BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

CHRISTOPHER B. LYON	)	
Claimant	)	
V.	)	
	)	
GARSITE PROGRESS LLC	)	AP-00-0493-612
Respondent	)	CS-00-0491-819
AND	)	
	)	
STARR INDEMNITY AND LIABILITY CO	)	
Insurance Carrier	)	

ORDER

Claimant appealed the December 8, 2025, preliminary hearing Order entered by Administrative Law Judge (ALJ) Kenneth J. Hursh. Keith L. Mark appeared for Claimant. Kevin Johnson 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 Preliminary Hearing, held November 19, 2025, with exhibits attached; the depositions of Mark A. Sanders, II, Richard A. Stephenson and Adam J. Stinott, taken November 26, 2025; and the documents of record filed with the Division, including the parties' briefs.

ISSUE

Did Claimant provide timely notice of his work accident pursuant to K.S.A. 44-520?

FINDINGS OF FACT

In March 2021, Claimant became employed with Respondent in electrical mechanical maintenance. His job duties included maintenance, repair and safety of production machinery and operating forklifts. When he was hired, Claimant declined health insurance.

At some point in the spring of 2025, Claimant was instructed by Mark Sanders, who Claimant identified as the plant manager, to move shelves weighing approximately 300

pounds, to another part of the warehouse. Claimant was instructed to do so without taking the shelves apart, if possible. The shelving was located in an area inaccessible to a forklift. He needed to move the shelves away from the wall so he could maneuver floor jacks under the shelves. This required Claimant to manually move the shelves by pressing his back against the shelving unit, lifting his feet off the ground, and using the wall as leverage. It took Claimant three pushes. Each time he pushed, he readjusted his feet higher on the wall for better leverage. According to Claimant, his back felt weird immediately. He experienced a lot of pressure and discomfort in the center of his back, but thought it was no "big deal".[1] Claimant completed the task of moving the shelves. He did not report the incident and continued performing his usual work. Two days later, Claimant had pain like he had "never" felt before, but he continued to work.[2]

According to Claimant, within two weeks of the incident, Rick Stephenson, Respondent's Vice-President of Operations, saw him walking with difficulty and asked him about it. He told Mr. Stephenson he thought he bruised a muscle or something like that while moving the shelves. Claimant testified Mr. Stephenson offered him medical treatment, which he declined. Mr. Stephenson instructed Claimant to come see him if he wanted to see a doctor and get FMLA paperwork. He told Mr. Stephenson he would see a doctor when he needed to and fill out FMLA paperwork.

According to Mr. Stephenson, the above conversation did not occur. Had Claimant informed him he injured himself moving the shelves, he would have taken immediate action and would have remembered the conversation. Mr. Stephenson testified:

> It's always possible that I don't recall, but I'm just saying that if it's work related, that sends up a red flag. And that it's similar to what I remember very well our conversation across the street. As soon as he said it was work related, I had a cow.
>
> . . .
>
> And I'd caveat it by saying, I don't believe it happened because if he would have said it was work related happened it would have sent up a red flag.
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> . . .
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> I'm not calling him a liar and maybe I don't recall and I'm not sure that he recalls the exact conversation. I'm just saying that if he would have said it was work related, it would definitely stick out, and I would remember that.[3]

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[1] P.H. Trans. at 24-25.

[2] *Id*. at 25.

[3] Stephenson Depo. at 34-36.

Claimant believed this conversation occurred around the time he sent a text message to Mark Sanders, Respondent's Senior Operations Manager, about having back pain. Claimant's phone revealed the text message occurred on April 7, 2025, causing Claimant to conclude the work accident occurred on March 28, 2025. According to Claimant, he continued performing his usual work, but was absent from time to time because of back problems and had to ask co-workers for help with lifting or moving things.

At his own expense, Claimant sought medical treatment for his back at Bridge Integrative Medicine (Bridge). The "New Patient Intake", dated May 27, 2025, showed Claimant was the responsible party, his back symptoms started on May 1, 2025 as a result of a "work project."[4] Claimant reported his pain was sharp, at level 9 and constant, which was defined as 76-100% of the day. When seen by the chiropractor at Bridge the following day, Claimant reported worsening pain with tingling/numbness into his legs, which started five weeks before while moving large steel shelving at work.

Claimant continued to treat his symptoms with Bridge through July 16, 2025. During this time, Claimant's complaints and symptoms remained essentially unchanged. He would improve slightly following treatment, but the pain level would return shortly thereafter. It should be noted Bridge medical records revealed on June 20, Claimant reported he thought he identified how he hurt his back, "Moving a heavy shelving rack put his back against it and push[ed] with his legs on the wall to move it."[5] On July 2, Claimant reported his pain became worse two days ago. It was down both legs, making it difficult to straighten from sitting or to stretch his leg out to drive. If he put his head down and opened his jaw, it increased his low back and thigh pain. At his next appointment on July 9, he reported his primary condition was 60% better. At his last appointment on July 16, Claimant reported he was somewhat improved, which was defined at 25-50% better.

Claimant's last day of work was July 18, 2025. On this date, Claimant was sent home from work by Respondent. According to Claimant, he was sent home because he was missing too much work.

On July 21, 2025, Claimant was evaluated by Robert M. McCullough at St. Luke's Health System ER. He had an MRI, was advised he had a herniated disc, was given two morphine injections, three prescriptions (oxycodone, acetaminophen and prednisone) and a referral to a neurosurgeon, Dr. Gurpreet Gandhoke. It appears a Saint Luke's Health System Workers' Compensation Form was completed. It is unknown who completed the form, but it was signed and dated by Claimant. The form reflects Claimant's supervisor with Respondent was Mark Sanders, he suffered a back injury on March 28, but no incident report had been filed and he was seeking treatment at his own expense.

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[4] P.H. Trans., Cl. Ex. 6 at 36.

[5] *Id*., Cl. Ex. 6 at 13.

On July 24, 2025, Claimant saw Gurpreet Gandhoke, M.D., a neurosurgeon at St. Luke's Neurosurgery. Claimant reported to the evaluation in a wheelchair. He reported a work-related accident "about 3 months ago" while moving large steel shelves.[6] Claimant reported he pursued conservative care through a chiropractor, which helped somewhat, but his back pain "came back with a vengeance"[7] about one week ago causing him to seek treatment at an emergency room. The ER visit was one day after he was sent home from work. Dr. Gandhoke noted an MRI revealed a large disc herniation at L4-5, causing severe compression over the central canal. Surgery was recommended. Claimant indicated he was concerned about the costs of the surgery because he would be paying it out-of-pocket and needed to investigate them before proceeding.

On July 25, 2025, Claimant saw S Kohl, FNP (family nurse practitioner), at Saint Luke's primary care. They discussed Claimant's overall situation and what he needed to do medically, going forward. Ms. Kohl instructed Claimant to see a neurosurgeon and talk with "Work Comp."[8]

At his attorney's request, Claimant was evaluated by Sonali Agarwal, M.D., on September 12, 2025. Claimant reported injuring his back and legs on April 28, 2025, while working for Respondent, moving a pallet rack. Dr. Agarwal opined the prevailing factor for Claimant's medical condition and need for treatment was the April 28, 2025, work-related injury. He recommended additional medical treatment and placed temporary work restrictions on Claimant.

Mark Sanders is Respondent's Senior Operations Manager. He oversees the operation on the production floor. Mr. Sanders originally believed Claimant moved the shelves in late April, but later changed his testimony to reflect late March 2025. He believed it was a Thursday or a Friday because it was around the time the warehouse manager was fired. Mr. Sanders acknowledged receiving the April 7, 2025, text message from Claimant, but denied it mentioned anything about a work-related injury. He denied any of the texts received from Claimant updating his treatment alleged a work-related injury to his back. Mr. Sanders testified Claimant first reported a work-related injury to him (moving the shelves) in July, 2025. He filled out the accident report. According to Mr. Sanders, it was his practice to complete an accident report on the day a work injury was reported. Mr. Sanders denied having any conversations with Claimant regarding a work-related back injury prior to July 2025. He acknowledged Claimant did not apply for FMLA prior to moving the shelves and kept him updated on his back treatment.

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[6] *Id.,* Cl. Ex. 2 at 1.

[7] *Id.,* Cl. Ex. 2 at 1.

[8] *Id.,* Cl. Ex. 8 at 1.

Richard Stephenson, whom the ALJ took to be "Rick Stevens," was in charge of all the employees (60) within Respondent's facility. Mr. Stephenson is familiar with Claimant as they worked together in this facility for approximately five years. According to Mr. Stephenson, the shelves were moved on April 3, 2025. He came to this conclusion because Respondent terminated the warehouse manager the day after the shelves were moved. The warehouse manager was terminated on April 4, 2025.

According to Mr. Stephenson, he did not know Claimant injured his back moving shelves until July 18, 2025. Respondent's facility was flooded due to heavy rain on July 17. Following a morning meeting on July 18, Mr. Stephenson went outside to check on the clean-up efforts. He approached Claimant who was standing across the street, next to a golf cart. Claimant advised Mr. Stephenson his back was "giving him fits" and it was due to moving the shelves. He noticed Claimant was in a lot of pain and directed him to get with Mark Sanders right away to fill out an incident report (which he stated are typically completed within minutes of the injury) and talk with HR about getting time off. Mr. Stephenson denied Claimant told him he hurt his back moving shelves prior to this time. According to Mr. Stephenson, Claimant has had persistent back issues for a long time.

Claimant denied any back problems, receiving medical treatment for his back or having restrictions prior to his work-related injury. He was able to perform all of his job duties prior to the work injury. Claimant also denied having any prior workers compensation claims. Respondent did not offer Claimant light-duty work and he has not worked anywhere since July 18, 2025. Claimant retained his current counsel on August 22, 2025. Claimant believed the work accident occurred towards the end of the month, a couple of days prior to the weekend, which he believed to be March 27 or 28.

Both Mr. Sanders and Mr. Stephenson testified Claimant told them he fell shoveling snow on his driveway in February 2025. According to Mr. Sanders, Claimant missed some work as a result of the fall. According to Mr. Stephenson, Claimant missed work on February 5 and 6, 2025 because of an ice storm. The following Monday, he called Claimant into the office and asked why he missed both days from work when everyone else just missed one. Claimant informed Mr. Stephenson he slipped and fell on his driveway and hurt his back.

Adam Stinott is a floor supervisor for Respondent. He denied Claimant ever told him he was injured at work. The first time Claimant discussed a work-related back injury with Mr. Stinott was in late July, 2025.

The ALJ found Claimant failed to prove by a preponderance of credible evidence he provided timely notice of the injury as required by K.S.A. 44-520. The ALJ stated:

> The claimant's case was based on the claimant's hazy memory of a conversation about two weeks after an event he is not sure when happened, and other evidence tended to refute, rather than corroborate, the timing of events the claimant remembered.[9]

Claimant argued he proved notice was given because within two weeks of the date of accident (moving shelves), he reported the work injury to Richard Stephenson. Respondent maintains the Order should be affirmed.

PRINCIPLES OF LAW AND ANALYSIS

The burden of proof shall be on the employee to establish the right to an award of compensation, based on the entire record under a "more probably true than not" standard and to prove the various conditions on which the right to compensation depends.[10] The Board possesses authority to review *de novo* all decisions, findings, orders and awards of compensation issued by administrative law judges.[11] A *de novo* hearing is a decision of the matter anew, giving no deference to findings and conclusions previously made by the administrative law judge.[12] Although the Board frequently gives some credence to an administrative law judge's credibility determination of witnesses who testify live,[13] the Board is not required to do so and may modify an award as it deems necessary.[14]

Notice of injury by accident can be given orally or in writing.[15] Notice of injury by accident is considered timely if Claimant provides notice to Respondent within thirty calendar days from the date of accident.[16] The notice requirement shall be waived if the injured worker proves the employer had actual knowledge of the injury.[17] Respondent has the duty to provide medical treatment reasonably necessary to cure or relieve an injured

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[9] ALJ Order at 3.

[10] K.S.A. 44-501b(c) and K.S.A. 44-508(h).

[11] K.S.A. 44-555c(a).

[12] See *Rivera v. Beef Products, Inc.,* No. 1,062,361, 2017 WL 2991555 (Kan. WCAB June 22, 2017).

[13] See *Parker v. Deffenbaugh Industries, Inc.,* Nos. 1,069,143, 1,069,144 and 1,069,145, 2014 WL 5798471 (Kan. WCAB Oct. 14, 2014).

[14] See *Samples v. City of Glasco,* No. 265,499, 2011 WL 2693241 (Kan. WCAB June 22, 2011).

[15] See K.S.A. 44-520.

[16] See K.S.A. 44-520(a)(1)(A).

[17] See K.S.A. 44-520(b).

worker from the effects of the injury.[18] The notice requirement allows Respondent to direct and control medical treatment.

To determine if proper notice is given, a date of accident must be established. Mr. Stephenson provided a believable explanation as to how he determined when the shelves were moved. He and Mark Sanders associated the shelves being moved with the termination of the warehouse manager. For preliminary hearing purposes, the shelves were moved on April 3, 2025, establishing the date of accident. Claimant was required to give notice within thirty days from this date.

It is undisputed, Claimant made his intentions clear he suffered a work-related injury and wanted to pursue benefits when he was directed to see Mr. Sanders and complete the necessary paperwork on July 18, 2025, clearly beyond the thirty day requirement. For Claimant to have a compensable claim, his testimony must be found credible regarding the alleged conversation he had with Mr. Stephenson within two weeks of moving the shelves. The ALJ did not find Claimant's testimony credible on this issue. This Board Member agrees with the ALJ.

Claimant had difficulty remembering dates, but he is adamant the conversation with Mr. Stephenson occurred within two weeks of moving the shelves. Mr. Stephenson did not recall a conversation within two weeks of moving the shelves and Claimant hurting his back while doing so. In July, when Mr. Stephenson learned from Claimant his back pain was caused by a work-related incident, he immediately directed Claimant to get with Mr. Sanders and fill out an incident report. It is hard to believe Mr. Stephenson would not direct Claimant to complete an incident report two weeks after moving the shelves if it occurred. In July, when Claimant and Mr. Stephenson discussed Claimant's back pain, Mr. Stephenson immediately directed Claimant to Mr. Sanders to complete the necessary paperwork required to pursue workers compensation benefits.

Claimant contends he is unsophisticated and has a poor memory. He was sophisticated enough to send text messages with pictures attached and send an email to Respondent upon request. If Claimant is unsophisticated with a poor memory, it does not relieve him from his responsibilities under K.S.A. 44-520. Claimant is required to provide notice, either orally or in writing, within thirty days. In addition to giving the specifics of an accidental injury (date, time, location, etc.), proper notice requires "It must be apparent from the content of the notice that the employee is claiming benefits under the workers compensation act or has suffered a work-related injury."[19]

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[18] See K.S.A. 44-510h(a).

[19] See K.S.A. 44-520(a)(1)(B)(4).

Claimant's actions after moving the shelves also casts doubt on whether he notified Respondent through his alleged conversation with Mr. Stephenson two weeks after. Claimant continued to work from April 3 (date provided by Mr. Stephenson for moving shelves) through May 27 without treatment. When Claimant chose to pursue treatment, he did so at his own expense (he was uninsured) from May 27 through July 18, when he was sent home. It should also be noted, Claimant testified he did not have prior back problems. Mr. Stephenson testified Claimant had ongoing back problems before the shelves were moved.

The July 18, 2025 conversation between Claimant and Mr. Stephenson was the first communication to Respondent Claimant intended to pursue benefits under the Act, or suffered a work-related injury. This time period exceeds the thirty-day notice requirement. Respondent has the duty to provide medical treatment reasonably necessary to cure or relieve an injured worker from the effects of the injury.[20] The notice requirement allows Respondent to direct and control medical treatment. Claimant's failure to request any benefits under the Act until July, 2025 left Respondent without sufficient notice of his intent to pursue benefits and denied Respondent the opportunity to direct and control the medical treatment Claimant was receiving. Respondent did not receive timely notice as required by K.S.A. 44-520.

WHEREFORE, the undersigned Board Member affirms the Order.

IT IS SO ORDERED.

Dated this _____ day of February, 2026.

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CHRIS A. CLEMENTS
BOARD MEMBER

c: (via OSCAR)
Keith L. Mark
Kevin Johnson
Hon. Kenneth Hursh

[20] See K.S.A. 44-510h(a).