

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

JOHN SIZEMORE)	
Claimant)	
V.)	
)	AP-00-0493-508
BOWMAN WELDING CO. LLC)	CS-00-0492-782
Respondent)	
AND)	
)	
PIE CASUALTY INSURANCE CO.)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier (Respondent) request review of the November 20, 2025, preliminary hearing Order entered by Administrative Law Judge (ALJ) Thomas Klein.

APPEARANCES

Roger A. Riedmiller appeared for Claimant. Pamela C. Parker 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 the Preliminary Hearing held November 10, 2025, with exhibits attached, the documents of record filed with the Division, and the briefs submitted by the parties.

ISSUES

1. Are the results of Claimant's drug test admissible under K.S.A. 44-501(b)(2)(B)?
2. Did the ALJ err in finding Claimant's impairment from marijuana did not contribute to his accident or injury?

FINDINGS OF FACT

Claimant began working for Respondent as a welder fabricating modular buildings around the end of September 2025. On October 7, 2025, Claimant and two coworkers constructed two walls, weighing approximately 2,500 pounds each, before their lunch break. The walls were stood on the edge of the jig. Claimant then went to lunch with his boss.

After lunch, Claimant began constructing a third wall. He testified:

A. While I was working, I heard someone yell, they are coming down, and I looked and the two walls that we had previously built were falling, and I just took off running to get out of the way, and I was crushed to the ground.

Q. And those walls falling are what caused you to suffer an injury?

A. Yes, sir.

Q. At the time that you were doing the work immediately prior to the walls falling down on you, were you in any contact with those two walls?

A. No, sir.

Q. Was there anything that you did in welding the next wall, putting the next wall together that touched or moved the two walls that fell on you?

A. No sir.¹

Claimant said only he and his two coworkers were present at the time of the incident. Claimant was taken by ambulance to Wesley Medical Center with extensive injuries.

Claimant began treatment for acute hypoxic respiratory failure, hemorrhagic shock, rib fractures, diaphragm rupture, hemopneumothorax, thoracic aortic pseudoaneurysm, splenic injury with active extravasation, L2 on L3 anterolisthesis with bilateral facet dislocation resulting in severe spinal canal stenosis, acute spinal cord injury of L2-3, concern for lumbar spine ligamentous injury, L4 vertebral body fracture, transverse process fractures of T8-12, transverse process fractures of L1-4, lactic acidosis, and acute kidney injury.² In the course of treatment, a toxicology screening was conducted. The results indicated Claimant was positive for cannabinoids at greater than 50 ng/ml.

¹ P.H. Trans. at 12.

² See *id.*, Cl. Ex. 2 at 1.

Claimant admitted he had used a substance within 30 days of the accident, but he denied consuming marijuana on October 7, 2025. Claimant testified he performed his usual job duties and had no difficulty performing his work tasks in the days preceding the incident. He further testified his boss, Mr. Bowman, never complained about his work activities.

The ALJ found the toxicology screening was admissible, preliminarily, as it appeared to have been administered in the normal course of medical treatment and not at the direction of Respondent. The ALJ ordered temporary total disability payments and authorized medical treatment, noting Respondent failed to show the accident or injury was contributed to by the presence of cannabinoids in Claimant's system.

PRINCIPLES OF LAW AND ANALYSIS

Respondent maintains the toxicology results are admissible and create a rebuttable presumption Claimant was impaired at the time of the accident. Respondent argues Claimant's impairment caused him to have a delayed reaction, contributing to the accident.

Claimant contends the ALJ's Order should be affirmed. Claimant argues, "The Respondent did not present any expert testimony or witnesses at the hearing to support the proposition that the Claimant caused his own injury by failing to respond appropriately and that 'response' was due to cannabinoid impairment."³

1. Are the results of Claimant's drug test admissible under K.S.A. 44-501(b)(2)(B)?

K.S.A. 2025 Supp. 44-501(b)(2) states, in part:

The results of a chemical test shall be admissible evidence to prove impairment if the employer establishes that the testing was done under any of the following circumstances:

...

(B) during an autopsy or in the normal course of medical treatment for reasons related to the health and welfare of the injured worker and not at the direction of the employer;

In *Woessner v. Labor Max Staffing*,⁴ the Kansas Supreme Court held the results of a drug test are admissible when collected in the course of medical treatment and are not

³ Claimant Brief (filed Jan. 15, 2026) at 3.

⁴ *Woessner v. Labor Max Staffing*, 312 Kan. 36, 471 P.3d 1 (2020).

subject to the conditions set out in K.S.A. 44-501(b)(3) for admissibility. The Supreme Court pointed out those requirements only relate to drug tests ordered by an employer. When a drug test is done in the course of medical treatment, the requirements in K.S.A. 44-501(b)(3) do not apply.

In this case, Claimant’s drug test was administered pursuant to the normal course of medical treatment and not at the order of Respondent. The drug test results are admissible.

2. Did the ALJ err in finding Claimant’s impairment from marijuana did not contribute to his accident or injury?

K.S.A. 2025 Supp. 44-501(b)(1) states, in part:

(A) The employer shall not be liable under the workers compensation act where the injury, disability or death was contributed to by the employee's use or consumption of alcohol or any drugs, chemicals or any other compounds or substances, including, but not limited to, any drugs or medications which are available to the public without a prescription from a healthcare provider, prescription drugs or medications, any form or type of narcotic drugs, marijuana, stimulants, depressants or hallucinogens.

(B) In the case of drugs or medications which are available to the public without a prescription from a healthcare provider and prescription drugs or medications, compensation shall not be denied if the employee can show that such drugs or medications were being taken or used in therapeutic doses and there have been no prior incidences of the employee's impairment on the job as the result of the use of such drugs or medications within the previous 24 months.

(C) It shall be conclusively presumed that the employee was impaired due to alcohol or drugs if it is shown that, at the time of the injury, the employee had an alcohol concentration of .04 or more, or a GCMS confirmatory test by quantitative analysis showing a concentration at or above the levels shown on the following chart for the drugs of abuse listed:

	Confirmatory test cutoff levels (ng/ml)
Marijuana metabolite	15

...

(D) If it is shown that the employee was impaired pursuant to subsection (b)(1)(C) at the time of the injury, there shall be a rebuttable presumption that the accident, injury, disability or death was contributed to by such impairment. The employee may overcome the presumption of contribution by clear and convincing evidence.

Respondent's Exhibit 1, entered into the record at the preliminary hearing, supports a finding Claimant's marijuana metabolite level exceeded 15 ng/ml. The undersigned finds the presumption of impairment contained in K.S.A. 44-501(b)(1)(C) applies. The burden of proof is upon the claimant to establish his right to an award for compensation by proving all of the various conditions to which his right to recovery depends. This must be established by a preponderance of the credible evidence.⁵ Claimant therefore has the duty to rebut the presumption he was not impaired at the time of the accident.

Respondent must prove Claimant was impaired. The presumption contained in K.S.A. 44-501(b)(1)(C) takes care of that aspect of Respondent's burden. Claimant must prove by clear and convincing evidence his use or consumption of, in this case, marijuana, did not contribute to the injury. The Kansas Supreme Court has defined clear and convincing evidence as "evidence that causes the factfinder to believe that 'the truth of the facts asserted is highly probable.'"⁶

The ALJ found Respondent failed to show the accident or injury was contributed to by the presence of cannabinoids in Claimant's system. This analysis is in error, since it is Claimant's responsibility to rebut the presumption of impairment, not Respondent's.

Claimant testified he did nothing to cause the walls to fall, and his tools were working properly. Claimant went to lunch with his boss without any suggestion he was impaired by marijuana. There is no evidence Claimant made a mistake or did anything causing the wall to fall on him. Claimant's testimony and the facts surrounding the nature of the accident convince the undersigned it is highly probable the presumed impairment did not contribute to Claimant's injuries.

The undersigned finds Claimant met the burden of showing the presence of cannabinoids in his system did not contribute to his injury.

DECISION

WHEREFORE, it is the finding, decision and order of the undersigned Board Member the Order of ALJ Thomas Klein, dated November 20, 2025, is affirmed.

⁵ See *Box v. Cessna Aircraft Co.*, 236 Kan. 237, 689 P.2d 871 (1984).

⁶ *Matter of Rundus*, 319 Kan. 823, 830, 561 P.3d 515, 520 (2024); citing *In re Spiegel*, 315 Kan. 143, 147, 504 P.3d 1057 (2022).

IT IS SO ORDERED.

Dated this _____ day of February, 2026.

SETH G. VALERIUS
BOARD MEMBER

c: Via OSCAR

Roger A. Riedmiller, Attorney for Claimant
Pamela C. Parker, Attorney for Respondent and its Insurance Carrier
Hon. Thomas Klein, Administrative Law Judge