

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

JACOB SCHRAG)
Pro Se Claimant)
V.)
EXCEL INDUSTRIES INC) AP-00-0494-954
Respondent) CS-00-0491-714
AND)
HARTFORD ACCIDENT AND)
INDEMNITY COMPANY)
Insurance Carrier)

ORDER

Claimant, pro se, appealed the February 26, 2026, preliminary hearing Order entered by Administrative Law Judge (ALJ) Thomas Klein. Bruce Wendel 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 Preliminary Hearing, held January 27, 2026, with exhibits attached; and the documents of record filed with the Division, including the parties' briefs.

ISSUES

1. Did Claimant fail to timely file an application for hearing (Form E-1) pursuant to K.S.A. 44-534?
2. Is Claimant entitled to compensation for a psychological injury and temporary total disability benefits?

FINDINGS OF FACT

On February 25, 2016, Claimant was working in Respondent's facility when a gunman entered the building. The gunman killed three people and injured 14 before being killed by law enforcement. According to Claimant, he had a bullet hole in his shirt, but was not "specifically hit by gun fire[.]"¹ Following the incident, Paul Mullet, one of Respondent's

¹ P.H. Trans. at 12.

owners, stated their first priority was their employees, “taking care of them financially, emotionally and mentally.”²

Claimant continued working for Respondent. On May 11, 2016, Claimant’s supervisor conducted a three month performance review and recommended Claimant for a pay increase, stating: “Jacob is [awesome] he is cross-[trained] on the roller, learned how to run the folding table efficiently and can understand our schedules. Jacob has a great attitude.”³

According to Respondent, Claimant voluntarily quit on or about May 31, 2016, for personal reasons.⁴ Claimant denied quitting and felt he was terminated for attendance issues. In June 2016, Claimant filed for unemployment which was denied. In late 2021, Stanley Black & Decker, Inc., acquired Excel Industries.

At some point, Claimant began receiving therapy. On January 7, 2022, Melynda Norton Hudson of Innerstrength Counseling, LLC, issued a letter confirming she diagnosed Claimant, under the Diagnostic and Statistical Manual of Mental Disorders-Fifth Edition, with agoraphobia with panic disorder, generalized anxiety disorder, bereavement-related adjustment disorder, persistent depressive disorder, and post-traumatic stress disorder, chronic. Claimant was approved for an emotional support animal.

On May 16, 2023, Keven Drummond Eiber, Senior Litigation Counsel for Stanley Black & Decker, Inc., responded to Claimant’s communications to the company. In the letter, Mr. Eiber stated the company declined to offer any monetary or other compensation for Claimant’s losses.

On October 16, 2024, Kansas Statewide Homeless Coalition issued a letter confirming Claimant was included in their Homeless Management Information System (HMIS) during the years 2021-2022.

On January 16, 2025, the Crime Victims Compensation Board (CVCB) issued a letter approving therapy for Claimant from November 1, 2024 to January 31, 2026. CVCB noted 80% of the therapy is directly related to the workplace shooting.⁵ Claimant began treating with Nicole Madden, LMSW, on November 5, 2024. In an undated “Diagnosis and treatment plan,” Ms. Madden stated:

² *Id.*, Cl. Ex. 11 at 1.

³ *Id.*, Resp. Ex. 2 at 20.

⁴ Documents contained in Respondent’s personnel file reflect both May 30 and May 31, 2016.

⁵ See P.H. Trans., Cl. Ex. 6.

Patient has a HX of depression, Anxiety, PTSD, and Agoraphobia. A few years ago he was a witness to a work place shooting where he experienced a near death experience. Since then he struggles to be in public places and keeps his doors locked. The Patient reports in the past 6 years he has lost his wife, dad, grandpa, and son, been robbed, homeless, and lost his job. Due to the impact of his trauma he struggles to find employment, his PTSD and Agoraphobia affects his everyday life. He is at high risk for homelessness.⁶

On March 6, 2025, Claimant was issued a check in the amount of \$25,000 by the CVCB for lost wages from June 1, 2024 through January 17, 2025.

On August 20, 2025, Claimant filed an Application for Benefits (E-1) alleging injuries from the shooting incident at Respondent's facility on February 25, 2016. Claimant claims severe post traumatic stress disorder, agoraphobia, and adjustment disorder from the incident. On August 25, 2025, Claimant sent written notice to Respondent demanding benefits under the Act. Respondent filed a Report of Injury with the Kansas Division of Workers Compensation on or about August 25, 2025.

According to the Kansas Division of Workers Compensation, Claimant reported two accidental injuries to his employers for work accidents occurring on March 31, 2015 and August 11, 2015. Respondent did not provide any benefits to Claimant for the February 25, 2016 incident.

In denying Claimant's request for benefits, the ALJ stated:

Claimant simply can't meet the timely claim standard. He argues for equitable tolling, but this court finds that it does not apply in this case. The case cited by claimant appears to be AI generated. It appears that claimant continued to work for the respondent for a few months after the shooting and filed for unemployment following his separation from employment in June of 2016. This application is relevant to show that claimant was not incapacitated, uninformed or otherwise prevented from timely asserting his rights. Claimant's argument for Promissory Estoppel likewise fail. Public statements after the shooting do not constitute a promise to the claimant to forever waive their written claim defenses.

Claimant's request for benefits is denied for failing to establish that his case arose out of and in the course of his employment under the [*Gleason*] standard, and failure to make a timely claim pursuant to K.S.A. 44-534.⁷

⁶ *Id.*, Cl. Ex 3.

⁷ ALJ Order at 2.

PRINCIPLES OF LAW AND ANALYSIS

Claimant argues Respondent failing to file an accident report as required by K.S.A. 44-557(a), equitable tolling and promissory estoppel as justification for extending his time limits. Claimant also argues his psychological injuries satisfy the statutory requirement of a “lesion or change in the physical structure of the body” under K.S.A. 44-508(f)(1). Respondent maintains the Order should be affirmed.

K.S.A. 44-534 requires an injured worker to file an application for hearing in the office of the director within three (3) years from the date of accident or within two (2) years of the date from the last date of payment of compensation, whichever is later. Three years from February 26, 2016 is February 26, 2019. Claimant filed his application for hearing alleging a date of accident occurring on February 25, 2016 on August 20, 2025, well past the three year time requirement set forth in K.S.A. 44-534. Respondent did not provide any compensation regarding the February 26 incident. The two year time limitation does not apply. Claimant did not timely file an application for hearing pursuant to K.S.A. 44-534.

Claimant’s arguments he is not bound by the time limitations under K.S.A. 44-534 because Respondent did not file an accident report, equitable tolling and promissory estoppel are considered and rejected.

K.S.A. 44-557(a) requires an employer to file an accident report with the director for any accident, claimed or alleged, within twenty-eight (28) days of receiving notice of the accident. Failure to file an accident report after receiving notice pursuant to K.S.A. 44-520 stays any time limitations set forth in the Kansas Workers Compensation Act (Act).⁸ Claimant did not allege an injury by accident for the February 25, 2016 incident until August 20, 2025. Respondent timely filed a Report of Injury on August 25, 2025. Claimant’s argument he did not have to file an application for hearing within the 3 or 2 year time frame because Respondent failed to file an accident report is rejected.

Claimant next argued he is excused from the time limitations set forth in the Act because of equitable tolling and promissory estoppel. Simply put, equitable tolling allows a court to pause or extend a statute of limitations deadline, under extraordinary circumstances and due to no fault of the party seeking the remedy. Neither the ALJ, Respondent’s counsel or this Board Member were able to verify the case cited by Claimant for support of his position. Claimant filed two work injuries prior to the February 25 incident, both in 2015. He clearly knew and understood his duty to report an accidental injury and how to do so.

⁸ K.S.A. 44-557(c).

After the alleged date of accident, Claimant filed for unemployment benefits when his employment ended with Respondent. This demonstrates his ability to function within an administrative procedural environment. It is difficult to reconcile Claimant's ability to file a request for unemployment with his argument he was incapacitated or unable to function sufficiently to file a request for benefits under the Act. Claimant's argument equitable tolling relieved him from his responsibility to timely file an application for hearing is rejected.

Claimant's reliance on promissory estoppel is also rejected. Promissory estoppel is a contract law doctrine that stops a person from going back on a promise even if a legal contract does not exist. There was not a contract made between the parties or promise made by Respondent to Claimant he would be compensated or taken care of because of the February 25 incident.

K.S.A. 44-501b(c) places the burden of proof on Claimant to establish his right to an award of benefits. Claimant has not provided sufficient facts or case law to support his arguments he should be relieved from the duty to file a timely application for hearing pursuant to K.S.A. 44-534. The ALJ's order denying benefits is affirmed. All other issues raised by Claimant are rendered moot because he did not timely file an application for hearing.

WHEREFORE, it is the finding, decision and order of the undersigned Board Member the Order of ALJ Thomas Klein, dated February 26, 2026, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of April, 2026.

CHRIS A. CLEMENTS
BOARD MEMBER

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