

MICHAEL BRUNSON

V.

Respondent

ARCH INDEMNITY INS. CO.

AP-00-0495-866

Ex. B: First Report of Injury,

Ex. C: Claimant's Written Statement,
Ex. D: Written Statement of Jose Romero,
Ex. E: Discovery Deposition of Claimant from April 11, 2024,
Ex. F: Evidentiary Zoom Videoconference Deposition of Travis Allen from August 7, 2025, with exhibits attached.

Also considered were the parties' briefs and the documents of record filed with the Division.

ISSUE

Did Claimant sustain an injury by accident arising out of and in the course of his employment?

FINDINGS OF FACT

Claimant began working for Respondent, a pet food manufacturer, in October 2023. Claimant worked the night shift as a forklift operator. On December 3, 2023, Claimant used a forklift to stack pallets of dog food bags. Each pallet held 50 bags of dog food, and each bag weighed over 40 pounds. At approximately 11:40 p.m., a pallet Claimant placed fell from the stack and struck Claimant's forklift. Claimant testified:

I was driving or I was stacking a pallet of dog food on these very, very high pallets. . . . Went to pull out. Noticed that the load or stack was rocking a little bit. I looked over and asked my co-worker Jose if the load looked secured. He told me yes. I went to pull out and as I went to pull out the load started to shift a little bit so I pulled out, put my forks down, turned and as I turned the load comes down, rocks the forklift violently, pitches me forward and two bags of dog food hit my neck and shoulder.¹

Jose Romero, Claimant's coworker, provided a witness statement. Mr. Romero indicated he told Claimant to fix the pallet because it would fall, and the pallet was damaged after the fall. He wrote, "[Claimant] try to said [sic] it was my fault because I put the pallet on the bottom."²

Claimant testified he felt immediate pain in his neck and right shoulder, and he needed help restacking the pallet. Claimant said he reported the incident to his lead, Randy Travis, and his supervisor, Jason VanBecelaere, but was told no medical staff was onsite and nothing could be done for him.

¹ P.H. Trans., Cl. Ex. 1 at 6-7.

² P.H. Trans., Resp. Ex. D.

Mr. VanBecelaere met with Claimant around 2:00 a.m. to discuss the incident and complete paperwork. Claimant provided a witness statement:

At some time between 11:30-12:30 I dropped a pallet of the blue diamond bags. I went in to the bay and asked Jose if it looked good. He told me yes. I told him ok. Pulled my forks out and the pallet fell over. It was cleaned up and that's it.³

Mr. VanBecelaere and Claimant signed a Report of Conference on December 4, 2023, acknowledging discussion of the event and noting disciplinary action would be taken next time an incident occurred. Mr. VanBecelaere completed a First Report of Injury, noting the incident was a "near miss" reported to him at 11:58 p.m. on December 3, 2023.⁴ In a handwritten description of the event, Mr. VanBecelaere wrote: "When getting statement from [Claimant] he stated he was not injured in the incident."⁵ Both Claimant and Mr. VanBecelaere signed this document on December 4, 2023. Claimant testified the handwritten portion was blank at the time he signed the document.

Mr. VanBecelaere sent an email to management at 5:22 a.m. on December 4, 2023, informing of "a near miss incident in the warehouse last night. . . . [Claimant] was not injured."⁶ Mr. VanBecelaere stated video of the incident was on one of the warehouse cameras.

Travis Allen, Respondent's assistant plant manager, testified he met with Cindy Crossno, safety manager, and Carey Simons, plant manager, at around 9:00 a.m. on December 4. After a review of Claimant's file, they decided to terminate Claimant for poor performance. Mr. Allen explained Claimant's performance "had been repeated from his 30-day evaluation that occurred with his supervisor as non-satisfactory so we made the decision to terminate the employment."⁷ At this time, Mr. Allen was not aware Claimant had reported a work injury.

At approximately 10:00 a.m., Claimant was terminated by telephone. Mr. Allen explained he informed Claimant of the reason for his termination and advised Claimant to return his uniform. Mr. Allen said Claimant would not accept his termination over the phone and wanted to speak face-to-face. Claimant arrived at Respondent's security gate

³ P.H. Trans., Resp. Ex. C.

⁴ P.H. Trans., Resp. Ex. B at 1.

⁵ *Id.* at 2.

⁶ P.H. Trans., Resp. Ex. F (Allen Depo.), Ex. H.

⁷ Allen Depo. at 18.

at 10:24 a.m. and spoke with Mr. Allen through the intercom. Mr. Allen described the interaction as hostile, with Claimant using vulgar language and throwing his uniform toward the gate. The police department was notified, but Claimant left the premises before police arrived.

Claimant testified he finished his shift at 6:00 a.m. on December 4 and went home. Claimant stated he called Respondent's HR department when they opened to "report the incident and to ask for medical help,"⁸ but he was told he would be contacted after management's morning meeting. When they called back, Claimant was terminated. Claimant testified he was not given a reason for his termination during the call. Later that day, after returning his uniform, Claimant called Respondent to ask about his last paycheck and the plan for his injury.

Mr. Allen stated Claimant did not report any injuries during the termination call, nor did he report any injuries while speaking through the intercom at the security gate. Mr. Allen testified:

Q. When did you first learn that he was alleging injury to the shoulder or neck?

A. It was after a short time when the HR manager received a call from him requesting a copy of the incident report from his injury, after the termination.

Q. And was that after the police had been called?

A. No, that would have been prior to, and I can't recall the exact time that that would have happened.⁹

Claimant, through his counsel, filed an Application for Benefits (E-1) with the Division on December 8, 2023. Respondent notified Sedgwick of the claim on December 20, 2023. Respondent indicated it questioned the validity of the claim because the "[i]ncident report from 12/04/2023 says that [Claimant] was not injured. EE was terminated right before he reported his shift for performance issues and then started saying he was injured."¹⁰

Dr. Pedro Murati examined Claimant at his counsel's request on October 11, 2024. Claimant complained of right shoulder pain radiating to above the elbow, constant pain, aching, and burning in his neck and arm, and difficulty sleeping due to right shoulder and

⁸ P.H. Trans., Cl. Ex. 1 at 16.

⁹ P.H. Trans., Resp. Ex. F (Allen Depo.) at 21.

¹⁰ Allen Depo., Ex. B at 3.

neck pain. Dr. Murati reviewed the history provided by Claimant and performed a physical examination, finding Claimant sustained right rotator cuff sprain vs. tear and myofascial pain syndrome of the right shoulder girdle as a result of the work incident. Dr. Murati recommended additional treatment but did not impose restrictions per Claimant's request.

Claimant currently works for Jasper Products as a forklift operator. Claimant stated he has not injured his neck or right shoulder since December 3, 2023. Claimant said he has constant burning pain in his neck and right shoulder, causing him sleep difficulties, and he has not received any shoulder or neck treatment to date.

Claimant demanded Respondent produce all video taken from the scene of the accident for thirty minutes before and one hour after the incident. Claimant testified video after the incident would show him exhibiting pain behavior and needing help to restack the fallen pallets. Respondent conceded it no longer had video of Claimant from this time period. It did, however, have a recording of the video taken by Mr. Allen. Mr. Allen testified he used his cell phone to record the video playing on a computer screen because Respondent's video system automatically deletes stored video after fourteen days, and the IT department was unable to save the original. Mr. Allen sent the cell phone video to Ms. Crossno and Respondent's legal team.

On June 13, 2025, Claimant filed a Motion to Quash the video recording. The ALJ denied Claimant's motion on June 25, 2025, finding:

There is no genuine question about the original digital surveillance video's authenticity. There is no credible evidence, moreover, to support that the original surveillance video is somehow available or was not destroyed via the surveillance video system's internal 14 day destruction process. Nor is there any credible evidence that Respondent intentionally or fraudulently destroyed the original video.

To the contrary, the Court finds [Mr. Allen] laudably attempted to preserve the surveillance video with his cell phone given the difficulty that Respondent's IT department was having, ultimately resulting in an inability to preserve the original video. If [Mr. Allen] or Respondent's management had indeed seen something they did not like on the original surveillance footage, the Court wonders why [Mr. Allen] would attempt to preserve it at all.¹¹

Ms. Crossno's deposition was taken, in another claim against Respondent, on March 25, 2026.¹² Ms. Crossno testified she did not recall issues capturing and saving incident videos on Respondent's system. The ALJ did not find significance in her

¹¹ ALJ Order (June 25, 2025) at 6.

¹² *Routh v. Schell & Kampeter, Inc. d/b/a Diamond Pet Foods*, CS-00-0475-766.

testimony because she was asked about Respondent's system generally, not specifically in regard to any case, and she was not asked whether she recalled Mr. Allen encountering issues with preserving Claimant's video.

The ALJ determined Claimant failed to sustain his burden of proving an accident by injury arising out of and in the course of his employment. The ALJ noted Dr. Murati's prevailing factor opinion was based largely on Claimant's account, which the Court did not find credible. Specifically, the ALJ explained:

Mr. Van Becelaere - who met with Claimant and did not terminate him - wrote two separate statements reflecting Claimant was not injured in the incident. Claimant wrote a statement, which did not mention an injury. The Court finds this evidence most persuasive, compelling, and credible.¹³

PRINCIPLES OF LAW AND ANALYSIS

Claimant argues it is uncontroverted he sustained personal injury arising out of and in the course of his employment. Claimant contends Respondent presented no defense in this claim.

Respondent maintains the ALJ's 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.¹⁴ The provisions of the Workers Compensation Act shall be applied impartially to all parties.¹⁵

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.

¹³ ALJ Order (Apr. 22, 2026) at 12.

¹⁴ See K.S.A. 44-501b(a).

¹⁵ 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.

An accident is 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. 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.¹⁶ The accident must be the prevailing factor causing the injury. An injury is any lesion or change in the physical structure of the body, causing damage or harm.¹⁷ Prevailing factor is defined as the primary factor compared to any other factor, based on consideration of all relevant evidence.¹⁸ Establishing prevailing factor is based on all relevant evidence and is not dependent on medical opinions.¹⁹

Claimant testified the falling dog food bags rocked the forklift violently, pitched him forward, and two bags of dog food hit his neck and shoulder. A closeup review of the video confirms the forklift was hit by the falling bags. A closeup review of the video does not confirm Claimant was struck by two bags of dog food. The pile of bags fell, hitting the front of the forklift. No bags fell inside the forklift as alleged by Claimant. The video is consistent with Claimant's written statement where he said ". . . the pallet fell over. It was cleaned up and that's it."²⁰ No injury was alleged in his written statement. No injury was observed in the video.

The ALJ found the preponderance of the credible evidence did not support Claimant sustained an accident which arose out of and in the course of his employment. The undersigned agrees. The undersigned finds Claimant's testimony relating to the cause of his injuries is inconsistent with the video of the incident and not credible.

¹⁶ See K.S.A. 44-508(d).

¹⁷ See K.S.A. 44-508(f)(1).

¹⁸ See K.S.A. 44-508(g).

¹⁹ See *Fish v. Mid America Nutrition Program*, No. 1,075,841, 2018 WL 3740430 (Kan. WCAB Jul. 12, 2018).

²⁰ P.H. Trans., Resp. Ex. C.

DECISION

WHEREFORE, it is the finding, decision, and order of the undersigned Board Member the Order of ALJ Brian Brown, dated April 22, 2026, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of August, 2026.

SETH G. VALERIUS
BOARD MEMBER

c: Via OSCAR

William L. Phalen, Attorney for Claimant
Kelsy E. Allison, Attorney for Respondent and its Insurance Carrier
Hon. Brian Brown, Administrative Law Judge