

**BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD**

**AIDA CASTILLO GUTIERREZ**  
Claimant

AP-00-0495-813  
CS-00-0493-342

v.

**UNIFIED SCHOOL DISTRICT #233**  
Self-Insured Respondent

AP-00-0495-814  
CS-00-0493-336

**ORDER**

Self-Insured Respondent (Respondent) appeals the April 14, 2026, Order issued by Administrative Law Judge (ALJ) Kenneth J. Hursh.

**APPEARANCES**

Zachary A. Kolich appeared for Claimant. Katie M. Clifford appeared for Respondent.

**RECORD AND STIPULATIONS**

The Appeals Board adopted the same stipulations and considered the same record as the ALJ, consisting of the Transcript of Proceedings, held April 1, 2026, including Claimant's Exhibits 1-6 and Respondent's Exhibits A-C; the transcript of Evidentiary Deposition of Aida Castillo-Gutierrez, taken April 6, 2026, including Claimant's Exhibit 7; and the pleadings and orders contained in the administrative files. The Board also reviewed the parties' briefs.

**ISSUE**

Did Claimant prove she sustained personal injuries by accident or accidents arising out of and in the course of her employment with Respondent, including prevailing factor?

**FINDINGS OF FACT**

Claimant works for Respondent as a cook. On November 17, 2022, Claimant was performing her usual work, tripped over a rug and landed on her right side. Claimant felt an immediate onset of pain on her right side, primarily around her ribs. Claimant denied injuring her right shoulder. Claimant reported the accident to Respondent and completed an accident report. According to the report, Claimant stated she fell and hurt her rib area and chest, causing pain to those areas and her arms and legs. Respondent authorized medical treatment.

Claimant initially treated at Concentra on November 17, 2022. Claimant reported injuries to her anterior ribs after tripping and falling, with pain and pressure over the right chest wall. Treatment and testing focused on the ribs. There is no record Claimant's shoulder was evaluated or tested.

Claimant also received treatment at Conservative Care Occupational Health from November 18, 2022, through January 6, 2023. Claimant initially reported pain on her right side around her chest running to the right scapula. Claimant did not report pain or injuries involving the shoulder joint. Claimant was diagnosed with chondrocostal junction syndrome, and contusion of the right front wall of the thorax. Claimant received conservative treatment focused on her ribs, and was placed on restrictions. During this time, Claimant consistently reported rib pain and right scapular pain, but no symptoms involving the shoulder joint.

On January 18, 2023, Claimant saw Dr. Azzam, an orthopedist, for treatment. Claimant reported ongoing rib pain. Dr. Azzam ordered a CT scan, which was interpreted as showing mildly displaced fractures of the right 5-7 ribs, and Claimant was diagnosed with fractures of the right 5-7 ribs. Dr. Azzam thought the fractures had healed, and Claimant's pain would improve with time and activity. Dr. Azzam declared Claimant at maximum medical improvement, and thought Claimant could work full-duty.

On May 17, 2023, Claimant returned to Conservative Care Occupational Health, and reported her rib pain was worse. Claimant was referred to a physical medicine specialist, and temporary restrictions were imposed.

Claimant saw Dr. Khadavi, a physical medicine specialist, for additional treatment from June 20, 2023, through November 9, 2023. Claimant initially reported rib pain, and an inability to lift her right arm because of pain in the right lateral flank. Dr. Khadavi diagnosed right 5-7 rib fractures, which he thought were the source of Claimant's pain. Due to ongoing symptoms, Claimant underwent a chest CT scan on August 1, 2023, which was interpreted as showing healed rib fractures with no acute injury. Claimant saw Dr. Khadavi for rib pain on August 10, 2023, and November 9, 2023. Claimant did not appear for a return appointment on November 29, 2023.

Claimant continued working for Respondent while she received treatment for her ribs. Claimant denied having persistent right arm or shoulder symptoms. Claimant testified her symptoms improved.

On April 4, 2025, Claimant tripped and fell at work again. Claimant landed on her right side, and felt pain in the right shoulder and ankle. Claimant reported the accident to Respondent, and medical treatment was authorized. Claimant testified she felt pain in different parts of her body following this accident, compared to the November 17, 2022, accident.

Claimant initially treated at Conservative Care Occupational Health from April 4, 2025, through May 12, 2025. On April 4, Claimant reported right shoulder, right elbow, right knee and right rib pain with bruising. Examination was notable for shoulder pain with full range of motion, and a right knee contusion with full range of motion. Claimant was diagnosed with a right shoulder sprain, right elbow contusion, right wrist sprain, right ankle sprain, right knee contusion and right front wall thorax contusion. Claimant was placed on light duty, and received conservative treatment. Physical therapy was ordered later. Claimant was released to work full-duty on May 5, 2025.

Due to ongoing symptoms, Claimant underwent an MRI scan of the right shoulder on May 8, 2025. The study was interpreted as showing mild degenerative changes at the AC joint, complete disruption of the supraspinatus tendon, and partial tearing of the infraspinatus tendon. On May 12, 2025, Claimant was referred to an orthopedic specialist.

Claimant saw Dr. Chernoff, an orthopedist treating shoulders, and Dr. Halloran, an orthopedist specializing in lower extremities, starting May 19, 2025. Following a MRI scan of the right ankle, Dr. Halloran diagnosed a split longitudinal tear of the distal posterior tibial tendon, and treated Claimant conservatively. Dr. Chernoff noted Claimant did not report right shoulder pain before April 4, 2025, reviewed the MRI scan, and thought Claimant's right shoulder pain was likely an acute exacerbation of a chronic rotator cuff tear. Dr. Chernoff provided conservative treatment for the right shoulder.

At her attorney's request, Claimant was evaluated by Dr. Parmar, an orthopedic specialist, on February 3, 2026. Claimant's daughter was present to interpret. Dr. Parmar understood Claimant initially was involved in an accident producing rib fractures and right shoulder pain, which took a long time to heal. Dr. Parmar also noted on April 4, 2025, Claimant was involved in a second accident causing injuries to the right elbow and arm, and an MRI scan revealed a rotator cuff tear. Examination was notable for tenderness at the right AC joint, limited active range of motion, positive impingement signs, and weakness.

Dr. Parmar thought Claimant initially injured her right shoulder in November 2022, and caused changes in the MRI scan Dr. Parmar characterized as chronic. Dr. Parmar

stated Claimant's right shoulder would have displayed an abnormality if the shoulder had been examined while treating for the rib injuries in 2022. Dr. Parmar also thought Claimant sustained acute changes in the structure of the right shoulder on account of the April 4, 2025, accident. Dr. Parmar recommended right shoulder surgery. Dr. Parmar charged \$1,400.00 for his evaluation.

Dr. Chernoff was provided a copy of Dr. Parmar's report, and Dr. Chernoff authored a report dated February 25, 2026. Dr. Chernoff disagreed with Dr. Parmar's causation opinion. Dr. Chernoff stated no imaging of the shoulder was performed when Claimant treated after the first accident, and the treatment records contained few mentions of shoulder pain. Dr. Chernoff also noted Claimant did not report prior right shoulder problems when he treated Claimant. Dr. Chernoff could not state Claimant had prior right shoulder problems.

Claimant continues to work for Respondent and continues to have right shoulder pain. Claimant wants the additional treatment, including surgery, recommended by Dr. Chernoff. A preliminary hearing took place on April 1, 2026, and the record was left open to take Claimant's deposition.

On April 14, 2026, ALJ Hursh issued the preliminary Order. ALJ Hursh noted the parties did not dispute the incidents of November 17, 2022, and April 4, 2025, occurred. ALJ Hursh found Claimant's condition after the first accident resolved. Claimant's shoulder complaints were isolated. After the second accident, Claimant's right shoulder symptoms were more pronounced. ALJ Hursh found the opinions of Dr. Chernoff better fit the facts than the opinions of Dr. Parmar. ALJ Hursh found Dr. Parmar's opinion of what an examination of the right shoulder would have revealed in 2022 to be speculative. ALJ Hursh concluded Claimant sustained a compensable right shoulder injury on account of the second accident, and awarded medical treatment and reimbursement under the unauthorized medical allowance. These proceedings follow.

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

Respondent argues the Order is erroneous because Claimant did not prove either accident was the prevailing factor causing the alleged shoulder injury. Respondent maintains Dr. Parmar and Dr. Chernoff both thought Claimant sustained a mere aggravation from the second accident, Dr. Chernoff did not believe Claimant sustained a shoulder injury from the first accident, and Dr. Parmar's opinion Claimant sustained a shoulder injury from the first accident was based on speculation. Claimant argues the

decision was correctly decided, Dr. Parmar identified a change in structure of the shoulder from the second accident, and the 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.<sup>1</sup> The provisions of the Workers Compensation Act shall be applied impartially to all parties.<sup>2</sup> 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.<sup>3</sup>

To be compensable, an accident must be identifiable by time and place of occurrence, produce at the time symptoms of an injury and occur during a single work shift.<sup>4</sup> The accident must be the prevailing factor in causing the injury, and “prevailing factor” is defined as the primary factor compared to any other factor, based on consideration of all relevant evidence.<sup>5</sup> An injury means any lesion or change in the physical structure of the body, causing damage or harm thereto.<sup>6</sup> An accidental injury is not compensable if work is a triggering factor or if the injury solely aggravates, accelerates or exacerbates a preexisting condition or renders a preexisting condition symptomatic.<sup>7</sup>

It is undisputed the events of November 17, 2022, and April 4, 2025, occurred. It is also undisputed Claimant has a rotator cuff tear at the right shoulder and requires additional medical treatment. The issue is whether Claimant proved either accident was the prevailing factor causing the right shoulder injury. Resolution of the issue requires review of all relevant evidence, including the medical evidence in the record.

Claimant’s testimony and the treatment records of Concentra, Conservative Care Occupational Health, Dr. Azzam and Dr. Khadavi establish Claimant injured her right 5-7

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<sup>1</sup> See K.S.A. 44-501b(a).

<sup>2</sup> See *id.*

<sup>3</sup> See K.S.A. 44-501b(c).

<sup>4</sup> See K.S.A. 44-508(d).

<sup>5</sup> See K.S.A. 44-508(d), (g).

<sup>6</sup> See K.S.A. 44-508(f)(1).

<sup>7</sup> See K.S.A. 44-508(f)(2).

ribs on account of the fall of November 17, 2022. Claimant reported some right scapular pain referring from the rib injuries. Claimant did not report pain within the right shoulder joint after the November 17, 2022, accident. Claimant did not display other clinical signs of a rotator cuff tear after the first accident. Based on Claimant's presentation, an examination of the right shoulder apparently was not performed, and comments of what a hypothetical examination would have revealed are speculation.

Claimant's testimony and the treatment records of Conservative Care Occupational Health also establish Claimant's right shoulder symptoms after the second accident were much more pronounced and severe, compared to the first event. Claimant testified the pain and symptoms she experienced after the second accident were different from what she experienced after the first accident. Claimant's right shoulder symptoms after the second accident were sufficiently severe and persistent to necessitate a MRI scan revealing signs of a rotator cuff tear. The MRI findings and Claimant's clinical presentation support finding a change in the structure of the shoulder joint after the second accident.

While Dr. Chernoff initially stated Claimant's MRI findings were consistent with a chronic tear, he later opined it could not be stated Claimant's rotator cuff tear was present in November 2022. Dr. Chernoff's opinions indicate, in the absence of evidence to the contrary, Claimant sustained a change in the physical structure of her right shoulder after the second accident. Dr. Parmar's opinion Claimant sustained a rotator cuff injury from the first accident, which would have been revealed if an examination of the right shoulder had been performed in November 2022, is speculative and is not credible medical evidence. Dr. Parmar also fails to explain how he could differentiate between acute and chronic findings in the MRI scan. The undersigned finds the competent, relevant evidence in the whole record establishes the accident of April 4, 2025, was the primary factor, compared to any other factor, causing the rotator cuff tear of the right shoulder.

The undersigned concludes the accident of April 4, 2025, was the prevailing factor causing the rotator cuff tear of the right shoulder. Claimant met her burden of proving she sustained a right shoulder injury arising out of and in the course of her employment with Respondent on April 4, 2025.

### **DECISION**

**WHEREFORE**, it is the finding, decision and order of the undersigned Board Member the Order issued by ALJ Kenneth J. Hursh, dated April 14, 2026, is affirmed.

**AIDA CASTILLO GUTIERREZ**

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**IT IS SO ORDERED.**

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

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**WILLIAM G. BELDEN  
APPEALS BOARD MEMBER**

c: Via OSCAR

Zachary A. Kolich  
Katie M. Clifford  
Hon. Kenneth J. Hursh