

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

PHILLIP S. PRUITT
Claimant

v.

GKN AEROSPACE CHEM-TRONICS, INC.
Respondent

AP-00-0493-502
CS-00-0480-511

and

LM INS. CORP.
Insurance Carrier

ORDER

Claimant and Respondent/Insurance Carrier (Respondent) appeal the November 24, 2025, Award issued by Administrative Law Judge (ALJ) Ali N. Marchant. The Board heard oral argument on May 7, 2026.

APPEARANCES

Terry J. Torline appeared for Claimant. Aaron J. Greenbaum appeared for Respondent.

RECORD AND STIPULATIONS

The Board adopted the same stipulations and considered the same record as the ALJ, consisting of the transcript of Regular Hearing, held July 17, 2025, including Claimant's Exhibits 1-3 and Respondent's Exhibits B-D; the transcript of Preliminary Hearing, held February 22, 2024, including Claimant's Exhibits 1-6 and Respondent's Exhibits A-H; the transcript of Motion Hearing, held June 10, 2024, including Exhibit 1; the transcript of Motion Hearing, held January 27, 2025, including Exhibit 1; the transcript of Videoconference Evidentiary Deposition of Greg E. Martin, taken September 25, 2025, including Exhibits A-D; the transcript of Videoconference Evidentiary Deposition of Daniel J. Prohaska, M.D., taken September 18, 2025, including Exhibits A-C; the transcript of Evidentiary Deposition via Zoom of Aly A. Gadalla, M.D., taken August 22, 2025, including Exhibits 1-4; the transcript of Videoconference Evidentiary Deposition of John P. Estivo, D.O., taken October 17, 2025, including Exhibits A-E; and the pleadings and orders contained in the administrative file. The Board also reviewed the parties' briefs.

ISSUES

1. What is the nature and extent of Claimant's disability or impairment?
2. Is Claimant eligible to receive an award based on work disability because he sustained at least 10% wage loss directly attributable to his work-related injuries?
3. Is Claimant entitled to an award of future medical treatment?

FINDINGS OF FACT

Claimant worked for Respondent as a Tool Grind Technician. Claimant set tools for machinists to cut metal airplane parts. Claimant's work involved heavy lifting, repetitive movements with both arms and using an impact gun. Claimant worked shifts alternating between thirty-six and forty-eight hours of straight-time, as well as overtime. Claimant estimated he worked sixty hours per week on average. The parties stipulated Claimant's base average weekly wage was \$1,772.67.

In August 2023, Claimant noticed the onset of left shoulder problems. Claimant reported his problems to his supervisor, Mr. Martin. Claimant informed Mr. Martin he wanted to report a work-related injury. According to Claimant, Mr. Martin told Claimant he would be removed from his department if he reported a work-related injury. Claimant continued working his normal job.

On September 28, 2023, Claimant sought medical treatment on his own with Dr. Jarmer, his primary care physician. According to Dr. Jarmer's notes, Claimant reported left biceps pain over the last several weeks. There is no record Claimant reported other symptoms. Dr. Jarmer diagnosed likely biceps tendinitis and rotator cuff tendinitis, and administered an injection. On December 13, 2023, Dr. Jarmer saw Claimant for a follow-up and ordered physical therapy.

Claimant testified he spoke with Mr. Martin after he saw Dr. Jarmer in September. Claimant testified another coworker, Mr. Cox, was also present. Claimant testified he told Mr. Martin he wanted medical treatment, and Mr. Martin replied Claimant would be moved from his department if he reported a work-related injury. Claimant did not complete an accident report and continued working his normal job. Mr. Cox confirmed Claimant's description of events, and thought the conversation took place in November 2023. Mr. Martin recalled Claimant saying his shoulder hurt, but Mr. Martin could not recall when the conversation occurred. Mr. Martin did not dispute Claimant's testimony.

On December 7, 2023, Claimant met with Mr. Martin and Respondent's Human Resources Manager, Ms. Johnson. Claimant testified he was told Respondent lost work

it performed for Spirit AeroSystems. As a result, Claimant was told he was being laid off effective December 7, 2023. Claimant initially signed a separation agreement as part of a severance package, which he subsequently rescinded. Claimant sent a letter to Respondent advising he rescinded his acceptance of the severance package, and advising he sustained a work-related injury. Claimant did not work elsewhere after he was laid off, and applied for unemployment compensation.

Claimant subsequently filed a complaint with the Kansas Human Rights Commission alleging retaliatory discharge. The matter settled at a mediation. The terms of the settlement are confidential and are not part of the record.

Claimant continued treating with Dr. Jarmer. According to Claimant, he told Dr. Jarmer he thought he sustained a work-related injury. Claimant also testified he developed right shoulder symptoms from physical therapy, as well as bilateral upper extremity symptoms. Dr. Jarmer's records do not document other symptoms, but the physical therapy records indicate Claimant reported bilateral shoulder pain in November 2023.

On January 16, 2024, Claimant was evaluated by Dr. Gadalla, an internal medicine and pain management physician, at the request of his attorney. Dr. Gadalla documented a history of bilateral upper extremity and shoulder injuries from work, and neck pain. Dr. Gadalla noted shoulder pain during range of motion testing. Dr. Gadalla confirmed Claimant sustained work-related injuries to both elbows, wrists and shoulders, as well as cervical myofascial pain syndrome. Additional treatment was recommended and temporary work restrictions were imposed.

Dr. Estivo, an orthopedic surgeon, evaluated Claimant at Respondent's request on March 14, 2024. Claimant reported he initially developed left shoulder pain, followed by right shoulder pain. Cervical pain was denied. Examination of the cervical and thoracic spines was normal, and no cervical tenderness was noted. Dr. Estivo noted a history of prior biceps tendinitis which fully resolved. Dr. Estivo diagnosed bilateral shoulder pain, did not believe Claimant reached maximum medical improvement, and recommended MRI scans of both shoulders with treatment recommendations to follow.

On June 17, 2024, Claimant was rehired by Respondent. Claimant continued to work for Respondent. Claimant performs half of the job tasks he previously performed to accommodate his work restrictions. Due to the loss of business from Spirit AeroSystems, Mr. Martin testified Respondent lost 86% of its business and less overtime work was available. Respondent also changed from having twelve-hour rotating shifts to eight-hour shifts. Claimant testified he was paid a lower hourly rate of pay and worked significantly less overtime. Respondent's pay records indicate Claimant is actually paid a higher straight-time pay rate than before, but he works significantly less overtime. Mr. Martin testified Claimant's work restrictions do not affect his ability to work more overtime hours,

but less work is available company-wide. According to Mr. Martin, Claimant works more overtime than others in his department.

Following a preliminary hearing, Dr. Prohaska, an orthopedic surgeon, was designated the authorized treating physician, and he treated Claimant from April 23, 2024, through January 23, 2025. Dr. Prohaska was only authorized to treat Claimant's shoulders, and he did not evaluate or treat other body parts. Dr. Prohaska diagnosed right-sided rotator cuff tear with long head biceps tendon partial tear and impingement, and a partial tear of the left long head biceps tendon. Dr. Prohaska thought Claimant's work activities caused his conditions. Dr. Prohaska testified he would refer Claimant to other providers if Claimant reported other symptoms to other body parts, and he made no referrals.

Dr. Prohaska performed surgery on the right shoulder to address the rotator cuff tear, biceps tendon tear and impingement on July 17, 2024. Dr. Prohaska also recommended surgery of the left shoulder. Claimant was unable to undergo the left shoulder surgery because of elevated A1C levels. Claimant reached maximum medical improvement on January 23, 2025. Claimant still had residual arm pain and was taking over-the-counter ibuprofen. Dr. Prohaska restricted Claimant from lifting over ten pounds with the left arm.

Dr. Gadalla reevaluated Claimant on March 6, 2025. Claimant reported pain in both arms and shoulders, as well as radiating pain in the neck. Claimant confirmed he was employed and taking ibuprofen for pain as needed. Range of motion of both shoulders was less than full and weakness was noted. Tenderness of the cervical and thoracic spines was noted. Dr. Gadalla diagnosed cervical and thoracic spine injuries and pain, bilateral shoulder tendinitis and subacromial bursitis, post-rotator cuff tear surgery on the right side, and left rotator cuff syndrome.

Using the *AMA Guides to the Evaluation of Permanent Impairment (AMA Guides)*, 6th edition, Dr. Gadalla rated Claimant's impairment at 21% of the body as a whole, and using the *AMA Guides*, 4th edition, Dr. Gadalla rated Claimant's impairment at 22% of the body as a whole. Dr. Gadalla included 2% of the body as a whole for the cervical condition and 2% of the body as a whole for the thoracic condition. Dr. Gadalla imposed restrictions referable to both shoulders and the cervical spine, and thought Claimant sustained 100% task loss after reviewing a task list prepared by Claimant. Future medical treatment, including injections, a pain management consultation and annual orthopedic evaluations, was recommended.

On June 2, 2025, Dr. Prohaska rated Claimant's impairment at 6% of the body as a whole attributable to both shoulders. Dr. Prohaska initially rated Claimant using the *AMA Guides*, 6th edition, and assessed additional impairment based on his medical judgment. Dr. Prohaska initially opined Claimant would require no future medical treatment, but later

stated Claimant could undergo the left shoulder surgery if his A1C level reduced. Claimant's permanent left shoulder lifting restriction was raised to thirty pounds because his shoulder condition stabilized. Dr. Prohaska reviewed Claimant's task list, and thought Claimant could perform all the tasks.

Dr. Estivo reevaluated Claimant on July 10, 2025, at Respondent's request. Claimant reported bilateral shoulder pain, and decreased range of motion of the right shoulder. Claimant stated he first noticed right-sided neck pain in June 2024, and thoracic and lumbar pain was denied. Claimant did not report problems performing his work duties. Examination of the cervical spine revealed no tenderness, no spasm and minimal discomfort during range of motion testing. Examination of the thoracic spine was normal. Examination of the left shoulder revealed generalized discomfort during range of motion testing, which was full, without evidence of impingement or labral tears. Examination of the right shoulder indicated discomfort during range of motion testing, which was limited.

Dr. Estivo diagnosed post-surgery of the right shoulder, with rotator cuff repair, biceps tenodesis and subacromial decompression procedures; partial thickness tear of the left rotator cuff; and age-related degenerative joint disease of the cervical and thoracic spines. Using the *AMA Guides*, 6th edition, Dr. Estivo did not believe Claimant sustained impairment of the cervical or thoracic spines on account of work activities. Dr. Estivo rated Claimant's impairment of the right shoulder at 6% of the body as a whole under the range of motion model from the *AMA Guides*, and 2% of the body as a whole for the left shoulder under the diagnosis-based model from the *AMA Guides*, resulting in total impairment of 8% of the body as a whole. Dr. Estivo found no reason, medically, to deviate from the *AMA Guides*. Dr. Estivo thought surgery of the left shoulder was an option if the shoulder worsened. No restrictions were imposed, and Dr. Estivo thought Claimant sustained no task loss after reviewing Claimant's task list.

At regular hearing, Claimant testified his left shoulder is constantly painful, and he cannot rest his arm on a chair. Claimant also experiences right shoulder symptoms extending to the neck, and turning to the right is painful. Claimant estimated his right shoulder strength was 80% of what it was before. Claimant testified he currently works forty to forty-five hours per week for Respondent. Claimant continues working within his restrictions, and has not turned down overtime work offered to him.

On November 24, 2025, ALJ Marchant issued the Award. ALJ Marchant determined Claimant proved he sustained compensable bilateral shoulder injuries from work activities. The ALJ concluded Claimant did not prove he sustained injuries to the cervical or thoracic spines because Dr. Estivo noted Claimant did not report neck or thoracic symptoms until several months after Claimant was laid off. ALJ Marchant concluded Claimant gave proper notice to Mr. Martin. Future medical treatment was awarded based on review of the medical evidence.

With regard to nature and extent, ALJ Marchant concluded Claimant's functional impairment was 10.33% of the body as a whole, attributable to both shoulders, based on an average of the ratings of Drs. Estivo, Gadalla and Prohaska. Claimant's request for work disability benefits was denied. Although Claimant met the functional impairment threshold, and his current earnings of \$1,204.97 established greater than 10% wage loss, Claimant's wage loss was caused by general economic factors affecting Respondent company-wide. ALJ Marchant concluded Claimant did not prove his wage loss was directly attributable to his work-related injuries. In the alternative, if a reviewing court determined Claimant was eligible to receive work disability compensation, ALJ Marchant found Claimant's wage loss was 32% and his task loss was 50%. These proceedings follow.

PRINCIPLES OF LAW AND ANALYSIS

Both parties seek review of the Award. Claimant argues his functional impairment should be 12% of the body as a whole, based on an average of the ratings of Drs. Prohaska and Estivo, then averaged with Dr. Gadalla's rating. Claimant also argues he should be awarded work disability compensation because he experienced an actual reduction in earnings because he is earning a lower straight-time rate of pay and less overtime on account of his work-related injuries. Respondent argues Claimant's functional impairment should be less than 10.33% of the body as a whole based on the opinions of Dr. Prohaska or Dr. Estivo. Respondent also argues future medical should be denied based on the greater weight of the evidence, and the denial of work disability compensation should be affirmed.

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.¹ The provisions of the Workers Compensation Act shall be applied impartially to all parties.² 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.³

1. CLAIMANT'S FUNCTIONAL IMPAIRMENT IS 10.33% OF THE BODY AS A WHOLE ATTRIBUTABLE TO BOTH SHOULDERS.

Both parties seek review of the Award's determination of Claimant's functional impairment. Respondent argues Claimant's functional impairment is best expressed by

¹ See K.S.A. 44-501b(a).

² See *id.*

³ See K.S.A. 44-501b(c).

Dr. Prohaska's 6% whole-body rating, or Dr. Estivo's 8% whole-body rating. Claimant argues Claimant's functional impairment should be 12% of the body as a whole, based on an average of the ratings of Drs. Prohaska and Estivo, followed by a split with Dr. Gadalla's rating based on the *AMA Guides*, 6th edition, of both shoulders.

It is undisputed Claimant sustained compensable injuries to both shoulders. Where an injury results in loss of use of both shoulders, permanent partial disability compensation shall be compensated as a whole-body injury.⁴ The extent of functional impairment for whole-body injuries is determined by competent medical evidence, using the *AMA Guides* as a starting point.⁵

Dr. Prohaska saw Claimant multiple times as the authorized treating orthopedist, and had the benefit of visualizing the right shoulder joint during the surgery. Dr. Prohaska testified he initially consulted the *AMA Guides* when rating Claimant's impairment, augmented the rating based on his independent medical judgment, and explained in his deposition the basis for his rating. Dr. Estivo saw Claimant twice, and he rated Claimant's impairment based on *AMA Guides*. Dr. Estivo testified to his rating methodology, and in his medical judgment deviation from the *AMA Guides* was not necessary. Dr. Gadalla also saw Claimant twice and issued ratings based on the *AMA Guides*, 4th and 6th editions. Dr. Gadalla's ratings include impairment ratings for unrelated, nonspecific cervical and thoracic symptoms. Dr. Gadalla's rating report states Claimant's impairment should be based on the *AMA Guides*, 4th edition, but he testified to Claimant's impairment using the rating based solely on the *AMA Guides*, 6th edition.

Like the ALJ, the Board finds all three ratings equally credible. Claimant returned to work for Respondent performing half of his usual work, and is earning a higher straight-time rate of pay. Claimant works less overtime due to work availability, and he works the most overtime in his department. Claimant's shoulders remain symptomatic and he has reduced strength. The ratings of Drs. Estivo and Prohaska are optimistic based on Claimant's treatment and residual complaints, while Dr. Gadalla's rating is excessive given Claimant's work status and work duties. The Board concludes Claimant's functional impairment is best expressed by an average of the three shoulder ratings, or 10.33% of the body as a whole referable to both shoulders. The Award's finding is affirmed.

2. CLAIMANT IS NOT ELIGIBLE TO RECEIVE PERMANENT PARTIAL GENERAL DISABILITY COMPENSATION BASED ON WORK DISABILITY BECAUSE THE

⁴ See K.S.A. 44-510e(a)(2)(A)(I).

⁵ See K.S.A. 44-510e(a)(2)(B); *Johnson v. U.S. Food Service*, 312 Kan. 597, 603, 478 P.3d 776 (2021).

GREATER WEIGHT OF THE EVIDENCE ESTABLISHES CLAIMANT'S WAGE LOSS WAS NOT DIRECTLY CAUSED BY HIS WORK-RELATED INJURIES.

The Board next addresses whether Claimant is eligible to receive permanent partial general disability compensation based on work disability considerations. Where an employee sustains an injury to the body as a whole resulting in functional impairment in excess of 7.5% solely from the present injury, or in excess of 10% where there is preexisting functional impairment, and the employee sustains at least a 10% wage loss as defined in K.S.A. 44-510e(a)(2)(E), the employee may receive work disability compensation in excess of the percentage of functional impairment.⁶ In such cases, work disability is determined by averaging the post-injury task loss caused by the injury with the post-injury wage loss caused by the injury.⁷ The employee must prove the post-injury wage loss is directly attributable to the work injury and not to other causes or factors.⁸

Claimant sustained whole-body injuries in excess of 7.5% of the body as a whole. Claimant previously earned \$1,772.67 per week, and the record indicates Claimant's post-injury average weekly wage is \$1,204.97. The Board agrees with the ALJ's post-injury average weekly wage finding. The difference in earnings is 32%. The issue is whether Claimant's resulting wage loss is directly attributable to the work injury and not to other causes or factors.

Claimant was initially laid off by Respondent after it lost 86% of its business. While Claimant expressed suspicion of the reason for his termination, an alternative reason for his layoff was not proven. During Claimant's layoff, Respondent reconfigured its working hours and shifts to lessen the effects of having less work. Claimant was rehired by Respondent in a similar position accommodating his medical restrictions. The record indicates Claimant earns a higher straight-time rate than before the injuries, but his overtime earnings are much lower. Claimant is working less overtime because there is less work available company-wide. There is no evidence Claimant's injuries or residual symptoms prevent him from working more overtime, and Mr. Martin testified Claimant works the most overtime of the employees in his department.

Based on the evidence in the record, the Board finds and concludes Claimant's post-injury wage loss was not directly attributable to his work-related injuries. Instead, Claimant's post-injury wage loss was caused by Respondent's loss of 86% of its business, which affected Respondent company-wide. Based on K.S.A. 44-510e(a)(2)(C)(ii), Claimant

⁶ See K.S.A. 44-510e(a)(2)(C).

⁷ See *id.*

⁸ See K.S.A. 44-510e(a)(2)(C)(ii).

did not prove he is eligible to receive work disability compensation. The denial of work disability in the Award is affirmed.

3. THE AWARD OF FUTURE MEDICAL TREATMENT IS AFFIRMED.

Respondent argues future medical treatment should be denied based on the greater weight of the evidence. Claimant argues the evidence in the record supports the award of future medical contained in the Award. The employer's liability to pay compensation attaches when an employee suffers personal injury by accident, repetitive trauma or occupational disease arising out of and in the course of employment.⁹ It is presumed the employer's obligation to provide medical treatment terminates upon the employee's reaching maximum medical improvement. The presumption may be overcome with medical evidence that it is more probably true than not that additional medical treatment will be necessary after maximum medical improvement. "Medical treatment" means treatment provided or prescribed by a licensed health care provider and not home exercises or over-the-counter medication.¹⁰

Dr. Prohaska initially recommended surgery of the left shoulder. The surgery did not take place because of Claimant's personal health condition. Dr. Prohaska initially stated Claimant did not require future medical treatment. Dr. Prohaska later testified if Claimant's personal health condition improved and Claimant wanted to undergo the surgery, Dr. Prohaska was willing to perform it. Dr. Gadalla also recommended future physician intervention for Claimant's injuries. Dr. Estivo testified left shoulder surgery would be an option if Claimant's condition worsened. The medical evidence establishes additional medical treatment will be necessary after maximum medical improvement. The Board affirms the award of future medical treatment.

AWARD

WHEREFORE, it is the finding, decision and order of the Board the Award issued by ALJ Ali N. Marchant, dated November 24, 2025, is affirmed.

⁹ See K.S.A. 44-501b(b).

¹⁰ See K.S.A. 44-510h(e).

IT IS SO ORDERED.

Dated this _____ day of June, 2026.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: (Via OSCAR)

Terry J. Torline
Aaron J. Greenbaum
Hon. Ali N. Marchant