BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

PERFECTO RODRIGUEZ
Claimant

v.

RESER'S FINE FOODS, INC.
Respondent

AP-00-0494-234
CS-00-0490-145

and

ARCH INDEMNITY INS. CO.
Insurance Carrier

ORDER

Claimant appeals the January 13, 2026, Preliminary Hearing Order issued by Administrative Law Judge (ALJ) Brian Brown.

APPEARANCES

Roger D. Fincher appeared for Claimant. Jodi J. Fox appeared for Respondent and Insurance Carrier (Respondent).

RECORD AND STIPULATIONS

The Appeals Board adopted the same stipulations and considered the same record as the ALJ, consisting of the transcript of Preliminary Hearing, held September 2, 2025, including Claimant's Exhibits 1-10 and Respondent's Exhibits A-C; the transcript of Teams Evidentiary Deposition of Rosa Duran, taken September 30, 2025, including Exhibits 1-4; and the pleadings and orders contained in the administrative file. The Board also reviewed the parties' briefs.

ISSUES

1. Did Claimant prove he gave proper notice to Respondent?

2. Did Claimant prove the alleged repetitive trauma was the prevailing factor causing his alleged injuries, medical condition and resulting disability?

FINDINGS OF FACT

Claimant worked for Respondent in the Sanitation unit. Claimant cleaned machines using a water hose with a nozzle and an abrasive pad, and he was required to stand and walk during his entire shift. The working environment was warm, and it was not unusual for workers to become sweaty. Claimant's working area had "ventilators,"[1] which provided some relief from the warm temperature. Respondent furnished Claimant boots to wear while working.

Claimant is sixty-nine-years old, and he communicates in Spanish. Claimant's daughter serves as Claimant's interpreter. Claimant's medical history is notable for Type 2 diabetes. Claimant testified he was diagnosed with diabetes while he lived in Mexico, and he receives medication from Mexico to treat his diabetes. Before January 2025, Claimant last saw a physician for treatment or monitoring of his diabetes in 2021. Claimant testified he has the equipment to monitor his blood sugars, and he last checked his blood sugars three days before his initial hospitalization for his claimed work-related injuries. Claimant testified his diabetes was under control prior to this claim. Claimant denied having prior foot problems.

Claimant testified in January 2025 he began experiencing pain in both heels, bilateral foot swelling and black dots on his right foot. Claimant denied having problems with the left foot. Claimant also testified the boots Respondent provided were too small and he believed the boots caused his symptoms. Claimant also believed the boots exposed his feet to bacteria. Claimant testified the working environment caused his feet to sweat, and his socks were saturated with sweat at the end of his shift. According to Claimant, his symptoms worsened from January 2025 through February 10, 2025. The foot pain became worse and Claimant developed foot sores.

Claimant testified he told his supervisor, Mr. Turner, the boots were causing his foot problems. Claimant could not recall when the conversation took place. Claimant testified he told Mr. Turner about his problems on other occasions, but he did not state when those conversations took place. Claimant denied telling Mr. Turner his foot problems were caused by a personal health condition. Claimant also testified he later received replacement boots but they were too big.

Claimant testified his right foot became black in color. Claimant went to Stormont Vail on his own, and was seen in the emergency department on February 10, 2025. The record does not contain a chart note or report with a diagnosis or causation opinion. The record contains a note from Stormont Vail stating Claimant was seen on February 10, 2025, and was allowed to return to work on February 17, 2025, without restrictions.

[1] P.H. Transcr., Cl. Ex. 10, p.16.

Claimant testified he was told he had a bone infection, amputation of the right foot was recommended, and was rejected by Claimant. Claimant also testified he did not say his symptoms started after he wore boots at work.

Claimant did not return to work for Respondent after February 10, 2025, because his right foot problems persisted. Claimant was placed on FMLA leave and completed FMLA paperwork. Claimant was admitted to Wamego Health Center. Records of Claimant's hospitalization are not in evidence, but other records of Wamego Health Center dated February 25, 2025, state Claimant was discharged after receiving a course of intravenous antibiotics. Claimant's diabetes medication was changed. Claimant was referred to a primary care physician, as well as an infectious disease physician and wound care specialist.

Claimant returned to Wamego Health Center on March 20, 2025. Claimant was diagnosed with osteomyelitis due to Type 2 diabetes, peripheral artery disease and debility. On March 24, 2025, Claimant was instructed to continue wound care. Claimant was released to work half days for one week, and to resume full working hours effective March 31, 2025.

Claimant received treatment at Cotton O'Neil Infectious Disease from March 11, 2025, through April 17, 2025. None of the records document a repetitive trauma or foot problems caused by working conditions or the boots provided by Respondent. Claimant was prescribed antibiotics and physical therapy for right foot diabetic foot infection and right second toe osteomyelitis. Claimant was diagnosed with acute osteomyelitis of the right foot, renal insufficiency, diabetic ulcer of a toe of the right foot associated with Type 2 diabetes, and Type 2 diabetes with other skin complications. The infectious disease specialist did not address Claimant's work status, and stated the primary care physician would determine Claimant's return to work.

Claimant also received treatment at Stormont Vail Wound Care Clinic from March 26, 2025, through June 5, 2025. The initial note of March 26, 2025, states Claimant works in a position requiring him to be on his feet, but the record does not state Claimant's working conditions caused or contributed to his medical condition. Claimant was diagnosed with acute osteomyelitis of the right foot; mixed hyperlipidemia; diabetic ulcers of the right foot and toe associated with Type 2 diabetes; Type 2 diabetes with skin complications, with long-term insulin use; smoker; and renal insufficiency. Claimant received a course of wound cleaning, debridement and dressing changes. The records are notable for home health voicing concerns about hygiene and compliance with treatment. On May 1, 2025, Claimant's working conditions were reviewed, but there is no indication Claimant's condition was considered work-related. As of June 5, 2025, Claimant was still actively treating and was not released. The Wound Care Clinic did not expressly address Claimant's work status and deferred to Claimant's primary care physician.

On June 4, 2025, Claimant was evaluated by Dr. Zimmerman at the request of his attorney. Dr. Zimmerman was not provided Claimant's treatment records. Dr. Zimmerman's understanding of Claimant's injuries and treatment was provided by Claimant. Claimant reported right foot pain and ulcerated lesions at the right heel. Claimant said he cleaned machines and wore heavy boots, and developed ulcerated foot lesions bilaterally. Claimant also said he developed foot lesions due to sweating in the boots. Dr. Zimmerman noted Claimant had run out of diabetes medication, did not check blood sugars, and was last seen by his primary care physician two months ago. Two punctate wounds were seen at the right heel producing a prominent odor. No acute lesions were seen on the left lower extremity, and no cellulitis was noted on the right lower extremity. Dr. Zimmerman found evidence of poor hygiene of the feet, with caked dirt between the toes.

Dr. Zimmerman diagnosed ulcers at the right lower extremity and lesions at the left lower extremity. Dr. Zimmerman stated the injuries occurred while Claimant was wearing boots and performing work for Respondent from January 6, 2025, through February 10, 2025. Dr. Zimmerman recommended additional medical treatment, and stated the medical records from the treating health care providers should be reviewed to confirm whether osteomyelitis was present. Dr. Zimmerman stated Claimant was unable to work.

Claimant testified his right foot remains symptomatic. Claimant reported ongoing pain and two blisters at the right foot. Claimant wanted the additional medical treatment recommended by Dr. Zimmerman. Claimant is not working due to his right foot, and he believes he was fired by Respondent.

Mr. Turner testified via deposition, and he confirmed he was Claimant's supervisor. Mr. Turner also testified he worked along Claimant. Mr. Turner confirmed Claimant worked with water and the workplace was warm. Mr. Turner stated Claimant worked without problems before January 2025. Claimant did not appear for work one day, and Mr. Turner was advised by another supervisor Claimant was off work because he was dealing with issues. Mr. Turner was not told what the issues were. Mr. Turner did not recall Claimant reporting foot pain or other problems to him before Claimant was off work. Claimant returned to work at some point, and told Mr. Turner he had foot pain but it was not caused by work. Mr. Turner also denied being told by Claimant he sustained work-related foot injuries. At some time, Mr. Turner was told by someone Claimant had an infection, but Mr. Turner did not recall who told him or when the conversation occurred.

Mr. Turner also testified employees were provided boots by Respondent. Mr. Turner could not recall if Claimant reported problems with the fit of his boots, but he later testified no one complained to him about their boots. Mr. Turner testified Claimant could request a different size of boot, and Mr. Turner would have provided new boots. Mr. Turner testified Respondent maintained records of boots being provided or exchanged.

Mr. Turner also testified Respondent provided used boots, but they were inspected before given to a worker and were almost brand new.

Ms. Duran, Respondent's HR Generalist, also testified. According to Ms. Duran, on January 20, 2025, Claimant requested time off to deal with a personal health condition, and later had a discussion about going on FMLA leave for that condition. Ms. Duran testified Claimant's FMLA paperwork did not state Claimant sustained a work-related injury. Claimant returned to work for Respondent on January 27, 2025, and worked for two weeks. On February 10, 2025, Claimant resumed FMLA leave and did not indicate his condition was work-related. Ms. Duran also testified Claimant's daughter informed her on February 17, 2025, Claimant was in the hospital and would not recover for a while. In March 2025, Claimant provided work status forms, which did not indicate Claimant's condition was work-related. On March 24, 2025, Claimant told Ms. Duran he could not work due to pain medication and requested FMLA leave continue. Claimant's attendance records are part of the record and support Ms. Duran's testimony.

Ms. Duran testified on May 1, 2025, she told Claimant his FMLA leave would expire on May 5, 2025. Claimant said his wounds had not fully healed and his doctor would not allow him to return to work. According to Ms. Duran, on May 2, 2025, Claimant produced a letter from an attorney advising she was representing Claimant in connection with a work-related foot injury. Ms. Duran testified this was the first time she received notice Claimant sustained a work-related injury. Pursuant to Respondent's policy, Ms. Duran completed an accident report and handled this matter under workers compensation. Ms. Duran denied having further contact with Claimant, apart from sending Claimant a letter advising his FMLA and personal leave expired, and he would be terminated if Claimant did not contact Respondent. Ms. Duran did not hear from Claimant. Claimant was terminated by Respondent on June 30, 2025.

Claimant sought additional medical treatment, reimbursement for Dr. Zimmerman's examination under unauthorized medical, and temporary total disability compensation. A preliminary hearing took place before ALJ Brown. On January 13, 2026, ALJ Brown issued the Preliminary Hearing Order. First, ALJ Brown concluded Claimant did not provide timely notice. ALJ Brown apparently used an accident date of February 10, 2025, which was the last date of the series alleged by Claimant, found Claimant did not provide notice until May 2, 2025, and concluded notice was not timely. Second, ALJ Brown concluded Claimant did not prove the alleged repetitive trauma was the prevailing factor causing the claimed injuries because Dr. Zimmerman's report was uncontroverted, but so unscientific to be untrustworthy. There is no indication in the Preliminary Hearing Order the treatment records from Wamego Health Center, Stormont Vail or Cotton O'Neil were considered. Claimant's request for compensation was denied. These proceedings follow.

PRINCIPLES OF LAW AND ANALYSIS

Claimant argues the Preliminary Hearing Order is erroneous and should be reversed. First, Claimant argues the correct date of accident is June 4, 2025, and it is uncontested Claimant gave notice before that date. Second, Claimant argues Dr. Zimmerman is the only physician who addressed causation, and his prevailing factor opinion should control. Respondent argues the notice determination was correct, Dr. Zimmerman did not provide a scientific basis for his opinions, and the Preliminary Hearing Order should be affirmed.

It is the intent of the Legislature the Workers Compensation Act be liberally construed only for the purpose of bringing employers and employees within the provisions of the Act.[2] The provisions of the Workers Compensation Act shall be applied impartially to all parties.[3] The burden of proof shall be on the employee to establish the right to an award of compensation, and to prove the various conditions on which the right to compensation depends.[4]

The Appeals Board possesses authority to review *de novo* all decisions, findings, orders and awards of compensation issued by administrative law judges,[5] and the Board possesses the authority to grant or refuse compensation, or to increase or diminish an award of compensation.[6] 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.[7]

1. CLAIMANT DID NOT PROVE HE GAVE PROPER NOTICE TO RESPONDENT.

Notice of an injury by repetitive trauma must be given by thirty days from the date of injury, or twenty days from the last day worked if the employee is no longer working for the employer, whichever is earlier.[8] Notice must be given to a supervisor or manager

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[2] *See* K.S.A. 44-501b(a).

[3] *See id*.

[4] *See* K.S.A. 44-501b(c).

[5] *See* K.S.A. 44-555c(a).

[6] *See* K.S.A. 44-551(l)(1).

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

[8] *See* K.S.A. 2024 Supp. 44-520(a)(1).

where an individual or department is not designated.[9] The notice must be apparent the employee is seeking benefits under the Workers Compensation Act or suffered a work-related injury.[10]

To determine whether notice is timely, the date of accident or injury must be considered. Under the Act, the date of injury for a repetitive trauma claim is the earliest of (1) the date the employee is taken off work by a physician due to a repetitive-trauma diagnosis, (2) the date the employee is placed on restricted duty by a physician due to a repetitive-trauma diagnosis, (3) the date the employee, while employed by employer, is advised by a physician the condition is work-related, or (4) the last day worked if the employee no longer works for the employer.[11]

The first date Claimant was taken off work due to a diagnosed repetitive trauma while employed by Respondent is June 4, 2025, when Claimant was evaluated by Dr. Zimmerman. None of the treating health care providers diagnosed a repetitive trauma. No physician placed Claimant on modified or restricted duty due to a diagnosed repetitive trauma. The date Claimant, while employed by Respondent, was advised by a physician his condition was work-related was likely when Dr. Zimmerman's report was received, which is currently unknown. The last day Claimant actually worked for Respondent was February 10, 2025. The earliest of these dates is February 10, 2025. The legally operative date of accident or injury is February 10, 2025.

Regarding notice, thirty days from the date of accident or injury is March 12, 2025. Twenty days from the last day worked is March 2, 2025. Claimant must prove he put management on notice he either sustained a work-related injury or sought workers compensation benefits by March 2, 2025.

Claimant testified he told Mr. Turner the boots caused his foot pain and sores while working for Respondent, but Claimant could not recall the date. Mr. Turner denied receiving notice of a work-related injury from Claimant. While Mr. Turner recalled being told Claimant had an infection, he did not recall who told him or when the conversation occurred. Ms. Duran testified Respondent was first notified Claimant sustained a work-related injury when a letter of legal representation was received on May 2, 2025. Claimant did not request workers compensation benefits from management. The undersigned finds Claimant first provided notice on May 2, 2025. Because this occurred after March 2, 2025, Claimant failed to prove he gave proper notice to Respondent.

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[9] *See* K.S.A. 2024 Supp. 44-520(a)(2).

[10] *See* K.S.A. 2024 Supp. 44-520(a)(4).

[11] *See* K.S.A. 44-508(e).

2. CLAIMANT FAILED TO PROVE THE ALLEGED REPETITIVE TRAUMA WAS THE PREVAILING FACTOR CAUSING HIS ALLEGED INJURY, MEDICAL CONDITION OR RESULTING DISABILITY.

An injury by repetitive trauma shall be compensable only if employment exposes the worker to an increased risk of injury, the employment is the prevailing factor causing the repetitive trauma and the repetitive trauma is the prevailing factor in causing the medical condition.[12] The repetitive nature of the injury must be demonstrated by diagnostic or clinical tests.[13] "Prevailing factor" is defined as the primary factor compared to any other factor, based on consideration of all relevant evidence.[14]

In the Preliminary Hearing Order, ALJ Brown concluded Dr. Zimmerman's report was uncontroverted, but was unscientific and therefore should not be considered. No evidence in the record supports this conclusion. Dr. Zimmerman's report was admitted preliminarily into evidence without objection. Dr. Zimmerman was not cross-examined. Pursuant to the Board's *de novo* review authority, the undersigned reviews all the relevant evidence in the record to determine whether Claimant met his burden of proof.

Claimant thought his condition was caused by work activities, but his testimony regarding his medical history and condition are contradicted by the medical evidence, and Claimant is not qualified to render a medical opinion. Dr. Zimmerman did not review the extensive treatment records in evidence, and relies solely on Claimant for his prevailing factor opinion. This omission undermines the credibility of Dr. Zimmerman's opinions.

The treating health care providers, however, provided contrary causation opinions. According to Wamego Health Center, Claimant's osteomyelitis was caused by his diabetes. According to Cotton O'Neil Infectious Disease and Stormont Vail Wound Care Clinic, Claimant's foot infection and ulcers were caused by his diabetes. There is no evidence in the records of Wamego Health Center, Cotton O'Neil or Stormont Vail Claimant's condition was caused by work activities or reported by Claimant as work-related. Claimant saw Wamego Health Center, Cotton O'Neil and Stormont Vail on his own on multiple occasions for treatment, rather than for litigation.

The undersigned finds the records of the treating health care providers, particularly the specialists from Cotton O'Neil and Stormont Vail, more credible than the opinions of

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[12] *See* K.S.A. 44-508(f)(2).

[13] *See* K.S.A. 44-508(e).

[14] *See* K.S.A. 44-508(d), (g).

Dr. Zimmerman. Claimant failed to prove the alleged repetitive trauma was the prevailing factor causing his alleged injuries, medical condition or resulting disability.

In conclusion, the denial of compensation in the Preliminary Hearing Order is affirmed, but for different reasons. Claimant failed to prove he gave proper notice to Respondent. Claimant also failed to prove the alleged repetitive trauma was the prevailing factor causing his alleged injury, medical condition or resulting disability. Claimant's request for compensation is denied at this time.

DECISION

WHEREFORE, it is the finding, decision and order of the undersigned Board Member the Order issued by ALJ Brian Brown, dated January 13, 2026, is affirmed, but for different reasons.

IT IS SO ORDERED.

Dated this _____ day of March, 2026.

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WILLIAM G. BELDEN
APPEALS BOARD MEMBER

c: Via OSCAR

Roger D. Fincher
Jodi J. Fox
Hon. Brian Brown