

**BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD**

|                                |   |                |
|--------------------------------|---|----------------|
| <b>SHAWN BENSON</b>            | ) |                |
| Claimant                       | ) |                |
| V.                             | ) |                |
|                                | ) |                |
| <b>LOREN COOK COMPANY</b>      | ) | AP-00-0497-156 |
| Respondent                     | ) | CS-00-0490-431 |
| AND                            | ) |                |
|                                | ) |                |
| <b>NATIONAL FIRE INSURANCE</b> | ) |                |
| <b>COMPANY OF HARTFORD</b>     | ) |                |
| Insurance Carrier              | ) |                |

**ORDER**

The claimant, through William L. Phalen, requested review of Administrative Law Judge (ALJ) Brian Brown's preliminary hearing Order dated July 7, 2026. Michael J. Owen appeared for the respondent and its insurance carrier.

**RECORD AND STIPULATIONS**

The Board adopted the same stipulations and considered the same record as the ALJ, consisting of the:

- (1) Preliminary hearing transcript, held November 19, 2025, with exhibits;
- (2) Deposition of the claimant, taken January 8, 2026;
- (3) Deposition of Alex James, taken January 12, 2026;
- (4) Deposition of Jacobi Sharpe, taken January 12, 2026;
- (5) Depositions of Nick Shafer, taken January 12, 2026, and May 7, 2026, with exhibits;
- (6) Deposition of Timmie Benson, taken May 19, 2026, with exhibits;
- (7) Deposition of Kaylee Moore, taken May 26, 2026, with exhibits; and
- (8) Documents of record filed with the Division, including the parties' briefs.

**ISSUE**

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

**FINDINGS OF FACT**

The claimant has a history of seizures for which he sees Dr. Jason King, a neurologist. In 2021, the claimant had a seizure and lost consciousness. Thereafter, he

continued to have intermittent spells with a lack of awareness lasting less than two minutes. After each, he would feel very tired. On July 11, 2024, he had several repeated episodes, upwards of six to seven. The claimant was prescribed Oxazepam 300 mg twice a day. On August 19, 2024, the claimant had a seizure while driving, and he struck a telephone pole. His medication was increased to 600 mg twice a day.

The respondent builds exhaust fans for restaurants and buildings. The claimant began working for the respondent as an assembler in February 2025. He described his work station as containing an excessive amount of air hose underneath the table, causing it to coil and loop out in the area where he walked back and forth.

The claimant testified he stepped right to grab a baffle at work on April 25, 2025, and felt his right foot and ankle get wrapped up in the air hose. He fell backwards, hit his head and lost consciousness. The claimant testified he recalled waking up and seeing an air hose tangled around his right leg and his ankle not in the right spot.

The claimant was transported by ambulance to Coffeyville Regional Medical Center emergency room (ER). The EMS records stated, "Patient was working when he woke up on the floor surrounded by his coworkers not knowing what happened. Has history of seizures and is taking his prescribed medication . . . . Patient attributes this new seizure to stress from grandfather passing two days prior."<sup>1</sup> The EMS record said nothing about the claimant tripping on a hose.

The claimant testified he said nothing to the Coffeyville Regional Medical Center ER staff about having a seizure, but rather he tripped on a hose and fell. The ER record does not state the claimant tripped on a hose. The ER record stated, "Fall with R ankle pain, suspected seizure, hx of seizures, on oxcarbazapime."<sup>2</sup> The ER staff conducted tests and noted a "hx of seizure, bmp normal, no seizure activity here" and right ankle fracture.<sup>3</sup> Potentially relevant differential diagnoses included likely syncope, concussion with loss of consciousness and concussion without loss of consciousness. The medical record further noted the claimant was seen for seizure and closed fibular fracture and provided discharge/informational sheets regarding use of crutches and information for "Recurrent Seizures in Adults."<sup>4</sup>

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<sup>1</sup> P.H. Trans., Resp. Ex. A at 42.

<sup>2</sup> *Id.*, Resp. Ex A at 1.

<sup>3</sup> *Id.*, Resp. Ex. A at 3.

<sup>4</sup> *Id.*, Resp. Ex A at 25.

The ER records also state the claimant stated he thought he may have struck the posterior of his head, but he denied any pain in that area. The report also states no noted injury was found on assessment.<sup>5</sup> Other than this complaint, there is no record of a documented head injury.

The same day as the work event, the claimant contacted Dr. King's office. The note stated: "Pt thinks he had a seizure today at work which caused him to fall and break his ankle; requesting a callback ASAP[.]"<sup>6</sup> A return call on April 28 indicated the claimant reported standing at his work table and then waking up on the floor with a broken ankle. The claimant confirmed he had been taking his seizure medication with no missed doses. He reported changes in his sleep pattern after his grandfather passed away two days prior. Dr. King increased his medication on May 5, 2025. Dr. King's records do not reflect a work accident involving tripping on a hose.

The claimant denied having a seizure. He testified:

Q. . . . When you would have a seizure, would you - - would you lose consciousness?

A. Yes.

Q. When you would wake up from a seizure would you feel different? Could . . . you tell that you had a seizure?

A. Yes.

Q. Tell the Court how you would feel after a seizure?

A. When I have a seizure, I will go out and when I come to I will be really tired and I won't really be able to speak. I know I'm there but I'm not able to speak, like really laziness.

Q. When you have a seizure, is there a period of time that other people around you can tell you have had a seizure? In other words you are lethargic and there's something wrong with you still?

A. When I have a seizure, yes.

Q. In other words if you had a seizure, how long are you lethargic after you have had a seizure, five minutes, five hours, how long is it, a day?

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<sup>5</sup> See *id.*, Resp. Ex. A at 36.

<sup>6</sup> Benson Depo., Resp. Ex. 1 at 3.

- A. If it happens in the morning it's the rest of the day, I'm down, basically.
- Q. Okay, so you didn't feel like you were having a seizure obviously because you weren't having one but when you came to after hitting your head you didn't feel like you had just had a seizure, correct?
- A. No.<sup>7</sup>

On May 2, 2025, the claimant underwent an open reduction and internal fixation for a distal fibular fracture by Dr. Sunil Menon, an orthopedic surgeon.

On August 6, 2025, the claimant saw Pedro Murati, M.D., at his attorney's request. The claimant complained of right knee pain radiating to the right foot, right foot pain with intermittent swelling and stiffness, right hip pain since surgery and walks with a limp. Dr. Murati opined the claimant's current diagnoses of right ankle, right knee, right hip and low back injuries were the direct result of the claimant's work-related injury and recommended additional medical treatment.

The claimant testified he developed additional injuries to his right knee, right hip and low back from walking with a limp after he got off crutches. He currently experiences constant right ankle and right knee pain, in addition to low back pain which radiates down into his right foot. His right foot swells and is stiff. The claimant currently works for VSE Aviation as a disassembler. He takes over-the-counter pain medication.

Jacobi Sharpe worked as an assembler for the respondent. Mr. Sharpe had a similar work station to the one used by the claimant. On the day of the claimant's accident, Mr. Sharpe heard a thud and saw the claimant on the ground. The claimant was clenched over and reaching towards his legs. Mr. Sharpe denied seeing the claimant trip or slip on anything, but admitted they all have "some sort of trip hazard" in their area.<sup>8</sup> He did not recall seeing an air hose around the claimant's leg or foot or seeing anyone remove anything off the claimant's leg or foot.

Alex James worked as an assembler for the respondent. He performed the same position as the claimant and worked straight across from the claimant. Mr. James heard the claimant fall and saw him lying on the ground. He testified he did not see anyone move anything off the claimant.

Timmie Benson is the claimant's father. Mr. Benson testified the claimant told him his foot got caught in something at work, causing the claimant to fall.

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<sup>7</sup> Claimant Depo. at 13-15.

<sup>8</sup> Sharpe Depo. at 14.

Nick Shafer worked for the respondent as a plant supervisor and was the claimant's direct supervisor. Mr. Shafer indicated each table has a fatigue mat and an impact driver. The air hose for the impact driver droops up underneath the table and plugs into the air line behind the table. He testified:

A. I believe we cut every air hose about 8 foot long. We cut them all based on exactly what they needed to enough to use them, but they wouldn't be too short or too long.

Q. Okay. Do you - - can you, like, move back and forth with it?

A. You can, but it's very limited at the space that you can go. You can go a little bit to your left and your right. You can obviously pick it up and, you know, get it up closer to you so that you can, you know, tighten up stuff as the unit builds upward. But it's not to where you can take it and, you know, walk 20 feet, 30 feet away from you or anything like that.

They're not - - they're not on, I guess you would call it a - - a hose reel. So you can't add any length to it as needed. You can't take away any length as needed or anything like that. They're just - -they're stationary. They're not a - - they're a fixed air hose, not a - - not a movable air hose.

Q. Okay. And so when you say that, you know, it kind of droops, does it - - does it touch the floor on the drooping portion?

A. I would say it's probably - - probably like 6 or 8 inches off the ground. There's a - - there's a noticeable distance that it's off the ground, but it doesn't actually hang and, you know, swirl on the floor or anything. There's not any - - any extra length to it. Like I said, we cut them off to be perfect per table and stuff when we actually install it on those tables there.<sup>9</sup>

Mr. Shafer testified there were no hoses or anything he had to move off of the claimant or uncoil from the claimant's leg. He testified he asked the claimant what happened when he was next to the claimant on the ground and the claimant indicated he was at his table one minute and the next minute, he was on the ground. Mr. Shafer described the alleged injury on the "Production Supervisor's Injury Investigation Report" as follows:

[E]mployee was working standing straight at table building a unit[.] Ankle gave out of possible seizure [occurred] and employee fell to the ground[.] [E]mployee at time

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<sup>9</sup> Shafer Depo. (Jan. 12, 2026) at 18-19.

of injury was installing conduit and birdscreen to a unit[.] [N]o tools or equipment was being used[.]<sup>10</sup>

Under the cause of the alleged injury, Mr. Shafer checked “possibly caused [due to] fainting or seizure” and stated, “no trip hazard or obstructions were in play[.] [A]rea was clean and [kept] well organized[.]”<sup>11</sup> Mr. Shafer mentioned a seizure based on speculation from some of the claimant’s coworkers.

Kaylee Moore worked for the respondent as an AC assembler. She is friends with the claimant. Ms. Moore testified the claimant’s work station was set up the same as hers. In describing the air hoses at their work stations, she testified, “[T]hey came underneath of the table, about four-foot of it and swirled around and would come up in front of our table on either the left or right of us and they were swirled by our feet.”<sup>12</sup> She testified she experienced problems of the danger of tripping over the hoses almost every day. She indicated there was enough hose to coil up on the ground and extend several feet into the work area.

Ms. Moore testified when she arrived at the claimant’s work station on April 25, 2025, she noticed the claimant’s feet were underneath his table and one of them was wrapped up in the air hose. Ms. Moore testified Nick Shafer removed the air hose from the claimant’s foot and put insulation underneath to keep the claimant’s foot elevated. She indicated it was obvious the claimant tripped on a hose. While she testified she was at the claimant’s side when he was on the ground, Mr. Shafer denied she was so close in proximity, and was rather standing off to the side, talking on her cell phone. Mr. Sharpe and Mr. James confirmed Ms. Moore tended to the claimant after the event.

Ms. Moore testified about a year after she started, she mentioned to Mr. Shafer the air hoses needed to be moved off the floor. She indicated the air hoses continued to be a trip hazard up until the time her employment ended with the respondent in July 2025. Ms. Moore had photographs showing hoses on the floor of work stations. Such photographs were in evidence.

The claimant sought temporary total disability benefits and medical treatment at the preliminary hearing. The ALJ found Mr. Shafer not credible, specifically finding hoses were on the ground under and around workers’ tables, and further finding Ms. Moore tended to the claimant, contrary to Mr. Shafer’s testimony. The ALJ found the claimant’s normal BMP testing did not prove the absence of a seizure. The ALJ found the ER reference to

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<sup>10</sup> Shafer Depo. (May 7, 2026), Cl. Ex. 1 at 1.

<sup>11</sup> *Id.*, Cl. Ex. 1 at 2.

<sup>12</sup> Moore Depo at 6.

“[n]o seizure activity here” meant no seizure activity at the ER itself. More importantly, the ALJ stated:

The EMT, ER, and Dr. King’s office records consistently reflect Claimant’s contemporaneous belief that he had experienced a seizure at work. The records do not reference or state that Claimant tripped over a hose. The records undercut Claimant’s testimony 1) that he did not have a seizure and 2) that he had tripped over a hose. Had Claimant tripped over a hose - or told medical staff that he tripped over a hose (per his testimony) - one would reasonably expect that at least one of the three medical providers’ records would reflect or even mention this. But they do not.

It is Claimant’s burden to establish that he sustained an accident which arose out of and in the course of his employment. The Court agrees that Nick was not a credible witness. But the fact that there indeed were hoses on the floor next to Claimant’s work station - an arguably hazardous work environment - does not establish that Claimant, in fact, tripped on one of them. Moreover - for purposes of determining whether Claimant sustained an accident which arose out of and in the course of his employment - it is less relevant whether Claimant actually experienced a seizure - he may or may not have - than it is that **the records clearly demonstrate that he believed he may have had a seizure. They do not indicate he tripped over a hose.**

The Court therefore concludes Claimant has not met his burden to establish he sustained a personal injury by accident by a preponderance of the credible evidence. (emphasis in original)<sup>13</sup>

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

The claimant argues he has met his burden of proof. The claimant asserts the BMP panel showed he did not have a seizure and it was reasonable and expected he would notify his neurologist of the fall to ensure there was no worsening of his preexisting seizure disorder. The respondent maintains the Order should be affirmed.

An employer is liable to pay compensation to an employee incurring personal injury by accident arising out of and in the course of employment.<sup>14</sup> The provisions of the Workers Compensation Act are applied impartially to all parties.<sup>15</sup> The employee has the burden of proof to establish the right to an award of compensation, including the various

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<sup>13</sup> ALJ Order at 11.

<sup>14</sup> See K.S.A. 44-501b(b).

<sup>15</sup> See K.S.A. 44-501b(a).

conditions upon which the right to compensation depends.<sup>16</sup> The trier of fact considers the whole record in determining if a claimant satisfied the burden of proof.<sup>17</sup>

The Board's review of an order is de novo on the record.<sup>18</sup> A de novo hearing is a decision of the matter anew, giving no deference to findings and conclusions previously made by the judge.<sup>19</sup> On de novo review, the Board makes its own factual findings.<sup>20</sup> Although the Board frequently gives some credence to an ALJ's credibility determination of witnesses who testify live,<sup>21</sup> the Board is not required to do so and may modify an award as it deems necessary.<sup>22</sup> The Court of Appeals requires the Board to justify deviating from an ALJ's first-hand credibility determination.<sup>23</sup>

The undersigned Board Member agrees with the ALJ's logical analysis. While there is some evidence supporting the claimant's position, the contemporaneous medical records do not support the occurrence of a work injury. Rather, the records point to a seizure as the cause of the claimant's fall at work. If the claimant's BMP testing was dispositive for the absence of a seizure, it is curious why the Coffeyville Regional Medical Center ER records would list a suspected seizure and discharge the claimant with paperwork regarding recurrent seizures in adults. The ALJ explained the contradictory evidence and found Mr. Shafer not to be credible. Nevertheless, the ALJ denied compensability based on three sources of medical records failing to mention an injury at work, and rather stating the claimant had a seizure at work. The ALJ did not err in reaching such conclusion. The claimant did not prove personal injury by accident arising out of and in the course of his employment.

**WHEREFORE**, the undersigned Board member affirms the preliminary hearing Order.

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<sup>16</sup> See K.S.A. 44-501b(c).

<sup>17</sup> See *id.*

<sup>18</sup> See *Helms v. Pendergast*, 21 Kan. App. 2d 303, 899 P.2d 501 (1995).

<sup>19</sup> See *In re Tax Appeal of Colorado Interstate Gas Co.*, 270 Kan. 303, 14 P.3d 1099 (2000).

<sup>20</sup> See *Berberich v. U.S.D. 609 S.E. Ks. Reg'l Educ. Ctr.*, No. 97,463, 2007 WL 3341766 (Kansas Court of Appeals unpublished opinion filed Nov. 9, 2007).

<sup>21</sup> See *Parker v. Deffenbaugh Industries, Inc.*, Nos. 1,069,143, 1,069,144 & 1,069,145, 2014 WL 5798471 (Kan. WCAB Oct. 14, 2014).

<sup>22</sup> See *Samples v. City of Glasco*, No. 265,499, 2011 WL 2693241 (Kan. WCAB June 22, 2011).

<sup>23</sup> See *Kotnour v. City of Overland Park*, 43 Kan. App. 2d 833, 837, 233 P.3d 299 (2010).

**IT IS SO ORDERED.**

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

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JOHN F. CARPINELLI  
BOARD MEMBER

c: (via OSCAR)  
William L. Phalen  
Michael J. Owen  
Hon. Brian Brown