

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

TINA HAMMOND

Claimant

v.

CREEKSTONE FARMS PREMIUM BEEF

Respondent

AP-00-0494-050

CS-00-0469-977

and

SOMPO AMERICA INSURANCE COMPANY

Insurance Carrier

ORDER

Randy S. Stalcup (Stalcup) appeals the January 7, 2026, Order issued by Administrative Law Judge (ALJ) Gary K. Jones.

APPEARANCES

Claimant appeared *pro se*. Michaela L. Webb appeared for Respondent and Insurance Carrier (Respondent). Stalcup appeared *pro se* as Claimant's former attorney.

RECORD AND STIPULATIONS

The Appeals Board adopted the same stipulations and considered the same record as the ALJ, consisting of the transcript of Motion for Attorney Fees & Lien Hearing, held October 21, 2025, including Claimant's Exhibits 1-3 and Respondent's Exhibit B-1; Claimant's Exhibits 4 and 5 subsequently downloaded into OSCAR; and the pleadings and orders contained in the administrative file. The Board also reviewed the parties' briefs, but not the attachments.

ISSUES

1. Did the ALJ exceed his jurisdiction by issuing an order awarding attorney fees and expenses at this time?
2. If the ALJ possesses jurisdiction to award attorney fees and expenses at this time, is the award of attorney fees and expenses erroneous?

FINDINGS OF FACT

Claimant alleges she sustained personal injuries from an accident arising out of and in the course of her employment with Respondent on August 9, 2022. After filing an Application for Benefits *pro se*, Claimant hired Stalcup to represent her. Stalcup filed an entry of appearance on September 2023. According to the written fee agreement in the administrative file, Stalcup would receive 25% of the compensation he recovered for Claimant, as well as expenses.

During the course of Stalcup's representation, he performed an investigation of the claim and gathered Claimant's medical records. A preliminary hearing took place, and Stalcup obtained a preliminary award of temporary total disability compensation. The preliminary order was affirmed by the Appeals Board. Stalcup represented Claimant in the review proceedings. Stalcup also obtained a preliminary award of medical treatment.

Claimant subsequently terminated Stalcup, and an order granting Stalcup leave to withdraw was issued on August 26, 2025. Stalcup subsequently filed his Motion to Assess Attorney Fees and Lien and Amended Motion to Assess Attorney Fees and Lien. Stalcup sought approval of an attorney fee of 25% of the temporary total disability compensation awarded in the preliminary order, as well as 25% of any future temporary total disability compensation paid, under the terms of his fee agreement. Stalcup also requested Respondent pay \$1,090.48 directly to him for attorney fees related to seven temporary total disability benefit checks sent directly to Claimant.

On October 21, 2025, a hearing on Stalcup's motions took place. The history of this claim was reviewed. The parties estimated approximately \$102,100.00 was paid in temporary total disability compensation. Claimant had not reached maximum medical improvement, a final award of compensation had not been issued, and Claimant continued to receive temporary total disability compensation. Stalcup also sought a lien against an award of compensation for attorney fees and expenses. Claimant disputed awarding Stalcup attorney fees against compensation paid after he withdrew, and Respondent disputed paying \$1,090.48 directly to Stalcup because they were not aware Stalcup was asserting a lien. Respondent also argued Stalcup was not entitled to fees based on his contract, but under *quantum meruit*.

On October 23, 2025, ALJ Jones issued an Order instructing Stalcup to file a statement regarding attorney fees with the Court. The Order also stated the Court would review the statement and issue an order regarding attorney fees. The Court found Respondent denied the claim, and Stalcup's representation resulted in a preliminary award of temporary total disability compensation. Pending further order, Respondent was ordered to pay 75% of the temporary total disability compensation to Claimant and 25% of the temporary total disability to Stalcup. Stalcup was instructed to place the money he

received in his trust account, pending further order. Stalcup's request Respondent pay him \$1,090.48 was denied.

On December 11, 2025, ALJ Jones issued another Order instructing Stalcup to file an itemized bill supporting his claim for attorney fees.

Stalcup filed an Amended Statement Regarding Attorney Fees stating he has practiced workers compensation for fifty years, and workers compensation is ninety-five percent of his practice. Stalcup sought attorney fees for approximately 107.5 hours, and he requested 25% of the compensation awarded for attorney fees and reimbursement for expenses.

Stalcup also filed an itemized bill. Stalcup requested reimbursement of \$292.04 for expenses, and claimed he incurred 107.5 hours while representing Claimant. The bill did not state an hourly rate. The bill does not contain much description of the tasks Stalcup performed, and many tasks simply state, "From Claimant," "To Claimant," "Sent Text," "Text Received," and "Texts w/staff".¹ The bill does not seek payment for support staff time.

On January 7, 2026, ALJ Jones issued the Order. Stalcup was not awarded attorney fees or expenses under his contract, but he was awarded attorney fees on an hourly basis and expenses under *quantum meruit*. ALJ Jones found Stalcup's representation involved no novel issues, no other employment was precluded, no time limits were involved and Stalcup had practiced law for forty-nine to fifty years. Stalcup was awarded expenses totaling \$173.92, after denying reimbursement claims for opening or closing the file, copies or faxes. Stalcup's time incurred after his withdrawal was denied, but ALJ Jones approved 95.8 hours. ALJ Jones found an hourly rate of \$200.00 was reasonable. Stalcup was awarded \$19,333.92 for attorney fees, and he was ordered to pay to Claimant any sums he received in excess of \$19,333.92. These proceedings follow.

PRINCIPLES OF LAW AND ANALYSIS

Stalcup argues the Order is erroneous because he provided services to Claimant resulting in preliminary awards of temporary total disability compensation and medical treatment, and he should be awarded expenses and attorney fees based on 25% of the compensation awarded to Claimant under his fee agreement. In the alternative, Stalcup argues he should be awarded attorney fees in *quantum meruit* based on an hourly fee of \$250.00. Respondent did not dispute the Orders, but acknowledged a final award of compensation had not been issued. Claimant did not file a brief, and did not express a clear position regarding Stalcup's fees at oral argument. At oral argument, the parties

¹ Claimant's Ex. 5.

advised Claimant recently reached maximum medical improvement, and Respondent stopped paying temporary total disability compensation. Respondent paid temporary total disability compensation totaling approximately \$115,000.00.

The Board possesses authority to review all final orders, awards, modifications of awards, or preliminary awards.² This review authority extends to orders resolving attorney fee issues.³ The Appeals Board possesses authority to review *de novo* all decisions, findings, orders and awards of compensation issued by administrative law judges.⁴ 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.⁵

1. THE ORDER GRANTING STALCUP'S REQUEST FOR APPROVAL OF ATTORNEYS FEES AND EXPENSES WAS PREMATURE AND IS VACATED BECAUSE THE ALJ ACTED OUTSIDE OF HIS JURISDICTION.

According to the Kansas Workers Compensation Act, no claim of any attorney for services rendered in connection with the securing of compensation for an employee, whether secured by agreement, order, award or judgment in any court shall exceed a reasonable amount for such services or 25% of the amount of compensation recovered and paid, whichever is less, in addition to actual expenses incurred.⁶ All attorney fees shall be fixed pursuant to a written contract, which shall be filed with the Division.⁷ Where an attorney is discharged before completing performance of a contingent fee agreement, the attorney may recover in *quantum meruit* the reasonable value of services he or she rendered in obtaining compensation for the employee.⁸ The statute contains the factors to consider in determining a reasonable attorney fee.⁹ The Division shall review the

² See K.S.A. 44-551(l)(1) & 44-555c(a).

³ See, e.g., *Croan v. Austin's Bar & Grill*, No. 1,049,582, 2013 WL 6920076 (Kan. WCAB Dec. 20, 2013); *Ellifrits v. Chanute Healthcare Center*, No. 1,030,564, 2007 WL 1390707 (Kan. WCAB Apr. 25, 2007).

⁴ See K.S.A. 44-555c(a).

⁵ See *Rivera v. Beef Products, Inc.*, No. 1,062,361, 2017 WL 2991555, at *4 (Kan. WCAB June 22, 2017).

⁶ See K.S.A. 44-536(a).

⁷ See K.S.A. 44-536(b).

⁸ See *Madison v. Goodyear Tire and Rubber Co.*, 8 Kan. App. 2d 575, 579, 663 P.2d 663 (1983); see also *Croan*, 2013 WL 6920076, at *5.

⁹ See K.S.A. 44-536(b).

contract and fees claimed, and shall only approve the contract and fees if they comply with K.S.A. 44-536.¹⁰ Any claim for attorney fees not in excess of the limits of K.S.A. 44-536 and approved by the Division shall be enforceable as a lien on the compensation due or to become due.¹¹ The Division's approval is a condition for an attorney's lien to attach.¹²

An appellate court may make a *sua sponte* inquiry into whether it has jurisdiction over a question presented to it on appeal.¹³ The Appeals Board previously ruled the Division's approval of an attorney fee contract comes at the time the final award is issued or at the time of settlement approval. The Act does not allow for the approval of attorney fees or the payment of attorney fees pre-award, and an administrative law judge exceeds his or her jurisdiction by approving attorney fees pre-award.¹⁴

In this case, compensation was paid under preliminary orders, and a final award of compensation has not been issued. The preliminary award of temporary total disability compensation is not a final decision, and could be modified upon a full hearing.¹⁵ Because a final award of compensation has not been issued, the ALJ's approval of Stalcup's request for attorney fees was premature. The resulting Order was issued outside of the ALJ's jurisdiction. Therefore, the award of attorney fees and expenses in the Order is vacated.

2. THIS MATTER IS REMANDED FOR FURTHER PROCEEDINGS AFTER A FINAL AWARD OF COMPENSATION IS ISSUED.

On review, the Board possesses the authority to remand any matter to the administrative law judge for further proceedings.¹⁶ The administrative law judge shall address all disputes regarding attorney fees, after reasonable notice to all interested parties and attorneys.¹⁷ Where an attorney is discharged before completing performance

¹⁰ See *id.*

¹¹ See *id.*

¹² See *Barnett & Lerner v. Aetna Cas. and Surety Ins. Co.*, 8 Kan. App. 2d 270, 273, 656 P.2d 165 (1982).

¹³ See *Kansas Bldg. Industry Workers Compensation Fund v. State of Kansas*, 302 Kan. 656, 666, 359 P.3d 33 (2015).

¹⁴ See *Ellifrits*, 2007 WL 1390707, at *2.

¹⁵ See K.S.A. 44-534a(b).

¹⁶ See K.S.A. 44-551(l)(1).

¹⁷ See K.S.A. 44-536(h).

of a contingent fee agreement, the attorney may recover in *quantum meruit* the reasonable value of services he or she rendered in obtaining compensation for the employee.¹⁸ The factors to consider in determining the reasonableness of an attorney fee claim are contained in K.S.A. 44-536.¹⁹ Upon a lien's attachment, if an employer or insurance carrier does not protect the lien, they will be liable to make good on the lien.²⁰

Although the award of attorney fees and expenses in the Order is vacated, Stalcup's request for attorney fees and expenses remains pending. The Board does not address the merits of Stalcup's request for attorney fees or expenses at this time. Stalcup was discharged by Claimant before the final award of compensation was issued. Under Kansas law, Stalcup may be entitled to attorney fees and expenses under *quantum meruit* upon the issuance of a final award.

This matter is remanded to ALJ Jones with instructions to conduct a hearing on Stalcup's request for attorney fees and expenses after a final award of compensation has been issued. Pursuant to the October 23, 2025, Order, Stalcup is ordered to keep the sums paid to him by Respondent in his trust account until a proper order addressing Stalcup's request for attorney fees and expenses is issued.

DECISION

WHEREFORE, it is the finding, decision and order of the undersigned Board Members the Order issued by ALJ Gary K. Jones, dated January 7, 2026, is vacated and remanded for further proceedings consistent with this decision.

¹⁸ See *Madison*, 8 Kan. App. 2d at 579; see also *Croan*, 2013 WL 6920076, at *5.

¹⁹ See K.S.A. 44-536(b).

²⁰ See *Barnett & Lerner*, 8 Kan. App. 2d at 274.

IT IS SO ORDERED.

Dated this _____ day of June, 2026.

APPEALS BOARD MEMBER

APPEALS BOARD MEMBER

APPEALS BOARD MEMBER

c: Via OSCAR

Tina Hammond
Michaela L. Webb
Randy S. Stalcup
Hon. Gary K. Jones