BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

SCOTT J. BURTON	)	
Claimant	)	
V.	)	AP-00-0494-769
	)	CS-00-0493-533
CITY OF OLATHE, KANSAS	)	
Self-Insured Respondent	)	

ORDER

The respondent and its insurance carrier (respondent), through Frederick J. Greenbaum, requested review of Administrative Law Judge (ALJ) Troy A. Larson's preliminary hearing Order dated February 17, 2026. John H. Thompson appeared for the claimant.

RECORD AND STIPULATIONS

The Board adopted the same stipulations and considered the same record as the ALJ, consisting of the preliminary hearing transcript, held February 10, 2026, with exhibits; deposition transcripts of Thomas L. Faulkender and Wyatt C. Prothe, taken January 30, 2026; documents of record filed with the Division; and the parties' briefs.

ISSUE

Did the claimant sustain personal injury by accident arising out his employment?[1]

FINDINGS OF FACT

The claimant works for the respondent as a Street Light Specialist II. He is responsible for maintaining streetlights and all infrastructures, including underground wires. He reviews plans for new streetlight installs, inspects new streetlight installs and investigates damaged infrastructure, such as damaged streetlight poles or underground wires.

A couple of weeks prior to November 5, 2025, the claimant noticed a missing light fixture on a streetlight at 112th Street and Ridgeview in Olathe. It was late in the afternoon and he was alone, so he reported it to his supervisor, Tommy Faulkender, and a coworker, Garrett Belcher. At the time, he observed a construction crew working with heavy equipment in the area. On November 5, 2025, the claimant and a coworker, Wyatt Prothe, returned to the site intending to put in a new light. The streetlight was located inside a fence erected to separate a construction site from the road. Upon arrival, the claimant

[1] The respondent agrees the claimant's injury occurred "in the course of" his employment. Respondent's Brief at 8.

found the light pole was bent and gouged, and would need to be replaced, requiring him to file a police report and attempt to find out who damaged the pole. When asked if this was a normal process he followed, the claimant testified:

> A. . . . In a case where there's damage to any of our infrastructure, street lights in this case, the pole, if it's, like, an active construction zone like that where there are workers in the area and we know that it was damaged because of that, it would be standard operating procedure to try to find out who was responsible for the damage.
>
> Q. And when you said you would make a police report, was that also part of the standard operating procedure?
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> A. Yes. We do a police report for any damaged pole for insurance purposes and to go through Charlesworth, which the City of Olathe, I guess, has hired in order to get the money back from the insurance companies.
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> Q. So, in a situation like that, ultimately getting the responsible party, or identifying the responsible party, is an important piece of your job, correct?
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> A. Yes. Street light poles are so expensive that if we had to pay for replacing every single street light that was damaged in the city out of our own budget, we would have very little money left over to do anything else at the city.[2]

The claimant suspected a concrete company that poured the sidewalk next to the streetlight damaged the pole. The claimant confronted Raymond Bedell, the driver of the concrete truck. Mr. Bedell was verbally abusive towards the claimant and the claimant responded with similar language. Obscene gestures were exchanged. At some point, Mr. Bedell exited his vehicle and approached the claimant, poking his finger into the claimant's forehead. The claimant pushed back and they began "grappling".[3] During the altercation, the claimant dislocated his right shoulder, a shoulder he dislocated three times in the past, the last time in 2006 with no intervening treatment until the current incident. The claimant was taken to Olathe Medical Center Emergency Room where he was treated and released.

On November 12, 2025, the claimant saw Michael Azzam, M.D., at the respondent's request. The doctor diagnosed the claimant with a right shoulder dislocation. Dr. Azzam recommended an MR arthrogram of the shoulder to evaluate the labrum and rotator cuff, and physical therapy for rotator cuff and scapular stabilizer strengthening. The doctor imposed temporary work restrictions of no lifting over 10 pounds with the right arm and no

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[2] P.H. Trans. at 13-14; see also pp. 7-8.

[3] *Id*. at 24.

overhead work. This appears to be the only treatment the claimant received. The respondent denied compensability.

Thomas Faulkender works for the respondent as the Street Light Maintenance Supervisor and is the claimant's immediate supervisor. He is aware of the claimant's incident on November 5, 2025. When asked what he tells employees about how to investigate this type of incident, Mr. Faulkender testified:

> A. Well, first get a police report. And if there's anybody around, we have a piece of paper. We tell them to ask around if you see somebody working there. Like, if it's obvious, like, this guy right here is working right next to it, it's pretty obvious who did it. But if - - if you know exactly who it is, then you just give them a piece of paper. And it basically just says 'Hey, you damaged our stuff. You have X amount of days to fix it. And if not, we'll just charge it to you.'
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> Q. Okay. Is the - - what happens if, you know, you have a - - a person that you're supervising that - - that - - what do you tell them to do when they go to a jobsite and it's not - - not readily available that - - that someone is sitting there working right next to the damaged pole? Okay? So, in [a] situation like this, where there clearly has been damage to a pole, but no one was in the process of working immediately next to it.
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> A. Well, if there's nobody around, you just make the police report. We'll just try to find it later on or the police can find out or Charlesworth can find out. But, I mean, if - - if you don't know who it is, then - - I mean, we're not told to just go find somebody.
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> Q. Okay. So in this situation there was concrete work done near the pole?
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> A. Yeah. Which sounds like they - - if there's a concrete company there - - I mean, normally if somebody is there, then, yeah, we'll ask around.
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> Q. Okay. And when they're asking around, how much - - what is the - - what do you instruct your direct reports to do - - or the people you're supervising about getting information from a contractor or someone else that's at a jobsite?
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> A. Just ask if they did it, pretty much. I mean, we're not - - I mean, I'm not telling people to go out there and do anything, like, dangerous or anything. But, I mean, basically, all we do is just say, 'Hey, you were working here. Did you do this?' And if - - if they say no, I mean, what are we going to do at that point?[4]

[4] Faulkender Depo. at 10-11.

Mr. Faulkender agreed it is better for the respondent's budget to find out which contractor damaged a light pole so the respondent does not incur the cost. He admitted all of his employees, including the claimant, investigate damage done to light poles occurring on jobsites as part of their job ("it's not uncommon for us to go ask around if somebody knows anything."[5]). Mr. Faulkender acknowledged the respondent's "Street Light Knockdown Operating Procedure"[6] does not state an investigation should be performed to determine who is responsible for a damaged light pole, but agreed a police report requires some basic information about who is responsible. He agreed employees are encouraged to conduct an investigation, stating: "If there's somebody there and it's obvious, like, who hit it, then, yeah, ask."[7] Mr. Faulkender never disciplined the claimant for investigating the cause of damage to a light pole until this incident. The claimant received a written warning for unprofessional behavior during the incident, including using language escalating the confrontation rather than diffusing the conflict.

Wyatt Prothe works for the respondent as a Street Light Specialist 1. On November 5, 2025, Mr. Prothe accompanied the claimant to inspect the street lights around a new development in Olathe. After discovering a damaged light pole, they began asking contractors at the jobsite if they knew who had damaged the pole. When asked why they go to all that trouble, Mr. Prothe testified:

> A. Well, it's near the end of the year. Our budgets have been, you know, cut; and it's really up to us to see how we can pay for these poles. It's near the end of the year; we don't have money that's just been given to us; so it's - - it's kind of a staple part of the job to get the people that actually did the damage to pay for the damage they did.
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> Q. So that's something that - - that you've been instructed - - where you can, find out if - - who the person or entity is that caused the damage so that it can be allocated back to them?
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> A. Right.[8]

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[5] *Id.* at 7; see also p. 19 ("we would ask around"), p. 23 ("all my guys" investigate damage done to light poles . . . "on a regular basis"), p. 28 (agreeing he instructed employees to investigate damage to light poles), p. 32 (employees asking people about the cause of light pole damage is "pretty commonplace"), and p. 49.

[6] *Id*., Resp. Ex. A.

[7] *Id*. at 28.

[8] Prothe Depo. at 14; see also pp. 11, 14-16.

Mr. Prothe testified they encounter an element of hostility from contractors "[e]very time" they conduct an investigation.[9] Mr. Faulkender agreed with this information. Mr. Prothe corroborated the claimant's testimony of what occurred during the incident and agreed Mr. Bedell was the "aggressor".[10] Mr. Prothe testified "[the claimant] tried to separate the distance between the two of them - - because he was just getting way to aggressive - - after he separated the distance, that's when the dude came back and tried to grab onto [the claimant]."[11]

Mr. Bedell is being prosecuted by the City of Olathe for assault or battery (or both) in connection with this incident.

The claimant continues to work for the respondent. The claimant has right shoulder weakness and experiences popping in his right shoulder on a fairly regular basis. He has pain in the front of his shoulder and if he overuses it, he experiences throbbing in his bicep.

The ALJ stated:

> The basic facts of this claim are uncontroverted. Claimant testified he sustained injury to his right shoulder while working for Respondent on November 5, 2025. On that date, Claimant was working with a co-worker, Wyatt Prothe, investigating damage to a City of Olathe streetlight near a construction site. Claimant suspected the concrete company that had poured the sidewalk next to the streetlight had caused the damage.
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> After a concrete truck had pulled into the construction site, Claimant confronted the driver to inquire whether his company had damaged the streetlight. The driver was verbally abusive towards Claimant, and Claimant responded with similarly abrasive language. The driver escalated the situation when he pushed his finger at Claimant's forehead. Claimant responded by pushing the driver away, but then both individuals began grappling one another. During this altercation, Claimant injured his right shoulder.
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> Based on the uncontroverted evidence as laid out above, the Court finds Respondent has failed to meet its burden of proof on the defense of arising out of and in the course of employment. Claimant was performing his ordinary job duties when he investigated the damage to the streetlight and which party may have been responsible for damaging it. While the Court acknowledges that Claimant's language when confronting the concrete truck driver may have not been entirely

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[9] *Id*. at 12; see also p. 22.

[10] *Id*. at 20.

[11] *Id.* at 24.

> appropriate given Claimant's employment as a representative for a public entity, such language alone cannot remove Claimant from the scope of his employment. Furthermore, it is uncontroverted that the concrete truck driver initiated physical contact with Claimant, which led to the physical altercation causing Claimant's right shoulder injury. Had Claimant initiated the physical contact, Respondent's defense may have succeeded, but those are not the facts presented to the Court.
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> The Court holds that Claimant's actions did not remove him from the scope of his employment because he was furthering the interests of his employer when he was physically assaulted by a third party. Respondent is ordered to provide authorized medical treatment for Claimant's right shoulder through Dr. Michael Azzam.[12]

PRINCIPLES OF LAW AND ANALYSIS

The respondent argues the claimant's actions took him outside the scope of his employment, and his injury did not arise out of his employment. The claimant maintains the Order should be affirmed.

An employer is liable to pay compensation, including medical treatment following an award, to an employee incurring personal injury by accident arising out of and in the course of employment.[13] The burden of proof is on the claimant.[14]

Board review of an order is de novo on the record.[15] A de novo hearing is a decision of the matter anew, giving no deference to findings and conclusions previously made by the judge.[16] On de novo review, the Board makes its own factual findings.[17]

K.S.A. 44-501(a)(1) states, in part:

> Compensation for an injury shall be disallowed if such injury to the employee results from:
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> . . .

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[12] ALJ Order at 3.

[13] See K.S.A. 44-501b(b).

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

[15] See *Helms v. Pendergast*, 21 Kan. App. 2d 303, 899 P.2d 501 (1995).

[16] See *In re Tax Appeal of Colorado Interstate Gas Co.*, 270 Kan. 303, 14 P.3d 1099 (2000).

[17] See *Berberich v. U.S.D. 609 S.E. Ks. Reg'l Educ. Ctr.*, No. 97,463, 2007 WL 3341766 (Kansas Court of Appeals unpublished opinion filed Nov. 9, 2007).

(E) the employee's voluntary participation in fighting or horseplay with a co-employee for any reason, work related or otherwise.

"The Kansas Supreme Court has been particularly vigilant in applying the plain-meaning rule to workers compensation statutes."[18]

K.S.A. 44-508 states, in part:

(d) "Accident" means an undesigned, sudden and unexpected traumatic event, usually of an afflictive or unfortunate nature and often, but not necessarily, accompanied by a manifestation of force. An accident shall be identifiable by time and place of occurrence, produce at the time symptoms of an injury, and occur during a single work shift. The accident must be the prevailing factor in causing the injury. "Accident" shall in no case be construed to include repetitive trauma in any form.

. . .

(f)(1) "Personal injury" and "injury" mean any lesion or change in the physical structure of the body, causing damage or harm thereto. . . .

(2) An injury is compensable only if it arises out of and in the course of employment. An injury is not compensable because work was a triggering or precipitating factor. An injury is not compensable solely because it aggravates, accelerates or exacerbates a preexisting condition or renders a preexisting condition symptomatic.

. . .

(B) An injury by accident shall be deemed to arise out of employment only if:

(i) There is a causal connection between the conditions under which the work is required to be performed and the resulting accident; and

(ii) the accident is the prevailing factor causing the injury, medical condition, and resulting disability or impairment.

(3)(A) The words "arising out of and in the course of employment" as used in the workers compensation act shall not be construed to include:

(i) Injury which occurred as a result of the natural aging process or by the normal activities of day-to-day living;

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[18] *Pierson v. City of Topeka*, No. 113,247, 2016 WL 687726, at *4 (Kansas Court of Appeals unpublished opinion filed Feb. 19, 2016); see *Hoesli v. Triplett, Inc.*, 303 Kan. 358, 362, 361 P.3d 504 (2015).

> (ii) accident or injury which arose out of a neutral risk with no particular employment or personal character;
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> (iii) accident or injury which arose out of a risk personal to the worker; or
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> (iv) accident or injury which arose either directly or indirectly from idiopathic causes.

The claimant was not involved in fighting with a coworker, so K.S.A. 44-501(a)(1)(E) does not apply.

The respondent argues case law supports a denial, citing *Covert*: "Under the Workmen's Compensation Act . . . , an employee cannot recover for injuries intentionally inflicted upon him by a third person in no way connected with the employment and entirely outside the employer's authority, unless there is some circumstance that, by reason of his employment, makes the employee peculiarly and especially subject to assault."[19] Contrary to the respondent's argument, the injury inflicted upon the claimant by a third person was connected with the claimant's employment. Exploring the cause of damage to the light pole, including interacting with the person who potentially damaged the light pole, was part of the claimant's job. There is no argument concerning the prevailing factor requirement. The preclusions against "arising out of" employment contemplated by K.S.A. 44-508(f)(3)(A)(i-iv) are inapplicable.

The respondent argues the claimant substantially deviated from his employment by engaging in a fight with a member of the public. An injury occurring during a substantial deviation from employment is not compensable:

> A deviation from the employer's work generally consists of a personal or nonbusiness-related activity. The longer the deviation exists in time or the greater it varies from the normal business route or in purpose from the normal business objectives, the more likely that the deviation will be characterized as major. In the case of a major deviation from the business purpose, most courts will bar compensation recovery on the theory that the deviation is so substantial that the employee must be deemed to have abandoned any business purpose and consequently cannot recover for injuries received, even though he or she has ceased the deviation and is returning to the business route or purpose.[20]

In *Kindel*, a supervisor and a worker were traveling from a job site back to Salina. They went to a "striptease" bar less than one-fourth of a mile off their route. Over the

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[19] *Covert v. John Morrell & Co.*, 138 Kan. 592, Syl. ¶ 1, 27 P.2d 553 (1933).

[20] *Kindel v. Ferco Rental, Inc.*, 258 Kan. 272, 284, 899 P.2d 1058 (1995).

course of four hours, the men became inebriated. Upon resuming the trip, the worker was killed when the supervisor wrecked the company vehicle. The worker's death was compensable: he was in a company-provided vehicle driven by a supervisor on the expected route home, all of which was contemplated by the employer.

In this case, there was no deviation from employment either in terms of physical distance or purpose. It cannot be said the claimant abandoned any business purpose or substantially deviated when the accident occurred. He was doing exactly what he had been instructed to do: investigate the cause of the damaged light pole. At worst, the claimant's vulgar responses to the aggressor and him not simply walking away from the situation were the result of poor decisions, but such behavior does not result in a lack of compensability.

The ALJ's well-written decision is based on the facts and the law. The decision is affirmed.

WHEREFORE, the undersigned Board member affirms the preliminary hearing Order.

IT IS SO ORDERED.

Dated this _____ day of April, 2026.

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JOHN F. CARPINELLI
BOARD MEMBER

c: (via OSCAR)
John H. Thompson
Frederick J. Greenbaum
Hon. Troy A. Larson