

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

PATRICIA KEYSER)	
Claimant)	
V.)	
)	AP-00-0494-096
STATE OF KANSAS)	CS-00-0153-714
Respondent)	
AND)	
)	
STATE SELF INSURANCE FUND)	
Insurance Carrier)	

ORDER

Claimant requests review of the December 31, 2025, Order entered by Administrative Law Judge (ALJ) David J. Bogdan.

APPEARANCES

Duncan A. Whittier appeared for Claimant. Nathan D. Burghart appeared for Respondent and its insurance carrier (Respondent). Due to a conflict, Board Member William G. Belden has recused himself from this appeal. Accordingly, Edward D. Heath, Jr. has been appointed as a Board Member Pro Tem in this case.

RECORD AND STIPULATIONS

The Board adopted the same stipulations and considered the same record as the ALJ, consisting of the transcript of the Post-Award Hearing held January 10, 2024, with exhibits attached, the documents of record filed with the Division, and the briefs submitted by the parties.

ISSUE

Is Claimant entitled to post-award attorney fees?

FINDINGS OF FACT

Claimant sustained an injury on February 24, 2012, while working for Emporia State University. Following treatment with various providers, Claimant entered into a settlement

agreement with Respondent on January 27, 2023. The settlement and compromise provided Claimant a lump sum payment for 25 percent whole person functional impairment plus additional compensation for a claimed permanent total disability. Respondent agreed to pay the cost for removal of Claimant's spinal cord stimulator and outstanding medical bills from Newman Regional Health and Flint Health Community Center. All other issues were closed, with Claimant waiving her right to future medical and review and modification.

The outstanding bills, which had gone to collections, related to medical treatment provided to Claimant in 2014 and 2015. Respondent paid these bills on or about June 5, 2023. On July 3, 2023, Claimant was notified a Satisfaction of Judgment would not be issued until the associated court costs were paid.

Claimant filed an Application for Preliminary Hearing (E-3) and an Application for Review and Modification (E-5) with the Division on November 2, 2023. Claimant sought modification to "enforce settlement award by ordering Respondent to pay medical bills and court costs."¹ At the hearing held January 10, 2024, Claimant's attorney argued:

Judge, I filed this application for post-award hearing in order to get confirmation of the payment of bills that had gone to collection and to a judgment pre-award that respondent was ordered to pay at the January 27, 2023 settlement hearing. I was unable to get a satisfaction of judgment from the collection firm or from respondent, and respondent advised that they were not going to pay the filing fee. . . . I informed respondent's counsel that if I had to file for a hearing on the issue I would ask for attorney's fees. I did file, but subsequently, the hearing application, an E-3 and an E-5 on November 2nd. Subsequently, respondent notified me that they were going to pay the filing fee. I asked for confirmation that they were going to pay my attorney fee. Respondent's counsel asked me for a bill. I submitted an itemized bill and then I never heard anything more. And that's why this hearing was not taken off docket. I learned today that the respondent is raising a defense to the attorney fee request.²

Respondent paid the court costs on November 29, 2023. Claimant did not submit requests for penalties or attorney fees.

Respondent objected to Claimant's attorney fee request, stating the fees relate to bills incurred prior to the settlement hearing. Respondent submitted into evidence two prior

¹ E-5 (filed Nov. 2, 2023).

² P.A.H. Trans. at 3-4.

Board decisions, *Ashpole*³ and *Varner*,⁴ in support of its argument Claimant's attorney is not entitled to fees to collect pre-award medical bills.

The ALJ found Respondent satisfied the terms of the settlement agreement, with the exception of the spinal cord stimulator removal. The ALJ held:

Review of the demand as presented, the issue for payment of the outstanding medical bills was documented as part of the settlement hearing, and was considered part and parcel of the settlement terms of the initial and original claim, and which were ultimately satisfied by respondent. Based upon the case law provided, and in review of the terms of settlement closing all issues but for stimulator removal, the relief sought by claimant would not be available by preliminary hearing as the issue has been resolved, or review and modification which pertains to post settlement issues, but rather more likely through an application for penalties, which is consistent with the demand for enforcement.

After hearing the evidence and arguments of counsel, it is found that: Claimant's preliminary hearing/motion to review and modify requests are considered and denied.⁵

PRINCIPLES OF LAW AND ANALYSIS

Claimant argues this claim is factually and legally distinguishable from the cases provided by Respondent. Claimant contends the outstanding billing, which was addressed at the settlement hearing, assessed additional costs after the resolution of the claim; therefore, Claimant's attorney should be awarded a reasonable fee for post-award services.

Respondent argues post-award attorney fees are not appropriate because matters that should have been handled prior to settlement are not within the intent of K.S.A. 44-536(g). Respondent maintains Claimant's attorney had several years to bring the outstanding medical bills to preliminary hearing and chose not to do so. Further, Respondent argues Claimant should have followed proper procedure and proceeded with a penalties application.

³ *Ashpole v. Meyers Bakeries*, No. 183,242, 1995 WL 545649 (Kan. WCAB Aug. 30, 1995).

⁴ *Varner v. Tyson Fresh Meats, Inc.*, No. 1,032,357, 2009 WL 1996468 (Kan. WCAB Jun. 30, 2009).

⁵ ALJ Order (Dec. 31, 2025) at 5-6.

K.S.A. 2011 Supp. 44-510k(c) states:

The administrative law judge may award attorney fees and costs on the claimant's behalf consistent with subsection (g) of K.S.A. 44-536, and amendments thereto. As used in this subsection, "costs" include, but are not limited to, witness fees, mileage allowances, any costs associated with reproduction of documents that become a part of the hearing record, the expense of making a record of the hearing and such other charges as are by statute authorized to be taxed as costs.

K.S.A. 2011 Supp. 44-536(g) provides:

In the event any attorney renders services to an employee or the employee's dependents, subsequent to the ultimate disposition of the initial and original claim, and in connection with an application for review and modification, a hearing for additional medical benefits, an application for penalties or otherwise, such attorney shall be entitled to reasonable attorney fees for such services, in addition to attorney fees received or which the attorney is entitled to receive by contract in connection with the original claim, and such attorney fees shall be awarded by the director on the basis of the reasonable and customary charges in the locality for such services and not on a contingent fee basis.

(1) If the services rendered under this subsection by an attorney result in an additional award of disability compensation, the attorney fees shall be paid from such amounts of disability compensation.

(2) If such services involve no additional award of disability compensation, but result in an additional award of medical compensation, penalties, or other benefits, the director shall fix the proper amount of such attorney fees in accordance with this subsection and such fees shall be paid by the employer or the workers compensation fund, if the fund is liable for compensation pursuant to K.S.A. 44-567, and amendments thereto, to the extent of the liability of the fund.

(3) If the services rendered herein result in a denial of additional compensation, penalties, or other benefits, and it is determined that the attorney engaged in frivolous prosecution of the claim, the employer and insurance carrier shall not be liable for any portion of the attorney fees incurred for such services.

In *Ashpole* and *Varner*, the Board has held in the past K.S.A. 44-536(g):

. . . was intended to provide claimant attorney fees in post-award matters involving issues that arise after the disposition of the initial and original claim rather than those issues which are to be determined as a part of the initial claim. To hold otherwise would be to encourage individuals to attempt to bifurcate the determination of issues with hope that the respondent and insurance carrier would

ultimately contribute to payment of claimant's attorney fees. Such interpretation could create an administrative nightmare.⁶

K.S.A. 44-536(g) provides for post award attorney fees in connection with an application for review and modification, a hearing for additional medical benefits, an application for penalties, or otherwise. "Although K.S.A. 44-536(g) provides for payment of claimant's attorney fees in certain post-award situations, this is not one of them."⁷

This case was settled on January 27, 2023. Newman Regional Health Partners, LLC was not paid until Respondent issued a check on June 5, 2023. All the bills submitted by Claimant were incurred in 2014 and 2015 and covered by the settlement agreement. Collection of the bills is not a post-award matter. Just as in *Ashpole* and *Varner*, the issue regarding payment of the medical bill in question existed before the disposition of the underlying claim. As such, Claimant's attorney is not entitled to attorney fees.

DECISION

WHEREFORE, it is the finding, decision and order of the Board the Order of ALJ David J. Bogdan dated December 31, 2025, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of March, 2026.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

⁶ *Ashpole, supra* at 3.

⁷ *Id.* at 2.

PATRICIA KEYSER

6

AP-00-0494-096
CS-00-0153-714

c: Via OSCAR

Duncan A. Whittier, Attorney for Claimant
Nathan D. Burghart, Attorney for Respondent and its Insurance Carrier
Hon. David J. Bogdan, Administrative Law Judge