

**BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD**

<b>DELILAH GODFREY</b>	)	
Claimant	)	
V.	)	
	)	
<b>MEDICALODGES, INC.</b>	)	AP-00-0493-616
Respondent	)	CS-00-0464-588
AND	)	
	)	
<b>UNITED WISCONSIN INS. CO.</b>	)	
Insurance Carrier	)	

**ORDER**

The respondent and its insurance carrier (respondent), through Matthew Schaefer, requested review of Administrative Law Judge (ALJ) Thomas Klein’s Order, dated November 24, 2025. Roger Riedmiller appeared for the claimant.

**RECORD AND STIPULATIONS**

The Board considered the same record as the ALJ, consisting of the preliminary hearing transcript, held October 20, 2025, with exhibits, documents of record filed with the Division, and the briefs of the parties.

**ISSUES**

1. Does the Board have jurisdiction to review the ALJ’s Order denying Respondent’s Motion to Dismiss?
2. Was the ALJ’s denial of the respondent’s motion to dismiss proper?

**FINDINGS OF FACT**

On March 30, 2022, the claimant filed an Application for Workers Compensation Benefits (E-1) for injuries to her hip and low back from a fall on January 6, 2022. On May 1, 2023, the claimant filed a Motion to Extend Date for Regular Hearing pursuant to K.S.A. 44-523.

On June 6, 2023, the claimant saw Pedro Murati, M.D., at her attorney’s request. The claimant reported injuries to her low back and left hip from a fall on January 6, 2022.

Dr. Murati diagnosed her with, among other things, a lumbar sprain and left trochanteric bursitis. The doctor recommended additional treatment, including at least yearly follow ups, physical therapy, injections, radiological studies, anti-inflammatory and pain medications, and need for surgical intervention. The doctor provided an impairment rating and restrictions, but did not state if the restrictions were temporary or permanent. Dr. Murati did not use the phrase “maximum medical improvement” in defining the claimant’s condition.

A prehearing settlement conference scheduled for October 18, 2023, was canceled.

On October 24, 2023, the claimant saw James Zarr, M.D., at the respondent’s request. The claimant reported falling on January 6, 2022, and striking her low back and left hip on a concrete floor. Dr. Zarr’s impressions were, among other things, a left femoral neck fracture secondary to a fall on January 6, 2022, and possible “non-healing” of the left femoral neck fracture indicated by a recent left hip CT scan. Dr. Zarr stated the claimant was not at maximum medical improvement. The doctor recommended re-evaluation by an orthopedic surgeon to determine whether further surgery or treatment is needed for the claimant’s left hip and evaluation of the claimant’s low back after she reaches maximum medical improvement for her left hip.

On December 12, 2023, the claimant filed an Application for Preliminary Hearing (E-3) seeking medical treatment.

On January 11, 2024, Dr. Zarr issued an addendum report after reviewing additional medical records. The doctor noted the additional records showed there was no fracture noted on x-rays taken after her fall on January 6, 2022, and the claimant made no complaints of left hip pain until February 28, 2022, at which time a CT scan revealed a left femoral neck fracture. Based on this information, Dr. Zarr stated, “I am now of the opinion with reasonable medical certainty that the work injury of 01/06/22 is NOT the prevailing factor causing [the claimant’s] left hip fracture.”<sup>1</sup> Dr. Zarr did not state the claimant was at maximum medical improvement.

On February 2, 2024, the claimant’s attorney, Michael Snider, filed a motion to withdraw and continued the preliminary hearing to afford the claimant an opportunity to seek other counsel. That same day, Mr. Snider sent a letter to the claimant stating, in part:

Enclosed please find our Motion to Withdraw that was filed with the Kansas Workers’ Compensation Court. Upon my withdrawal as your attorney, until you find new counsel for representation you will be responsible for complying with all statutes of limitations regarding hearing dates for your claim. Enclosed please find the Kansas Statute Annotated K.S.A. 44-523 which details statutes of limitations

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<sup>1</sup> P.H. Trans., Resp. Ex. 2.

regarding hearings in a workers compensation case. In your 01/06/2022 injury case the date to which you must have proceeded to a regular hearing is **March 30, 2025.**<sup>2</sup>

On June 5, 2024, Roger Riedmiller entered his appearance as the claimant's attorney. That same day, the case was reassigned from the Hon. Bruce Moore to the Hon. Thomas Klein.

On August 13, 2025, the respondent filed a Motion to Dismiss Pursuant to K.S.A. 44-523(f)(1). An Application for Dismissal (E-6) was not filed. On August 27, 2025, the claimant filed an Application for Preliminary Hearing (E-3) requesting benefits. The motion to dismiss was held in conjunction with the preliminary hearing on October 20, 2025. No testimony was taken, but exhibits were offered from Dr. Murati and Dr. Zarr, the claimant's deposition transcript, and letters from claimant's prior counsel regarding time limitations. The ALJ summarized the evidence, and the arguments from counsel, and ruled:

This matter comes on for Respondent's motion to dismiss for lack of prosecution as well as claimant's request for benefits. The E-1 was filed in this matter March 30, 2022. A motion to extend terminal dates was filed May 1, 2023. At the time of hearing the matter had not proceeded to Regular Hearing. Claimant was originally represented by other counsel. That counsel, upon his retirement, sent a letter to the claimant spelling out the statutory time requirements. Current counsel entered the case June 5, 2024, and filed a notice of intent on August 12, 2025 requesting benefits. Upon counsel's entry, the case was transferred from Judge Moore to this court. Respondent takes the position that claimant has not met her burden to show why the claim should remain open.

Claimant's counsel refers to the difficulty in taking over a new case and the claimant's move from Great Bend to Wichita as factors in the delay in moving the case forward. Counsel also suggests that some communication between counsel has taken place and the matter lies within the court's discretion to dismiss or not pursuant to 44-523(f)(1).

Based on the circumstances of her original counsel retiring, new counsel familiarizing himself with the intricacies of the claim, changes of the ALJ and venue, and conversations between counsel regarding a way forward, indicate that the claimant did not abandon her claim and that the delay in moving forward does not merit a dismissal under these circumstances. Respondent's motion to dismiss is denied at this stage of the proceedings.

Claimant requests ongoing treatment, or an independent medical evaluation (IME) to address treatment recommendations and causation.

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<sup>2</sup> See Motion to Withdraw (filed Feb. 2, 2024) at 4; P.H. Trans., Resp. Ex. 3.

The court requests an IME from Dr. Hufford to address a diagnosis, prevailing factor, and treatment recommendations if any for the various alleged injuries.

Parties are to prepare a joint letter containing all of the relevant medical records to assist Dr. Hufford.<sup>3</sup>

### **PRINCIPLES OF LAW AND ANALYSIS**

The respondent argues the record lacks evidence to prove good cause to extend the claimant's workers compensation claim. The respondent asserts the claimant was aware of what was happening in her claim, was instructed on how to proceed, was provided the consequences of failing to act timely, had reached MMI, and failed to schedule her motion for an extension. The claimant maintains the Order should be affirmed. The claimant asserts the complexities of multiple cases and their interrelationship, exchange of information with the claimant's former attorney, the change in a professional opinion originally favorable to the claimant, and other factors as reasons for not dismissing the claim.

#### **1. The Board lacks jurisdiction to hear the respondent's appeal.**

Not every decision by an ALJ is subject to review by the Board. The Board has authority to review preliminary hearing orders under the criteria set out in K.S.A. 44-534a. However, the order under appeal in this case is not a preliminary hearing order.

K.S.A. 44-551(l)(1) states: "All final orders, awards, modifications of awards, or preliminary awards under K.S.A. 44-534a, and amendments thereto, made by an administrative law judge shall be subject to review by the workers compensation appeals board upon written request of any interested party within 10 days."

Denials of motions to dismiss are interlocutory and are not subject to review by the Board.<sup>4</sup> The Order denying Respondent's motion to dismiss was not final, but interlocutory in nature. Had the ALJ dismissed the claim for lack of prosecution, then a final order would have resulted and the Board would have jurisdiction to review the order.<sup>5</sup>

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<sup>3</sup> ALJ Order at 1-2.

<sup>4</sup> See *Walker v. State of Kansas*, No. 1,048,030, 2013 WL 485696 (Kan. WCAB Jan. 25, 2013); *Stupasky v. Hallmark Marketing Corp.*, No. 1,031,988, 2012 WL 1142954 (Kan. WCAB Mar. 14, 2012); *Pham v. Dold Foods, Inc.*, Nos. 1,013,951 & 1,013,952, 2011 WL 6122903 (Kan. WCAB Nov. 22, 2011).

<sup>5</sup> See *Carrillo v. Sabor Latin Bar & Grille*, No. 1,045,179, 2014 WL 5798458 (Kan. WCAB Oct. 24, 2014).

When a record reveals a lack of jurisdiction, the Board’s authority extends no further than to dismiss the action.<sup>6</sup>

**2. Whether the ALJ erred in denying the respondent’s motion to dismiss is moot.**

Given the finding on the first issue, the second issue is moot.

**DECISION**

**WHEREFORE**, the respondent’s application for Board review of the Motion Hearing Order of ALJ Thomas Klein, dated November 24, 2025, is dismissed for lack of jurisdiction.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of February, 2026.

\_\_\_\_\_  
BOARD MEMBER

\_\_\_\_\_  
BOARD MEMBER

\_\_\_\_\_  
BOARD MEMBER

c: (via OSCAR)  
Roger Riedmiller  
Matthew Schaefer  
Hon. Thomas Klein

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<sup>6</sup> See *Berumen v. U.S.D.* 233, No. 1,067,401, 2014 WL 6863036 (Kan. WCAB Nov. 4, 2014).