

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

EDWIN LEA)	
Claimant)	
V.)	
)	AP-00-0493-663
FEATURE DRILLING LLC)	CS-00-0482-754
Respondent)	
AND)	
)	
TRAVELERS PROPERTY CASUALTY CO.)	
OF AMERICA)	
Insurance Carrier)	

ORDER

Respondent and Claimant appealed the December 1, 2025, Award by Administrative Law Judge (ALJ) Bruce E. Moore. The Board heard oral argument on May 21, 2025. David H. Farris appeared for Claimant. Megan Townsley and William L. Townsley, III appeared for Respondent and its insurance carrier.

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 October 4, 2024, with exhibits 2 and 3¹; the transcript of Regular Hearing, held June 18, 2025; Evidentiary Deposition of Pedro Murati, M.D., taken July 22, 2025, with exhibits attached; Evidentiary Deposition of John Babb, M.D., taken August 8, 2025, with exhibits attached, and the documents of record filed with the Division, including the parties' briefs.

ISSUES

1. What is the nature and extent of Claimant's functional impairment?
2. Future medical benefits.

¹ Claimant's Ex. 1 and Respondent Exhibit are not considered because they are not supported by testimony or a stipulation to their admissibility. See R.H. Trans. at 8.

FINDINGS OF FACT

Claimant worked for Respondent as an equipment operator since March, 2023. He operated a bulldozer to prepare a location for construction of a drilling rig. When the crew was short of help, Claimant would help out doing whatever was needed. On March 28, 2024, Claimant was on a rig, helping to set the head of a pump jack. Something slipped or the cable gave way and the cable holding the jack fell. As Claimant tried to get a hold of the cable, his arm was pulled and extended to the point where he had pain in his bicep. Claimant finished the workday and reported the incident to his supervisor, Clint Long. He told Mr. Long he tore or pulled something in his right arm.

Respondent went out of business in April 2024. Claimant continued to work, but with a different company. Since his injury, the physical condition of his right upper extremity has gotten worse. Claimant intends to work until he is unable to do so because of the pain. His pain affects his activities of daily living and the way he performs his work tasks. According to Claimant, he did not have right shoulder or biceps issues before the accident.

John R. Babb M.D., a board-certified orthopedic surgeon, was authorized to provide treatment. He evaluated Claimant on November 4, 2024. Claimant reported he was able to care for himself, but had difficulty dressing and bathing. He experienced loss of arm strength and noted his pain was on an occasional or intermittent basis. Claimant described his current pain severity as 3/10, with 4 as his worst pain. His pain was aching, annoying and burning, which increased with carrying and activity. Claimant reported he was right handed, his right arm bothered him while working, but he was able to “get by.”² Dr. Babb diagnosed Claimant with a proximal biceps and rotator cuff injury. He opined the prevailing factor for Claimant’s injury was the work injury, referred him for an MRI and asked him to return following the MRI. The medical record for this date noted the encounter was performed and signed-off by Dr. Babb.

Claimant was seen for follow-up with Dr. Babb on December 2, 2024, following the MRI performed on November 20, 2024. Like his first appointment, Claimant reported he was able to care for himself, but had difficulty dressing and bathing. He also reported his right arm continued bothering him at work, but he was able to “get by.”³ The MRI confirmed Dr. Babb’s diagnosis of biceps tendon and rotator cuff injuries. Specifically, the MRI revealed:

² Babb Depo., Ex. 3 at 15 (Nov. 4, 2024 office note).

³ *Id.*, Ex. 3 at 9 (Dec. 2, 2024 office note).

1. Complete, full-thickness tear of the supraspinatus tendon, with 2 cm tendon retraction. Adjacent moderate tendinopathy and strain of the infraspinatus tendon, with concealed interstitial delamination at the myotendinous junction.
2. Biceps pulley mechanism injury, with complete, full-thickness retracted tear of the intra-articular long head biceps tendon, and partial-thickness 2 cm humeral sided tear of the subscapularis tendon superior insertional fibers.
3. Chronic, near circumferential tear of the glenoid labrum, with paralabral cyst formation at the posteroinferior margin. Underlying mild-to-moderate glenohumeral joint arthrosis.
4. Lateral outlet stenosis and Impingement, both bony and ligamentous, with subcortical pitting and penetrating cystic erosions of the posterolateral humeral head.
5. Small glenohumeral joint effusion, with reactive capsulitis, and distension of the subscapularis recess.⁴

Dr. Babb diagnosed a tear of the right biceps tendon, full-thickness tear of the supraspinatus tendon, partial-thickness tear of the subscapularis tendon, and chronic, near circumferential tear of the glenoid labrum with moderate osteoarthritis, not work related. He recommended surgery and physical therapy (2x/week for 6 weeks for range of motion, stretching, strengthening and functional activities). Dr. Babb gave temporary restrictions of no overhead work with the right arm and no lifting greater than 20 pounds. Claimant advised he was unsure if he wanted to pursue surgery because it had been a long time since his injury and he was concerned about the length of recovery. He also wanted to discuss surgery with his wife, lawyer and work. The medical record for this date noted the encounter was performed, documented and signed-off by Mark Vail, PA-C on December 6, 2024, and signed by Dr. Babb on December 9, 2024.

Claimant was seen by Dr. Babb for the third and last time on May 14, 2025. Claimant reported only occasional pain at a 2/10 that increased with activity. He advised he continued to operate heavy equipment that bothers his right arm, but he was able to “get by” at work. Claimant reported he did not do physical therapy as recommended because it did not fit into his schedule. Surgery was recommended again, which Claimant declined. He did not want surgical intervention at this time citing his father and father-in-law had poor recoveries from similar procedures.

The risks involved if the rotator cuff was not surgically repaired was discussed with Claimant. Specifically, over time his muscle could atrophy and become non-repairable leading to a reverse total shoulder replacement. Claimant indicated he understood the

⁴ *Id.*, Ex. 3 at 10 (Dec. 2, 2024 office note).

risks. He was released at MMI without permanent restrictions. Dr. Babb testified he performed a physical examination revealing Claimant had full range of motion, but the medical note was electronically signed by Corwin Nozari, PA-C, and is unclear whether Claimant's shoulder range of motion was tested and who performed the testing. The medical note showed Claimant's examination revealed:

Right Shoulder Exam:

Palpation:

Bicipital groove: Negative

Proximal biceps: Positive

Range of Motion:

AROM

Full, to L5-SI Internally

Strength:

Abduction: 5/5

External rotation: 5/5

Forward flexion: 5-/5

Belly press test: 4/5

Special Tests:

Impingement: Negative

Hawkins: Positive

Speed's: Equivocal

Yergason's: Negative

Popeye's: Positive

Hook test: Negative

Lift off: Negative⁵

In a letter dated May 14, 2025, Dr. Babb opined Claimant had 6% functional impairment to the right shoulder based on the *AMA Guides to the Evaluation of Permanent Impairment*, 6th edition (*Guides*, 6th ed.), along with his training and experience. Dr. Babb testified he used a diagnosis-based impairment rating. He testified he does not deviate from the *Guides*, 6th ed. He uses them as a guide and then discusses how the patient is doing and his medical experience to arrive at a rating.⁶

⁵ *Id.*, Ex. 3 at 4-5 (May 14, 2025 office note).

⁶ *Id.* at 20.

Regarding Claimant's rating, Dr. Babb testified:

A His MRI suggested that the labral injury was chronic in nature, and he also had glenohumeral arthritis, and I don't feel like that was a part of the rating.⁷

...

A Well, when I saw the patient, patient had full range of motion of the shoulder, and when you use the Guides, I use a diagnosis-based impairment rating, not the range-of-motion rating. So per the Guides, you don't combine both DBI and range of motion as impairment. And the patient had full range of motion when I saw the patient.

Q And, again, this is based on your May 2025 evaluation, correct?

A That's correct.⁸

...

A Impingement syndrome is very common when you have a rotator cuff tear.

Q But you didn't include that as part of your rating, correct?

A It's part of the rating when you do Guides, when you do a diagnosis-based impairment, that's included in the impairment.⁹

Q But did you take into consideration how this injury affects his activities of daily living?

A He -- I don't believe he discussed anything that he was having issues with activities of daily living, just at work.

Q So your impairment didn't take into consideration the things he does at home or at work and how this injury affects those things --

A No --

⁷ *Id.* at 15.

⁸ *Id.* at 15.

⁹ *Id.* at 16.

Q -- did you?

A No, I did take into account that. So if the patient didn't say he was having any problems at home getting dressed in the morning or taking care of his home, he didn't -- he did not say he was having any issues at home or activities of daily living. He said to me specifically that he was -- he was able to do everything he needed to do at work without restrictions.¹⁰

Lastly, Dr. Babb testified Claimant needs the surgery he recommended and would benefit significantly from it. He recommended Claimant should keep his medical benefits open.

Claimant testified he anticipates having the surgery recommended by Dr. Babb in the future, but he needed to continue working and Dr. Babb would not give him any kind of guarantee the surgery would fix his problem. Claimant wants to work until he cannot take it anymore. He did not believe physical therapy would help with his pain and stated his pain has gotten worse since surgery was recommended. His current symptoms include difficulty sleeping, showering, constant aching in the right shoulder and pain with lifting. Claimant takes Tylenol for pain and most recently, received a cortisone injection in his shoulder from his family physician.

At his attorney's request, Claimant was evaluated by Pedro A. Murati, M.D., on January 16, 2025. Dr. Murati is a certified independent medical examiner, board-certified in pain and electrodiagnostic medicine, physical medicine and rehabilitation. He is also an adjunct clinical assistant professor. Claimant reported he is right hand dominant and has issues with wiping after defecating, brushing teeth, bathing, showering, dressing, writing, typing, housework, shopping lifting/carrying groceries, meal prep/cleanup, driving a vehicle and grasping. He is unable to fish like he did before. Claimant provided a list of his job duties with Respondent and detailed description of the physical requirements to Dr. Murati.

After performing a physical examination and review of the medical records provided, Dr. Murati diagnosed Claimant with a complete full thickness tear of the rotator cuff, a subscapular tear and a tear of the bicipital tendon. In short, "he tore everything that could be torn except for the labrum."¹¹ Dr. Murati described Claimant's shoulder "as a real mess."¹²

¹⁰ Babb Depo. at 19.

¹¹ Murati Depo. at 5-6.

¹² *Id.* at 6.

Using the *Guides*, 6th ed., as a starting point and based on competent medical evidence, Dr. Murati opined Claimant has a combined functional impairment of 18% to the right upper extremity at the shoulder level. His rating included 11% for loss of range of motion of the right shoulder (measurements taken using a goniometer), 3% for the right labrum involvement, 3% for the right bicipital involvement, and 1% for the impingement syndrome. At Claimant's request, Dr. Murati did not provide permanent work restrictions, but opined Claimant "very dearly needs them."¹³ He opined Claimant would require future medical treatment, including surgical intervention and like Dr. Babb, opined Claimant should retain his future medical benefits.

The ALJ found Claimant had 10% functional impairment to the right upper extremity at the shoulder level and awarded future medical benefits. In so doing, the ALJ eliminated Dr. Murati's ratings for loss of range of motion and the torn labrum from his 18% rating, reducing it to 4%. He then averaged Dr. Murati's rating with Dr. Babb's and added 5% for loss of range of motion. He found:

Without the loss of range of motion component, Dr. Murati's rating of 4% and Dr. Babb's rating of 6% averages to a 5% impairment of function to the right upper extremity. Since the loss of range of motion is disputed, the court will assess an additional 5% to the right upper extremity, giving equal weight to whether there may be a loss of range of motion.¹⁴

On appeal, Respondent urged the Board to adopt Dr. Babb's opinion and award Claimant 6% functional impairment to the right upper extremity at the shoulder level. In so doing, Respondent argued Dr. Babb was the treating physician and utilized a correct application of the *Guides*, 6th ed. This, coupled with his consideration of competent medical evidence, Claimant's activities of daily living, and other clinical and radiographic findings renders his opinions more credible than Dr. Murati's. Respondent also argued future medical treatment should be denied because Claimant refused to complete physical therapy or undergo surgery as recommended by Dr. Babb and his refusal was unreasonable and should be denied based upon K.A.R. 51-9-5.

On appeal, Claimant urged the Board to adopt Dr. Murati's opinion and award 18% functional impairment to the right upper extremity at the shoulder level. In so doing, Claimant argued Dr. Murati's impairment rating is more credible because it considers the recent statutory changes and case law. Claimant also maintains the award of future

¹³ *Id.* at 24.

¹⁴ ALJ Award at 7.

medical benefits 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.¹⁵ The Appeals Board possesses authority to review *de novo* all decisions, findings, orders and awards of compensation issued by administrative law judges.¹⁶ 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

1. Claimant is awarded permanent partial disability compensation of 18% functional impairment to the right upper extremity at the shoulder level.

Two physicians provided functional impairment ratings to the shoulder level, Dr. Babb (6%) and Dr. Murati (18%). Both physicians looked to the *Guides*, 6th ed., as a starting point. The ALJ awarded a 10% functional impairment. He did so by reducing Dr. Murati’s rating (deducted ratings for the loss of range of motion and the torn labrum) to 4%, averaged it with Dr. Babb’s 6% and added 5% for loss of range of motion, without explanation how he arrived at the increase of 5% for the loss of range of motion.

According to Dr. Babb, he does not deviate from the *Guides*, 6th ed., but stated he uses *the Guides*, 6th ed., as a guide and then relies on his medical experience and how the patient is doing to arrive at a functional impairment rating. Here, Dr. Babb used a strict interpretation from a diagnosis-based table (table 15-5 after a grade modifier of +3, page 403) to find 6%. No explanation was provided regarding why he settled on a strict interpretation and did not deviate from *the Guides*, 6th ed. Because his rating is diagnosis based, it only accounts for the torn rotator cuff. The MRI confirmed a torn biceps tendon, torn labrum and impingement syndrome. Dr. Babb opined the labrum tear was not work-related. He testified impingement syndrome is very common when there is a rotator cuff tear and when you use a diagnosis-based impairment from the *Guides*, 6th ed., it was included within the rotator cuff impairment. Dr. Babb did not rate range of motion because he testified claimant’s range of motion was full and the *Guides*, 6th ed., do not allow a

¹⁵See K.S.A. 44-501b(c) and K.S.A. 44-508(h).

¹⁶See K.S.A. 44-555c(a).

combination of diagnosis based and range of motion ratings.

Dr. Murati opined the torn labrum was a part of Claimant's work-injury. It is hard to believe a hyper-extension injury significant enough to cause a complete tear of the rotator cuff and a tear of the biceps tendon did not affect the labrum. Although Dr. Murati testified the injury tore everything in the shoulder, but the labrum, it does not mean Claimant did not suffer impairment to the labrum as a result of the work-injury. Dr. Murati did not diagnose or assign impairment for a torn labrum, but for the labrum involvement to the injury. According to Claimant, he was performing his job prior to his injury without shoulder issues.

Dr. Murati used a goniometer to measure Claimant's range of motion. Dr. Babb testified Claimant's range of motion was full upon last examination, but his medical records are unclear on this issue. Specifically, it is unclear what range of motion testing was performed and what body parts were tested and who performed the testing. Both physicians opined the longer Claimant waited to pursue surgery, the worse his condition would be. Dr. Murati evaluated Claimant at least eight months after Dr. Babb (assuming range of motion was tested at the May 14, 2024, appointment). Dr. Murati opined Claimant had 11% functional impairment as a result of loss of range of motion. Dr. Babb opined a strict interpretation does not allow for a combination of the diagnosed based rating and range of motion.

Dr. Murati assigned 1% impairment for impingement, Dr. Babb did not provide a rating for impingement opining under the *Guides*, 6th ed., it is included under the rotator cuff diagnosis rating. Dr. Murati testified to and his report detailed how Claimant's injury affected his activities of daily living and his ability to perform his job tasks. Dr. Babb testified Claimant did not report issues affecting his daily activities of home, but his medical records, while limited, suggest otherwise. Dr. Babb's medical records reveal Claimant reported difficulty with dressing and/or bathing on the first two appointments.

It cannot be ignored Dr. Murati was Claimant's retained evaluator, but under these facts, the inconsistencies between Dr. Babb's medical records and testimony, including whether Claimant was evaluated by Dr. Babb or a staff member, and his strict interpretation of the *Guides*, 6th ed., without explanation, renders his functional impairment rating less credible than Dr. Murati's. While Dr. Babb was authorized to provide treatment, no treatment was provided. He recommended surgery and physical therapy which Claimant declined to pursue at this time.

Authorized treating physicians are often given more credibility than an independent evaluator under the theory they develop more of a relationship with the patient because

of the time spent with them. Here, Claimant was seen by Dr. Babb or a member of his staff on three occasions over a six month time frame. The first appointment consisted of an initial evaluation resulting in the referral for an MRI. The second appointment shared the results of the MRI and provided treatment recommendations. The third appointment appears to be a final evaluation for purposes of obtaining a functional impairment rating. Under these facts, it is hard to argue Dr. Babb established a relationship with Claimant which would put him in a better position to evaluate Claimant and his condition.

In addition, the *Guides*, 6th ed., state the role of the physician in providing a functional impairment rating is to provide an independent and unbiased assessment of the injured worker's medical condition, including its effect on the individual's function and activities of daily living. "Although treating physicians may perform impairment ratings on their patients, it is recognized that these are not independent and therefore may be subject to greater scrutiny."¹⁷

Dr. Babb is certainly qualified to provide treatment and treatment recommendations, but under these facts, it does not provide him any greater expertise in establishing an impairment rating. It is difficult to reconcile his 6% functional impairment rating with the surgical intervention he recommends (including a possible total shoulder replacement), Claimant's continued deterioration until surgery is performed and the limited inquiry into how Claimant's injury has affected his ability to perform his job tasks and activities of daily living.

For these reasons, the Board finds the opinion of Dr. Murati regarding functional impairment to be more credible than those of Dr. Babb and modifies Claimant's functional impairment to 18% to the right upper extremity at the shoulder level.

2. Claimant is entitled to future medical benefits.

The employer's liability for compensation includes the duty to provide medical treatment as may be reasonably necessary to cure or to relieve the effects of the injury.¹⁸ 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 it is more probably true than not additional medical treatment will be

¹⁷ American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (6th ed.) at 23, Table 2.3b *Examiners Roles and Responsibilities*.

¹⁸ See K.S.A. 44-510h(a).

necessary after maximum medical improvement.¹⁹

The ALJ awarded Claimant future medical benefits based on the opinions of Dr. Babb and Dr. Murati. Specifically, they opined Claimant needed the shoulder surgery recommended by Dr. Babb. Both physicians opined Claimant needed to keep his medical benefits open. Respondent's argument Claimant should be denied future medical because he unreasonably refused to proceed with surgery when recommended by Dr. Babb is considered and rejected. Under K.S.A. 44-510e, Claimant provided sufficient medical evidence it is more probably true than not additional medical treatment will be necessary after he was placed at MMI. Claimant is awarded future medical benefits.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Bruce E. Moore dated December 1, 2025, is modified in part and affirmed in part. The Award is modified to reflect an award of permanent partial disability compensation based on 18% functional impairment to the right upper extremity at the shoulder level and affirmed the award of future medical benefits.

Claimant is entitled to 40.5 weeks of permanent partial disability at the rate of \$804.00 per week, or \$32,562.00, for an 18% permanent partial functional disability, which is all due and owing and ordered paid in one lump sum less any amounts previously paid.

¹⁹ See K.S.A. 44-508h(e).

IT IS SO ORDERED.

Dated this _____ day of June, 2026.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: (Via OSCAR)

David H. Farris, Attorney for Claimant
Megan Townsley, Attorney for Respondent and its Insurance Carrier
William L. Townsley, III, Attorney for Respondent and its Insurance Carrier
Hon. Bruce E. Moore, Administrative Law Judge