit, or rolling a forty-eight-inch ring. Mr. Barron testified he worked in close proximity to Claimant and would have seen the accident if it occurred, but also testified around noon he would be working at an upper level away from the pit area. Mr. Barron also testified Respondent's policy would require Claimant to report any work-related accidents to him. As part of Respondent's investigation, a written statement was completed for Mr. Barron denying he saw an accident. Mr. Barron also denied Claimant told him anything.

Claimant sought medical treatment, payment of past medical bills and TTD. A preliminary hearing took place on October 7, 2025. On November 21, 2025, ALJ Klein issued the Order. Essentially, ALJ Klein found Claimant's testimony more credible than the testimony of Respondent's witnesses. Respondent was ordered to provide a list of two healthcare providers, from which Claimant would select one to serve as the authorized healthcare provider. Temporary total disability compensation and payment of the past medical bills was also awarded. These proceedings follow.

PRINCIPLES OF LAW AND ANALYSIS

Respondent seeks review of the Order, arguing Claimant did not prove by the greater weight of the credible evidence the accident occurred because the pathway Claimant used would have been too narrow and because no one heard a ring fall. Respondent also argues the award of TTD was erroneous. Respondent asks the Board to admit the transcript of Claimant's discovery deposition into evidence, but the Board's review is limited to the evidence considered by the ALJ.¹ Claimant argues the Order should be affirmed because Respondent's witnesses were not present at the accident scene, Claimant's testimony is supported by the histories in the medical records, and the loud working environment could cover the sound of the ring falling.

¹ See K.S.A. 44-555c(a).

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 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

1. CLAIMANT MET HIS BURDEN OF PROVING HE SUSTAINED PERSONAL INJURY FROM AN ACCIDENT ARISING OUT OF AND IN THE COURSE OF HIS EMPLOYMENT WITH RESPONDENT ON JUNE 30, 2025.

The Board first addresses whether Claimant proved he sustained personal injury from an accident arising out of and in the course of his employment with Respondent. To be compensable, an accident must be identifiable by time and place of occurrence, produce at the time symptoms of an injury and occur during a single work shift.⁵ The accident must be the prevailing factor in causing the injury, and “prevailing factor” is defined as the primary factor compared to any other factor, based on consideration of all relevant evidence.⁶

Claimant consistently testified on June 30, 2025, he was rolling a forty-eight-inch ring as part of his usual work for Respondent. The ring began to fall and Claimant attempted to regain control of it. As a result, Claimant was pushed off balance and fell into the pit area. Claimant struck the wall of a manhole tube. Based on review of the pictures and video of the working area, the pathway where Claimant testified he was working is relatively narrow, but could accommodate the ring. Claimant consistently testified he struck a concrete manhole as a result of the fall into the pit. Claimant’s description of the event to the healthcare providers is consistent with his testimony. The medical records indicate a causal relationship between the reported accident and the injuries.

Respondent’s witnesses were not present at the accident scene when the event occurred. Respondent’s witnesses were performing their jobs in different areas, and did not watch Claimant. Respondent’s witnesses were contradictory on whether a ring could be rolled by one person, and whether the ring would make a loud sound if it fell. One of

² See K.S.A. 44-501b(a).

³ See *id.*

⁴ See K.S.A. 44-501b©).

⁵ See K.S.A. 44-508(d).

⁶ See K.S.A. 44-508(d), (g).

Respondent's witnesses never heard a ring fall, while another witness testified the ring could cause a thudding sound depending on where it fell. While Claimant may not have complied with Respondent's policy to immediately report an accident to management, it does not necessarily follow the accident Claimant described did not occur.

Having considered the record, the undersigned finds and concludes the greater weight of the credible evidence establishes Claimant sustained personal injuries while rolling a heavy metal ring as part of his work for Respondent on June 30, 2025. The determination in the Order Claimant sustained a compensable injury from an accident arising out of and in the course of his employment with Respondent is affirmed.

2. THE APPEALS BOARD DOES NOT POSSESS THE AUTHORITY TO INDEPENDENTLY REVIEW CLAIMANT'S ENTITLEMENT TO TTD AT THIS TIME, AND RESPONDENT'S APPLICATION FOR REVIEW IS DISMISSED IN PART.

The Board next addresses Respondent's argument the award of TTD is erroneous. The Board possesses the authority to review preliminary orders on disputed issues of whether the employee suffered an accident, repetitive trauma or resulting injury; whether the injury arose out of and in the course of employment; whether notice was given; or whether certain defenses apply.⁷ "Certain defenses" are issues concerning the compensability of the injury under the Workers Compensation Act.⁸ If jurisdiction under K.S.A. 44-534a is not present, it is appropriate to dismiss the appeal.⁹

Apart from disputing whether Claimant proved the occurrence of a compensable accident and injury, no other compensability issues pertaining to TTD have been raised. The Board does not possess authority to review the preliminary award of TTD at this time. In the absence of jurisdiction, Respondent's request for independent review of the TTD award is dismissed. It is unnecessary to address the remaining issue because it is moot.

DECISION

WHEREFORE, it is the finding, decision and order of the undersigned Board Member the Order issued by ALJ Thomas Klein, dated November 21, 2025, is affirmed. Respondent's request for review of the preliminary award of temporary total disability compensation is dismissed.

⁷ See K.S.A. 44-534a(a)(2).

⁸ See *Carpenter v. National Filter Service*, 26 Kan. App. 2d 672, 675, 994 P.2d 641 (1999).

⁹ See *id.* at 676.

IT IS SO ORDERED.

Dated this _____ day of January, 2026.

WILLIAM G. BELDEN
APPEALS BOARD MEMBER

c: Via OSCAR

Brian D. Pistotnik
Aaron J. Greenbaum
Hon. Thomas Klein