

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

MICHAEL RICHARDSON

Claimant

V.

LONG MOTOR CORPORATION

Respondent

AND

HARTFORD INS. CO. OF MIDWEST

Insurance Carrier

AP-00-0493-483

CS-00-0480-606

ORDER

Claimant appealed the November 18, 2025, Award by Administrative Law Judge (ALJ) Julie A.N. Sample. Ronald Edelman appeared for Claimant. Bruce Wendel appeared for Respondent and its insurance carrier. The Board heard oral argument on July 16, 2026.

RECORD AND STIPULATIONS

The Board adopted the same stipulations and considered the same record as the ALJ, consisting of the documents of record filed with the Division, including the parties' briefs, and the following:

1. Transcript of Regular Hearing, held July 16, 2025, with Claimant Exhibits 1a-16 and Respondent Exhibits 1-15;
2. Transcript of Preliminary Hearing, held August 7, 2024, with Claimant Exhibits 1-5, and Respondent Exhibits 1-11, and Tracy Riffel Deposition Exhibit;
3. Evidentiary Deposition of Long Motor Corporation through its designated representative, Tracy L. Riffel, taken June 10, 2024, with Exhibits 1-3;
4. Discovery Deposition of Michael Richardson, taken August 27, 2025, with Exhibits 1-2; and
5. Discovery Deposition of Michael Richardson, taken May 1, 2024, with Exhibits 1-5.

ISSUE

Did Claimant timely file his Application for Benefits (E-1) against Respondent pursuant to K.S.A. 44-534(b)?

FINDINGS OF FACT

Claimant was employed by Focus Workforce Management (Focus), an employment agency, and assigned to Respondent. Pursuant to a contract with Respondent, Focus provided temporary workers for Respondent's business and workers compensation coverage for those workers.¹ Respondent set work hours, tasks, and provided training for the workers placed by Focus. Focus dealt with any problematic workers placed with Respondent and provided replacement workers if necessary. Respondent paid Focus, and Focus paid the workers, deducting applicable taxes.

On August 31, 2020, Claimant slipped and fell while unloading product at Respondent's facility, striking the back of his head and neck. On September 17, 2020, Claimant filed an E-1 against Focus for injuries to his head, neck and back.² Respondent was not a party to this claim.

On October 9, 2020, Claimant came under the care of Dr. Michael Rippee, a neurologist, at Kansas University Health System. Dr. Rippee provided various medications, as well as vestibular and speech therapy. Claimant treated with Dr. Rippee until his release at maximum medical improvement (MMI) on March 29, 2021.

Claimant's attorney sent him to Dr. Todd Hill, a psychiatrist, for an evaluation for treatment recommendations on June 21, 2022. Dr. Hill recommended additional treatment. Claimant submitted a 7-day demand letter to Focus requesting the treatment recommended by Dr. Hill.

Focus referred Claimant to Dr. James Zarr, who examined Claimant on February 28, 2023. It appears Dr. Zarr was prepaid by Focus for his evaluation on February 9, 2023. Dr. Zarr reviewed Claimant's medical records and conducted a physical examination, finding Claimant sustained persistent neck pain and concussion resulting in post-traumatic headache and mild cognitive deficits as a result of the work injury.³

¹ See P.H. Trans., Resp. Ex. 8.

² *Richardson v. Focus Workforce Management, Inc.*, CS-00-0453-156.

³ See P.H. Trans., Cl. Ex. 1 at 4.

Dr. Zarr opined Claimant was at MMI and provided a functional impairment rating. Regarding future medical treatment, Dr. Zarr opined, “I simply recommend continued use of non-narcotic analgesics for his neck and headache pain complaints.”⁴

According to Claimant, he met with Dr. Zarr in his office for approximately an hour to an hour and one-half. He described how his injury occurred, the injuries suffered and the treatment received. Claimant described his ongoing symptoms and his desire to receive additional treatment to address those symptoms. He stated his physical examination included range of motion testing to his neck and balance testing. Claimant discussed his past medication and received suggestions regarding future medication. According to Claimant, Dr. Zarr recommended he avoid light, avoid too much lifting, and let his body heal.

Focus paid temporary total disability (TTD) benefits and medical compensation.⁵ On December 20, 2023, Focus filed an Application for Dismissal (E-6) in their claim pursuant to K.S.A. 44-523(f). Claimant filed a new claim against Respondent, filing an E-1 on January 3, 2024.⁶ Claimant filed a “Voluntary Motion To Dismiss” on February 8, 2024 advising the Court he filed a separate claim against Respondent. An “Agreed Order Of Dismissal With Prejudice” against Focus was approved and filed with the Court on February 14, 2024.

Tracy Riffel is Respondent’s director of human resources. According to Ms. Riffel, Respondent works with several employment agencies, including Focus, to get temporary workers. Respondent did not have the right to fire or discipline Claimant, did not pay him and did not withhold taxes or provide fringe benefits. She denied Respondent ever represented to any federal, state or local authority Claimant was their employee. Respondent was unaware Claimant was asserting a claim and seeking benefits against them until they received Claimant’s application for benefits on January 3, 2024.

Claimant continues to experience severe migraines, blurred vision, neck pain, sharp pains down his back, slurred speech, difficulty recalling information, and discomfort when around a lot of people. He is currently receiving treatment from his primary care physician and botox injections for migraines every three months at the KU Medical Center. Claimant currently works as a cook and cashier at a restaurant.

⁴ *Id.*

⁵ See P.H. Trans., Resp. Ex. 3 and 4.

⁶ See CS-00-0480-606.

The ALJ found Claimant's claim was not filed in a timely manner as required by K.S.A. 44-534(b) and therefore, Claimant is not entitled to benefits under the Kansas Workers Compensation Act, stating:

After careful consideration, the Court finds no legally justifiable reason to deviate from its previous decision. Nothing within the Claimant's subsequent deposition testimony alters the Court's view that Dr. Zarr's evaluation and subsequent rating report was "medical compensation" and most certainly was not "medical compensation" paid for by this Respondent nor is it considered "medical compensation" under the Act. The Appeals Board has been quite clear on that issue. (citations omitted) Likewise, the Court is equally unpersuaded that another employer's payment of this bill extended period in which to bring this claim.⁷

PRINCIPLES OF LAW AND ANALYSIS

Claimant appealed arguing his claim against Respondent was timely filed pursuant to K.S.A. 44-534. Claimant contends Dr. Zarr's evaluation, performed in the claim against Focus, constituted medical compensation allowing Claimant to file his E-1 within two years of the last date "compensation" was paid. Claimant also argues the statute does not require the compensation paid must be paid by the party against whom benefits are being sought. Respondent maintains the Award should be affirmed. In the alternative, Respondent argues it was not Claimant's employer.

K.S.A. 44-534(b) requires an injured worker to file an E-1 in the office of the director within three (3) years from the date of accident or within two (2) years from the date of the last date of payment of compensation, whichever is later. Claimant's date of accident is August 31, 2020. Three years from this date is August 31, 2023. Claimant filed his E-1 alleging a date of accident occurring on August 31, 2020 on January 3, 2024, well past the three year time requirement set forth in K.S.A. 44-534. Respondent did not provide any compensation regarding the August 31 accidental injury. The two year time limitation does not apply. Claimant did not timely file an E-1 pursuant to K.S.A. 44-534.

Claimant argues the evaluation performed by Dr. Zarr on February 28, 2023, in the workers compensation claim filed against Focus extends the time limitation in the current claim against Respondent, rendering his E-1 timely filed. The Board rejects this argument. The Board recently ruled an IME does not constitute the payment of compensation.⁸ Dr. Zarr was not an authorized treating physician and he did not provide medical treatment to

⁷ Award at 6.

⁸ See *Tobin v. L&W Repair LLC*, AP-00-0483-877, 2024 WL 4111268, at *4 (Kan. WCAB Aug. 21, 2024).

Claimant. Respondent did not pay for Dr. Zarr's evaluation, Focus did. Focus' payment of Dr. Zarr's evaluation does not constitute the payment of compensation by Respondent.

The Kansas Workers Compensation Act (Act) was created to establish the duties, obligations and procedures to protect the rights of the parties involved in the claim arising out of an employee's accidental injury suffered while in the course of their employment. Simply put, the Act is a creature of statute, setting forth the duties/obligations of the parties involved in the claim and the procedures to follow in the event one of the parties seeks to obtain or terminate benefits available under the Act.⁹

Here, Claimant was injured on the job and filed his claim against Focus who provided medical treatment and temporary total disability compensation. There is nothing in the record establishing Respondent participated in or had any involvement with the claim or the benefits provided by Focus until the claim was dismissed. Claimant was placed at MMI by Dr. Rippee on March 29, 2021. Claimant sought additional medical treatment based upon Dr. Hill's June 21, 2022 evaluation, which was generated at his request. On December 20, 2023, and prior to a preliminary hearing to determine Claimant's request for additional medical treatment, Focus filed a motion to dismiss Claimant's claim pursuant to K.S.A. 44-523(f)(1). The motion to dismiss against Focus was sustained by an agreed order between the parties filed on February 14, 2024. Claimant filed his E-1 against Respondent on February 3, 2024, seeking the additional medical benefits recommended by Dr. Hill.

When Claimant filed a new claim against Respondent, he established a new set of duties/obligations between the parties, including his duty/obligation to timely file an E-1. A timely filed E-1 against one employer in a prior claim against a different employer does not satisfy Claimant's duty/obligation to timely file an E-1 against a subsequent employer in a new claim. Respondent did not participate in the prior claim against Focus. Dr. Zarr's evaluation was scheduled, completed and paid for by Focus long before Respondent was notified Claimant was seeking benefits from them. Claimant and Focus were litigating the claim (Claimant sought additional treatment) when the motion to dismiss was filed.

K.S.A. 44-501b(c) places the burden of proof on Claimant to establish his right to an award of benefits. Claimant has not provided sufficient facts or authority to support his argument compensation paid in a claim against one employer (Focus) applies to a subsequent claim against a second employer (Respondent), relieving him from his duty to file a timely E-1 pursuant to K.S.A. 44-534(b). The ALJ's order denying benefits is affirmed. All other issues raised by Claimant are rendered moot because he did not timely file an E-1.

⁹ See *Jones v. Continental Can Co.*, 260 Kan. 547, 920 P. 2d 939, *rev. denied* (1996).

AWARD

WHEREFORE, it is the finding, decision and order of the Board the Award issued by ALJ Julie A.N. Sample, dated November 18, 2025, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of July, 2026.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: (via OSCAR)
Ronald Edelman
Bruce Wendel
Hon. Julie Sample