

**BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD**

<b>JOAQUIN LIRA</b>	)	
Claimant	)	
V.	)	
	)	AP-00-0494-875
<b>HI LO INDUSTRIES, INC.</b>	)	CS-00-0482-762
Respondent	)	
AND	)	
	)	
<b>FEDERATED MUTUAL INS. CO.</b>	)	
Insurance Carrier	)	

**ORDER**

Claimant appealed the February 23, 2026, preliminary hearing Order entered by Administrative Law Judge (ALJ) Brian Brown.

**APPEARANCES**

William L. Phalen appeared for Claimant. Dallas Rakestraw and Pamela Parker appeared for Respondent and its insurance carrier.

**RECORD AND STIPULATIONS**

The Board adopted the same stipulations and considered the same record as did the ALJ, consisting of the transcript of Preliminary Hearing from September 3, 2025; with exhibits attached; Preliminary Hearing by Deposition of Joaquin Lira, taken February 3, 2026, the documents of record filed with the Division and the parties' briefs.

**ISSUE**

Did Claimant meet his burden of proving he sustained injury by repetitive trauma arising out of and in the course of employment, including whether work activities were the prevailing factor in causing the alleged injury?

**FINDINGS OF FACT**

Claimant is 71 years old and began working for Respondent beginning May 10, 2021. Claimant's job duties include feeding raw wood into a machine for cutting wood into various sizes for cabinets to be built. A single board could weigh 20 pounds. The finished

boards are carried to a steel cart. He also picks up board scraps from the floor and throws them in barrels requiring constant bending at the waist to pick up around 25 pounds. The barrels themselves weigh around 50 pounds and when full around 900 to 1,200 pounds. When these barrels are full Claimant has to push them to an area located about a quarter of a mile away.

In September 2023, Claimant began noticing pain in his back and hips while pushing the carts. Claimant denies any back or hip problems before working for Respondent. Claimant reported this pain to his supervisor, Lucky Reagan. Claimant testified he was told not to say anything or he could be fired. Claimant continued to work and his symptoms continued to get worse. Claimant then reported his injury Human Resources (HR). HR took no action regarding Claimant's report of injury. Claimant continued to work and his symptoms continued to get worse. Claimant then reported his injury to the safety department and again nothing was done for him.

Claimant finally sought medical treatment on his own at Ashley Clinic beginning September 26, 2023. Claimant complained of bilateral hip and low back pain. He testified the clinic advised him to file for family medical leave (FMLA). The FMLA was granted. Claimant used FMLA approximately 4 times a month because of his back and hip pain.

Claimant filed a workers compensation claim on May 1, 2024, alleging an injury by repetitive trauma from May 10, 2022, to April 16, 2024. After he filed his claim, Respondent modified Claimant's work duties. Claimant was no longer required to push the heavy barrels.

Claimant continues to be employed with Respondent.

There are no Ashley Clinic notes in the record, but these notes were reviewed by the doctors Claimant saw. According to Claimant, he sought treatment with Ashley Clinic until May 16, 2024. According to the doctor's reports admitted into evidence Claimant had X-rays of the both hips which showed osteoarthritis in both hips. Claimant was prescribed non-steroidal medication.

Dr. Pedro A. Murati evaluated Claimant on July 10, 2024, at the request of his attorney. Claimant's chief complaints were bilateral hip pain radiating down both legs, numbness to both feet, only being able to stand for 30 minutes at a time and low back pain. Claimant reported he began having pain in his hips in May 2023.

Dr. Murati noted he evaluated Claimant on two prior occasions in 2016 and 2017 for a left knee injury.

Claimant reported his job requires strenuous, repetitive movements of twisting, bending, and turning as he lifts wood off a conveyer belt. The wood is then sorted and placed on carts weighing 900-1,200 pounds, which are transported long distances to other departments. There was also repetitive squatting and crawling while cleaning sawdust from under the conveyer belt machine.

Dr. Murati examined Claimant and diagnosed lumbar radiculopathy, bilateral SI joint dysfunction, right hip sprain, right trochanteric bursitis and right iliotibial band sprain. Dr. Murati opined the diagnoses are within all reasonable medical probability, a direct result from the work-related injury that occurred on April 16, 2024, during Claimant's employment with Hi-Lo Industries.

Dr. Murati recommended the following treatment. For the lumbar radiculopathy, he recommended an MRI of the lumbar spine to rule out any disc pathology and a bilateral lower extremity NCS/EMG to include the lumbosacral paraspinals, to document any radiculopathy. He recommended physical therapy, anti-inflammatory medication, and a series of lumbar epidural steroid injections. If the series of 3 epidurals are not helpful, he recommended 2 medial branch blocks. If these are successful, he recommended radio frequency ablations to be repeated every 6 months for the extent of his lifetime. For the SI joint dysfunction and the trochanteric bursitis, he recommended cortisone injections to decrease inflammation and appropriate physical therapy with instruction on use of the SI belt and/or gait training and anti-inflammatory medications and pain medication as needed. As a last resort, with respect to the SI joint dysfunction, he recommended SI joint fusion. For trochanteric bursitis, he recommended cortisone injections to decrease inflammation, appropriate physical therapy with instruction on use of the SI belt and/or gait training and anti-inflammatory medications and pain medication as needed. For the bilateral iliotibial band sprain (he had right in his diagnosis), he recommended physical therapy, anti-inflammatory medication and cortisone injections.

Dr. Murati opined on Claimant's date of injury Claimant sustained enough permanent structural change in the anatomy of his low back and hips it caused pain necessitating treatment. Therefore, under all reasonable medical certainty and probability, the prevailing factor in the development of Claimant's conditions is the accident and multiple repetitive traumas at work. He opined Claimant's employment has exposed him to an increased risk that he would not have had if unemployed.

Dr. Scott A. Wingerter evaluated Claimant on October 21, 2024, at Respondent's request. Claimant presented with bilateral hip pain. Claimant attributed his pain to his work for Respondent pushing large lumber carts. Dr. Wingerter ordered x-rays of the hips showing mild joint space narrowing and osteophyte formation. There was evidence of decreased head neck offset and cystic changes at the femoral neck consistent with femoral acetabular impingement. There was no evidence of fracture or dislocation. Dr. Wingerter

diagnosed bilateral hip myofascial pain. He found there was no inciting event, and he would not consider this a workplace injury. Dr. Wingerter did not consider the work accident to be the prevailing factor for the diagnosis. He opined if treatment were deemed to be necessary, physical therapy would be recommended. He did not believe surgical intervention was indicated.

Dr. Vito J. Carabetta evaluated Claimant on May 6, 2025, at the request of the Court. Claimant presented with bilateral posterior hip girdle area pain. Claimant described the pain as constant deep and aching on both sides, marginally worse on the right side than the left. Claimant reported walking for 15 minutes was the primary aggravating factor. Claimant also had midline deep aching pain in the lower back. This pain was unimproved and was worsening over time. This symptom was constant, but Claimant could not name any aggravating or alleviating factors.

Claimant believed his complaints started probably in September 2023. This was noted as ongoing issues for several years. Claimant denies reporting in September 2023 that he had "right hip pain, chronic pain, past hip injuries from years ago."

Dr. Carabetta examined Claimant and diagnosed bilateral hip joint osteoarthritis and low back pain. He opined the prevailing factor for bilateral hip joint osteoarthritis could not be Claimant's employment with Respondent because osteoarthritis in the hips requires decades to form and Claimant's relatively short employment with Respondent would not be the source. He opined the hip joint osteoarthritis on either side is clearly not related to work, but Claimant's low back pain complaints may be. They may also stem from constant straining with the work activities Claimant described. The bilateral hip joint osteoarthritis must be clinically addressed before the back complaints could be verified as being work related.

The ALJ found Claimant failed to establish he sustained work-related bilateral hips and low back injuries by a preponderance of the credible evidence. Dr. Carabetta credibly opined Claimant's arthritic bilateral hip condition was not work-related and work was not the prevailing factor for Claimant's low back pain.

#### **PRINCIPLES OF LAW AND ANALYSIS**

Claimant argues the ALJ erred in finding the incident occurring at Hi-Lo Industries was not the prevailing factor in causing the Claimant's injuries and need for medical treatment. The Claimant points out the Respondent presented no lay testimony at the Preliminary Hearing and The Board should accept the testimony of the Claimant and the opinions of Dr. Murati and order medical care to the Claimant's hips and back and for such further relief as the Board deems just and equitable.

Respondent argues the Board should affirm the ALJ. Respondent argues there is no evidence of a causal connection between his physical complaints and his work-related activities, and Claimant has failed to carry his burden to prove his employment is the prevailing factor causing his injuries. Respondent contends the evidence clearly shows Claimant's bilateral hip condition is a preexisting degenerative condition and not related to the conditions or character of his employment. Further, until the hip condition is resolved, any causal connection of Claimant's low back complaints to his work-related activities are purely speculative.

K.S.A. 44-508(h) states:

"Burden of proof" means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record unless a higher burden of proof is specifically required by this act.

K.S.A. 44-508(f) states:

(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.

(A) An injury by repetitive trauma shall be deemed to arise out of employment only if:

(i) The employment exposed the worker to an increased risk or hazard which the worker would not have been exposed in normal non-employment life;

(ii) the increased risk or hazard to which the employment exposed the worker is the prevailing factor in causing the repetitive trauma; and

(iii) the repetitive trauma is the prevailing factor in causing both the medical condition and resulting disability or impairment.

(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.

K.S.A. 44-508(g) states:

(g) "Prevailing" as it relates to the term "factor" means the primary factor, in relation to any other factor. In determining what constitutes the "prevailing factor" in a given case, the administrative law judge shall consider all relevant evidence submitted by the parties.

Claimant is alleging his repetitive work duties resulted in injuries to his hips and low back caused by his work duties with Respondent.

X-rays taken shortly after Claimant reported his accident showed osteoarthritis in his hips with no evidence of fracture or dislocation.

Dr. Wingerter opined Claimant has bilateral hip myofascial pain and it was not work-related. Dr. Carabetta, the Court's evaluator, opined the osteoarthritis in Claimant's hips took a long time to develop and predates his employment with Respondent.

Dr. Murati diagnosed Claimant with several conditions of the lower extremities and lumbar radiculopathy. Dr. Murati also believed there is enough permanent structure change to the Claimant's anatomy in his low back and hips due to repetitive trauma, due to his work with Respondent Claimant has a new and compensable injury. Dr. Murati's opinion is not persuasive. There is no credible medical evidence showing Claimant sustained a new injury to his hips and back as well as the other conditions Dr. Murati diagnosed.

The Board finds Dr. Carabetta and Dr. Wingerter's opinions more credible. Based on Dr. Carabetta's and Dr. Wingerter's opinions, the Board is persuaded Claimant did not sustain a new and compensable injury as a result of his work with Respondent. Claimant has a preexisting osteoarthritic condition in his hips which was aggravated by his work with Respondent.

Dr. Carabetta speculated Claimant's low back complaints could be caused by his work with Respondent. However, the connection of low back complaints to Claimant's work with Respondent could not be determined until Claimant's hip complaints were addressed medically.

For these reasons, it is found and concluded Claimant's injuries did not arise out of and in the course of employment. There is no evidence of new injury as result of his work with Respondent. The credible medical evidence shows a preexisting condition aggravated by Claimant's work. There is no medical evidence connecting Claimant's low back complaints to his work with Respondent. Claimant's request for benefits is denied.

**DECISION**

**WHEREFORE**, it is the finding, decision and order of the undersigned Board Member that the Order of ALJ Brian Brown dated February 23, 2026, is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of May, 2026.

---

REBECCA SANDERS  
BOARD MEMBER

c: Via OSCAR

William L. Phalen, Attorney for Claimant  
Dallas Rakestraw, Attorney for Respondent and its Insurance Carrier  
Pamela Parker, Attorney for Respondent and its Insurance Carrier  
Hon. Brian Brown, Administrative Law Judge