

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

ANGELA BASCUE)	
Claimant)	
V.)	
)	AP-00-0494-897
GOODWILL INDUSTRIES OF KANSAS, INC.)	CS-00-0492-677
Respondent)	
AND)	
)	
ACCIDENT FUND GENERAL INS. CO.)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier (Respondent) request review of the February 13, 2026, preliminary hearing Order entered by Administrative Law Judge (ALJ) Thomas Klein.

APPEARANCES

Charles W. Hess appeared for Claimant. Matthew J. Schaefer appeared for Respondent.

RECORD AND STIPULATIONS

The Board adopted the same stipulations and considered the same record as the ALJ, consisting of the transcript of the Preliminary Hearing held January 6, 2026, with exhibits attached, the documents of record filed with the Division, and the briefs filed by the parties.

ISSUES

1. What is the prevailing factor causing Claimant's headaches?
2. Did the ALJ exceed his jurisdiction by ordering medical treatment with Dr. Eva Henry?

FINDINGS OF FACT

On August 22, 2024, Claimant was struck in the forehead by heavy fixtures while working for Respondent's Newton location. Following the accident, Claimant received conservative treatment for concussion, and later, post-concussive headaches. She was eventually referred to board-certified neurologist Dr. Eva Henry for authorized treatment of post-concussive syndrome, migraines, and increased headaches. Dr. Henry initially provided Claimant with natural supplements, testing, and prescription medication. When Claimant failed to experience long-term lessening of her symptoms, Dr. Henry recommended Botox injections for the neck and temples.

Claimant acknowledged an approximate ten-year history of headaches prior to the work incident. Claimant testified she saw her primary care physician, Dr. Mitzi Bales, for her headaches. While Dr. Bales recommended various prescription medications at times, Claimant preferred over-the-counter options because she "[doesn't] believe in taking a lot of medications if it's not necessary."¹ Claimant explained her symptoms prior to the accident occurred every three to four days and were not severe enough to warrant prescriptions.

Claimant reported syncope and lightheadedness when she presented to Neurology Consultants of Kansas in July 2019, as well as tension headache disorder. Claimant was evaluated at Endocrine Center of Kansas, LLC, beginning in December 2023, for reasons unrelated to this claim. Records indicate she reported that her job was "very stressful" and she often had headaches.² She reported fainting, dizziness, blurred vision, body ache, and lightheadedness. In December 2024, Claimant reported dizziness and headaches "due to concussion sustained at work."³

Claimant testified the frequency and intensity of her headache symptoms increased following the accident, and she now suffers migraines. Claimant explained migraines occur approximately twice per month, last for one to three days, and include symptoms of intense pain, blurred vision, and light sensitivity. Claimant has missed work due to migraine symptoms. She testified:

Q. Okay. And then so how do you differentiate between a, quote, headache and a, quote, migraine?

¹ P.H. Trans. at 15.

² P.H. Trans., Resp. Ex. B at 1.

³ *Id.* at 11.

A. Well, the headaches are intense, but migraines are almost debilitating. They're very severe. Again, like I said, a lot of light sensitivity, and I really just have to go to sleep to get rid of them.

...

Q. Do you have any of those symptoms when you have a, quote, headache?

A. No. I don't rest when I have a regular headache. I typically take medicine and go about my day, as I need to.⁴

Todd Caze II, Ph.D., a sports neuropsychologist with Caze Concussion Institute, evaluated Claimant at Respondent's request and generated a report dated September 18, 2025. Dr. Caze performed an examination and conducted a records review, noting a history of headaches and degenerative changes in Claimant's left temporomandibular joint (TMJ). Dr. Caze concluded:

[Claimant] is the VP of Operations for GoodWill, she is historically a high achiever and it is easy to assume everything she reports should be taken at face value. However, [Claimant] does endorse a significant level of stress which impacts her sleep and exacerbates her headaches. She also has the tendency to be hypervigilant towards physical and cognitive sensations and therefore over-reports symptoms as a result.

[Claimant's] current symptoms reported are not consistent with concussion. They are more consistent with her pre-injury history. Her current symptoms are often exacerbated by stress and quality of sleep.⁵

Dr. Caze determined Claimant had reached maximum medical improvement related to her concussion and recommended no work restrictions. He recommended targeted physical therapy for possible TMJ, noting the records lacked specific therapies addressing any possible contributions of TMJ to Claimant's ongoing headaches.

Dr. Henry reviewed Dr. Caze's report. In a letter dated December 28, 2025, Dr. Henry opined Claimant sustained a concussion as a direct result of the August 22, 2024, accident. Dr. Henry stated Claimant continues to suffer from concussion symptoms, including migraine headaches, and recommended Botox injections every 12 weeks as treatment. Regarding the report from Dr. Caze, Dr. Henry provided:

⁴ P.H. Trans. at 18.

⁵ *Id.*, Resp. Ex. A at 3.

A PhD psychologist is not qualified to treat medical issues arise [*sic*] from a complex condition such as chronic post concussive syndrome, including managements for post traumatic migraine headaches.⁶

The ALJ ordered Respondent to provide the treatment recommended by Dr. Henry as authorized. The ALJ explained:

Claimant testified that she has had headaches for about 10 years. Prior to the accident her physician recommended that she use over the counter medications for that condition. [Claimant] testified that her headaches became more intense post accident.⁷

PRINCIPLES OF LAW AND ANALYSIS

Respondent argues the prevailing factor causing Claimant's need for treatment is her preexisting condition and not the accident of August 22, 2024. Respondent does not dispute the occurrence of an accident on August 22, 2024. Respondent requests the ALJ's Order be reversed.

Claimant maintains the ALJ's Order is well-supported by the evidence and should be affirmed in its entirety. Claimant argues Respondent raises no grounds warranting reversal or modification of the preliminary Order.

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.⁸ The provisions of the Workers Compensation Act shall be applied impartially to all parties.⁹

1. What is the prevailing factor causing Claimant's headaches?

K.S.A. 44-501b(c) states:

The burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends. In determining whether the claimant has satisfied this burden of proof, the trier of fact shall consider the whole record.

⁶ P.H. Trans., Cl. Ex. 2 at 1.

⁷ ALJ Order (Feb. 13, 2026) at 1.

⁸ See K.S.A. 44-501b(a).

⁹ See *id.*

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)(2) states, in part:

(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:

"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.

In support of its argument, Respondent presented medical evidence from three sources. A report from Neurology Consultants of Kansas in July 2019 addressed syncope, lightheadedness, and tension headache disorder. Presumably, the report addresses a preexisting condition in defense of Claimant's claim for migraine headaches.

Claimant was evaluated at Endocrine Center of Kansas, LLC, beginning in December 2023, with complaints of fainting, dizziness, blurred vision, body ache, and lightheadedness. The evaluation took place prior to Claimant's accident and did not address post-concussive syndrome.

Dr. Caze noted a history of headaches and degenerative changes in Claimant's left temporomandibular joint. Dr. Caze opined Claimant's current symptoms are not consistent with concussion and more consistent with a pre-injury history, exacerbated by stress and quality of sleep. Dr. Caze is a psychologist, not a medical doctor.

The only post-injury report from a medical doctor was provided by Dr. Henry. Dr. Henry believes Claimant sustained a concussion as a direct result of the August 22, 2024, accident. Dr. Henry, a neurologist, wrote a PhD psychologist is not qualified to treat medical issues arising from a complex condition such as chronic post-concussive syndrome.

The undersigned gives greater weight to the opinions of Dr. Henry because she is a board-certified neurologist and has been treating Claimant. Based upon the evidence submitted by the parties, the primary factor causing Claimant's chronic post-concussive syndrome is the accident she suffered on August 22, 2024.

2. Did the ALJ exceed his jurisdiction by ordering medical treatment with Dr. Henry?

This is an appeal from a preliminary hearing order. Not every alleged error is subject to review. The Board can review preliminary hearing orders in which an ALJ has exceeded his or her jurisdiction.¹⁰ Moreover, the Board has specific authority to review the preliminary hearing issues listed in K.S.A. 2024 Supp. 44-534a, which are:

1. Whether the employee suffered an accident, repetitive trauma or resulting injury,
2. Whether the injury arose out of and in the course of the employee's employment,
3. Whether notice is given, or
4. Whether certain defenses apply, shall be considered jurisdictional, and subject to review by the Board.

The term "certain defenses" refers to defenses that dispute the compensability of the injury under the Act.¹¹

The issue of Claimant's entitlement to medical treatment is a question of law and fact over which an ALJ has the jurisdiction to determine at a preliminary hearing, not one of the jurisdictional issues listed in K.S.A. 2024 Supp. 44-534a and not subject to review from a preliminary hearing order.

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.¹²

The ALJ did not exceed his jurisdiction by ordering medical treatment with Dr. Henry. The issue concerning medical treatment is not an issue reviewable by the Board pursuant to K.S.A. 44-534a and not reviewable at this stage of the proceeding.

¹⁰ K.S.A. 2024 Supp. 44-551(l)(2)(A).

¹¹ *Carpenter v. National Filter Service*, 26 Kan. App. 2d 672, 994 P.2d 641 (1999).

¹² *Allen v. Craig*, 1 Kan. App. 2d 301, 303-304, 564 P.2d 552, rev. denied 221 Kan. 757 (1977).

DECISION

WHEREFORE, it is the finding, decision and order of the undersigned Board Member the Order of ALJ Thomas Klein dated February 13, 2026, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of April, 2026.

SETH G. VALERIUS
BOARD MEMBER

c: Via OSCAR

Charles W. Hess, Attorney for Claimant
Matthew J. Schaefer, Attorney for Respondent and its Insurance Carrier
Hon. Thomas Klein, Administrative Law Judge