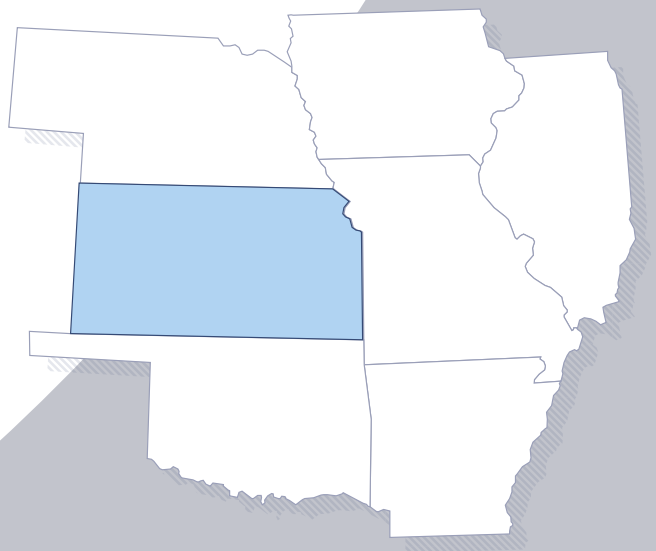
Workers' Compensation Reference Guide

Kansas



KANSAS WORKERS' COMPENSATION

Applies to injuries occurring on or after May 15, 2011.

I. JURISDICTION - K.S.A. 44-506

A. Act will apply if:

1. Accident occurs in Kansas.
2. Contract of employment was made within Kansas, unless the contract specifically provides otherwise.
3. Employee's principal place of employment is Kansas.

II. ACCIDENTS

A. Traumatic Accidental Injury

1. "Undesigned, sudden, and unexpected traumatic event, usually of an afflictive or unfortunate nature and often, but not necessarily, accompanied by a manifestation of force."
2. "An accident shall be identifiable by time and place of occurrence, produce at the time symptoms of an injury, and occur during a single work shift."
3. "The accident must be the prevailing factor in causing the injury."
4. Deemed to arise out of employment only if:
    a. There is a causal connection between the conditions under which the work is required to be performed and the resulting accident; and
    b. The accident is the prevailing factor causing the injury, medical condition, and resulting disability or impairment.

B. Repetitive Use, Cumulative Traumas or Microtraumas– K.S.A. 44-508(e)

1. "The repetitive nature of injury must be demonstrated by diagnostic or clinical tests."
2. "The repetitive trauma must be the prevailing factor in causing the injury."
3. Date of accident shall be the earliest of:
    a. Date the employee is taken off work by a physician due to the diagnosed repetitive trauma;
    b. Date the employee is placed on modified or restricted duty by a physician due to the diagnosed repetitive trauma;
    c. Date the employee is advised by a physician that the condition is work related; OR
    d. Last day worked, if the employee no longer works for the employer.

e. In no case shall the date of accident be later than the last date worked.

4. Deemed to arise out of employment only if:
    a. Employment exposed the worker to an increased risk or hazard which the worker would not have been exposed in normal non-employment life;
    b. The increased risk or hazard to which the employment exposed the worker is the prevailing factor in causing the repetitive trauma; and
    c. The repetitive trauma is the prevailing factor in causing both the medical condition and resulting disability or impairment.

C. Prevailing Factor
1. Primary factor in relation to any other factor.
2. Judge considers all relevant evidence submitted by the parties.

D. Exclusions
1. Triggering/precipitating factors
2. Aggravations, accelerations, exacerbations
3. Pre-existing condition rendered symptomatic
4. Natural aging process or normal activities of daily living
5. Neutral risks, including direct or indirect results of idiopathic causes
6. Personal risks

III. NOTICE OF ACCIDENT - K.S.A. 44-520

A. Notice requirements depend on the date of accident.
B. For accidents after April 25, 2013:
1. Notice must be given by the earliest of the following days:
    a. 20 calendar days from the date of accident or injury by repetitive trauma**;**
    b. 20 calendar days from the date the employee seeks medical treatment for the injury; or
    c. 10 calendar days from the employee's last day of actual work for the employer.

C. For accidents between May 15, 2011, and April 25, 2013:
1. Notice must be given by the earliest of the following days:
    a. 30 calendar days from the date of accident or injury by repetitive trauma**;**
    b. 20 calendar days from the date the employee seeks medical treatment for the injury; or

c. 20 calendar days from the employee's last day of actual work for the employer.

D. For accidents before May 15, 2011:
1. Notice must be given within 10 days of the accident unless the employer had actual knowledge of the accident.
2. If an employee does not provide notice within 10 days, his claim will not be barred if his failure to provide notice was due to just cause, provided that:
    a. Notice was given within 75 days; or
    b. The employer had actual knowledge of the accident; or
    c. The employer was unavailable to receive notice; or
    d. The employee was physically unable to give such notice.

E. May be oral or in writing
1. "Where notice is provided orally, if the employer has designated an individual or department to whom notice must be given and such designation has been communicated in writing to the employee, notice to any other individual or department shall be insufficient under this section. If the employer has not designated an individual or department to whom notice must be given, notice must be provided to a supervisor or manager."
2. "Where notice is provided in writing, notice must be sent to a supervisor or manager at the employee's principal location of employment." The burden is on the employee to prove that such notice was actually received by the employer.

F. Notice shall include the time, date, place, person injured and particulars of the injury and it must be apparent the employee is claiming benefits or suffered a work-related injury.

G. Notice requirement is waived if the employee proves that
1. the employer or employer's duly authorized agent had actual knowledge of the injury;
2. the employer or employer's duly authorized agent was unavailable to receive such notice within the applicable period; or
3. the employee was physically unable to give such notice.

IV. REPORT OF ACCIDENT – K.S.A. 44-557

A. Employer / carrier must file with the Division of Workers' Compensation within 28 days of obtaining knowledge of any accident that requires an employee to miss more than the remainder of the shift in which the injury occurred.
1. Civil penalties are possible for failure to file.
2. Accident report cannot be used as evidence.

V. APPLICATION FOR HEARING- K.S.A. 44-534

A. The employee must file an application for hearing by the later of:
1. 3 years after the date of accident; or
2. 2 years after the last payment of compensation.

B. Once Application for Hearing is filed, claim must proceed to hearing or award within three years or be subject to dismissal with prejudice – K.S.A. 44-523(f)

VI. MEDICAL TREATMENT

A. K.S.A. 44-510h

1. Employer has the right to select the treating physician.
2. Employee has $500 unauthorized medical allowance for treatment.
3. Rebuttable presumption that employer's obligation to provide medical treatment terminates upon the employee reaching maximum medical improvement.
4. Medical treatment does not include home exercise programs or over- the-counter medications.

B. K.S.A. 44-510k

1. After an award, any party can request a hearing for the furnishing, termination or modification of medical treatment.
2. ALJ must make a finding that it is more probably true than not that the injury is the prevailing factor in the need for future medical care
3. If the claimant has not received medical treatment (excluding home exercise programs or over-the-counter medications) from an authorized health care provider within two years from the date of the award or the date the claimant last received medical treatment from an authorized health care provider, there is a rebuttable presumption no further medical care is needed.

C. K.S.A. 44-515

1. All benefits suspended if employee refuses to submit to exam at employer's request.
2. Employee may request that a report from any examination be delivered within a reasonable amount of time (no longer 15 day requirement).

VII. AVERAGE WEEKLY WAGE – K.S.A. 44-511

A. Add wages earned during the 26 weeks prior to the accident and divide by the number of weeks worked during that period. No longer a difference between full-time and part-time employees.

B. Wages = Money + Additional compensation

1. Money: gross remuneration, including bonuses and gratuities.
2. Additional Compensation: only considered if and when discontinued
    i. Board and lodging if furnished by the employer
    ii. Employer paid life insurance, disability insurance, health and accident insurance
    iii. Employer contributions to pension or profit sharing plan.

C. Examples

1. Example One
    a. 26 weeks worked - $10,400 earned
    b. No additional compensation discontinued
    c. Average weekly wage = $400
2. Example Two
    a. 26 weeks worked - $10,400 earned
    b. Additional compensation discontinued following injury
        i. Health insurance-$200 per week.
        ii. Pension contribution-$150 per week.
    c. Average weekly wage - $750

VIII. TEMPORARY BENEFITS – K.S.A. 44-510c(b)

A. Temporary Total Disability

1. Two-thirds of Average Weekly Wage (AWW) from above, subject to statutory maximum determined by date of injury
2. Seven-day waiting period.

    *No temporary total disability for first week unless off three consecutive weeks.
3. Exists when the employee is "completely and temporarily incapable of engaging in any type of substantial gainful employment."
4. Treating physician's opinion regarding ability to work is presumed to be determinative.
5. employee is entitled to temporary total disability benefits if employer cannot accommodate temporary restrictions of the authorized treating physician.

6. No temporary total disability benefits if the employee is receiving unemployment benefits.
7. Insurer or self-insured employer MUST provide statutorily mandated warning notice on or with the first check for temporary total disability benefits.

B. Temporary Partial Disability
1. Two-thirds of the difference between Average Weekly Wage pre-accident and claimant's actual post-accident weekly wage up to statutory maximum.
2. available for scheduled and non-scheduled injuries

C. Termination of Benefits
1. Maximum medical improvement
2. Return to any type of substantial and gainful employment
3. Employee refuses accommodated work within the temporary restrictions imposed by the authorized treating physician
4. Employee is terminated for cause or voluntarily resigns following a compensable injury, if the employer could have accommodated the temporary restrictions imposed by the authorized treating physician but for the employee's separation from employment.

IX. PRELIMINARY HEARINGS – K.S.A. 44-534a

A. After filing an Application for Hearing pursuant to K.S.A. 44-534, a party may file an Application for Preliminary Hearing.

B. Seven days before filing Application for Preliminary Hearing the applicant must file written NOTICE OF INTENT stating benefits sought.

C. An Administrative Law Judge will be assigned

D. Hearing can be set seven days later. If claim denied at preliminary hearing, failure to proceed to regular hearing within one year and without good faith reason results in dismissal with prejudice.

E. Benefits to Consider at Preliminary Hearing:
1. Medical treatment (including change of physician).
    a. Ongoing or past bills.
2. Temporary total or temporary partial benefits (including rate).
    a. Prospective or past benefits.
3. Medical records and reports are admissible.

4. Witnesses may be necessary.
5. Opportunity for decision on ultimate compensability issues.

F. Preliminary Awards are binding unless overruled at a later Preliminary Hearing or Regular Hearing.

G. Limited right to review by the Appeals Board.
1. "whether the employee suffered an accidental injury, whether the injury arose out of and in the course of the employee's employment, whether notice is given, or whether certain defenses apply"

H. Penalties – K.S.A. 44-512a
1. Award must be paid within 20 days of receipt of statutory demand. Penalties can be $100 per week for late temporary total and $25 per week per medical bill.

I. Dismissal of claim denied at Preliminary Hearing – K.S.A. 44-523(f)
1. Claim dismissed with prejudice, if:
    a. Case does not proceed to Regular Hearing within one year
    b. Employer files application for dismissal
    c. Claimant cannot show good cause for delay
2. Dismissal considered final disposition for fund reimbursement

X. PRE-HEARING SETTLEMENT CONFERENCES – K.S.A. 44-523(d)

A. Must occur before a Regular Hearing can take place.

B. Generally after claimant reaches maximum medical improvement.

C. Court will clear case for Regular Hearing or enter order for appointment of independent physician to determine permanent impairment of function or restrictions.

D. Process varies from Judge to Judge.

E. Issues regarding final award or settlement are considered.

XI. PERMANENT DISABILITY – K.S.A. 44-510e

A. <u>Maximum Awards</u>
1. Functional Impairment Only - $75,000
    a. Cap now applies even if temporary total or temporary partial disability benefits were paid.

b. $75,000 cap does not include temporary total or temporary partial disability benefits paid.

2. Permanent Partial Disability - $130,000
    a. Cap includes temporary total or temporary partial disability benefits paid
3. Permanent Total Disability - $155,000
    a. Cap includes temporary total or temporary partial disability benefits paid
4. Death benefits - $300,000
    a. Includes $1,000 for appointment of conservator, if required.

B. Reduction for Pre-existing Impairments

1. Basis of prior award in Kansas establishes percentage of pre-existing impairment.
2. If no prior award in Kansas, pre-existing impairment established by competent evidence.
3. If pre-existing injury is due to injury sustained for same employer, employer receives a dollar for dollar credit.
4. In all other cases, the employer receives a credit for percentage of pre-existing impairment.

C. Scheduled Injuries

1. Includes loss of and loss of use of scheduled members
2. Combine and rate multiple injuries in single extremity to highest scheduled member actually impaired
3. Formula
    a. (scheduled weeks – weeks TTD paid) x rating % x compensation rate
4. Example
    a. Arm Injury = 210 weeks
    b. TTD paid = 10 weeks
    c. Rating = 10%
    d. Compensation Rate = $546
        i. **(210 weeks – 10 weeks) x 10% = 20 weeks x $546.00 = $10,920.00**

D. Body as a Whole Injuries

1. Presumption is functional impairment
2. Includes loss of or loss of use of: (1) bilateral upper extremities, (2) bilateral lower extremities, or (3) both eyes.
3. Formula

a. (415 weeks – weeks TTD paid in excess of 15 weeks) x rating % x compensation rate

4. Example
    a. TTD paid = 25 weeks
    b. Rating = 15% Body as a Whole
    c. Compensation Rate = $546.00
        i. **(415 weeks – 10 weeks) x 15% = 60.75 weeks x $546.00 = $33,169.50**
5. Work Disability
    a. High end permanent partial disability.
    b. Allows the employee to receive an Award in excess of functional impairment.
    c. Employee eligible if:
        i. Body as a whole injury; and
        ii. The percentage of functional impairment caused by the injury exceeds 7 ½% or the overall functional impairment is equal to or exceeds 10% where there is preexisting functional impairment; and
        iii. Employee sustained a post-injury wage loss of at least 10% which is directly attributable to the work injury.
6. Formula
    a. ((Wage Loss % + Task Loss %) / 2) x (415 weeks – weeks TTD paid in excess of 15 weeks) x compensation rate
        i. **Wage Loss**: "the difference between the average weekly wage the worker was earning at the time of the injury and the average weekly wage the worker is capable of earning after the injury."
            (a) Consider all factors to determine the capability of the worker, including age, education and training, prior experience, availability of jobs, and physical capabilities.
            (b) Legal capacity to enter contract of employment required.
            (c) Refusal of accommodated work within restrictions and at a comparable wage results in presumption of no wage loss
        ii. **Task Loss**: "the percentage to which the employee, in the opinion of a licensed physician, has lost the ability to perform the work tasks that the employee performed in any substantial gainful employment during the five-year period preceding the injury."

(a) Task loss due to pre-existing permanent restrictions not included

7. Example:
    a. TTD paid = 25 weeks
    b. AWW on date of accident = $1,000.00
    c. AWW after accident = $350
    d. Tasks performed during 5 years prior to accident = 25
    e. Tasks capable of performing after the accident = 10
    f. Compensation Rate = $555.00
        i. **(65% wage loss + 60% task loss) / 2 = 62.5% work disability x (415 weeks – 10 weeks) = 253.125 weeks x $555.00 = $140,484.37**
        ii. This would be capped at $130,000.00, and the amount of TTD paid is considered in determining if the maximum has been reached.

E. Permanent Total Disability
1. Employee is completely and permanently incapable of engaging in any type of substantial and gainful employment.
2. Expert evidence is required to prove permanent total disability
3. Can only be permanently and totally disabled once in a lifetime.

F. Death Cases – K.S.A. 44-510b
1. Burial Expenses:
    a. Employer shall pay the reasonable expense of burial not exceeding $10,000.00 (increase from previous maximum of $5,000.00).
2. Initial Lump sum payment of $60,000.00 to surviving legal spouse or a wholly dependent child or children or both (increase from previous amount of $40,000.00).
3. Weekly benefits thereafter: 50% to surviving spouse – 50% to surviving children.
    a. Surviving children will receive weekly benefits until the child becomes 18, unless the child is enrolled in high school. In that event compensation shall continue until May 30th of the child's senior year in high school or until the child becomes 19 years of age, whichever is earlier.
    b. Surviving child will receive weekly benefits through the age of 23 if one of the following conditions are met:
        i. Dependent child is not physically or mentally capable of earning wages in any type of substantial and gainful employment; or

ii. Dependent child is a student enrolled full time in an accredited institution of higher education or vocational education.

c. Conservatorship required for minor children.

4. Cap –

a. $300,000.00 - For surviving spouse and wholly dependent children

i. Can exceed as children receive benefits above cap to age 18.

b. $100,000.00 – If no surviving spouse or wholly dependent children (all other dependents)

XII. REGULAR HEARING – FULL TRIAL

A. Hearing

1. Claimant generally testifies.
2. Each Party has 30 days after the hearing to put on evidence.
    a. Depositions of any and all witnesses.
    b. Parties may stipulate records into evidence.
3. Administrative Law Judge will enter an Award within thirty days of submission of evidence.
    a. Review and Modification stays open as a matter of law.
    b. Future medical treatment only awarded if the claimant proves it is more probable than not that future medical treatment will be required as a result of the work-related injury.
    c. Penalties again apply per K.S.A. 44-512a.

B. Review:

1. Award can be appealed within ten days to Kansas Appeals Board.
2. Can appeal Board decisions to Court of Appeals.
    a. No change at that level if substantial evidence to support Board decision.

C. Post-Award Hearings

1. Medical – K.S.A. 44-510k
    a. Claimant seeking medical treatment.
    b. Employer/Insurer seeking to modify or terminate award for medical treatment.
    c. Claimant's attorney can receive hourly attorney fees.
2. Review and Modification – K.S.A. 44-528
    a. Review if change of circumstances; i.e. increase in disability.
    b. Claimant's attorney can receive fees.

XIII. SETTLEMENTS – K.S.A. 44-531

A. Can obtain full and final settlement if claimant agrees.
1. Would close all issues.

B. Case can settle on Running Award per law.
1. Leaves future medical open on application to Director.
2. Respondent controls choice of physician.
3. Leaves right to Review and Modification open.

C. Most common settlement format is Settlement Hearing before Special Administrative Law Judge with a court reporter present.
1. FORMAT:
    a. Claimant is sworn in.
    b. Claimant is asked to describe his/her accident(s).
    c. Judge asks claimant if he/she is receiving any medical bills.
        i. Court will generally order payment of valid and authorized bills.
    d. Terms of settlement will be explained and read into record by Employer's attorney.
    e. Unrepresented claimant will receive explanation from Judge that he/she could hire an attorney.
        i. Explanation will detail that attorney could send claimant to a rating doctor of his/her choice – or claimant does not have to hire an attorney to get a rating from his/her own doctor.
    f. Most importantly, in a full and final settlement, the court will explain that claimant is giving up all rights to future medical.
        i. Additional payment can be made to compromise future medical.
    g. If claimant is out of state, settlement hearing can occur by telephone or by written joint petition and stipulation.

XIV. DEFENSES

A. Drugs and Alcohol – K.S.A. 44-501(b)(1)
1. Employer not liable if the injury was contributed to by the employee's use or consumption of alcohol or drugs.
2. There is a .04 level which will establish a conclusive presumption of impairment due to alcohol. Impairment levels for drugs set by statute.
3. Rebuttable presumption that if the employee was impaired, the accident was contributed to by the impairment.

4. Refusal to submit to chemical test results in forfeiture of benefits if the employer had sufficient cause to suspect the use of alcohol or drugs or the employer's policy clearly authorizes post-injury testing.
5. Results of test admissible if the employer establishes the testing was done under any of the following circumstances
    a. As a result of an employer mandated drug testing policy in place in writing prior to the date of accident
    b. In the normal course of medical treatment for reasons related to the health and welfare of the employee and not at the direction of the employer
    c. Employee voluntarily agrees to submit a chemical test

B. Coming and Going to Work – K.S.A. 44-508
1. Accidents which occur on the way to work or on the way home are generally not compensable.
2. Exceptions:
    a. On the premises of the employer.
    b. Injuries on only available route to or from work which involves a special risk or hazard and which is not used by public except in dealing with employer.
    c. Employer's negligence is the proximate cause
    d. Employee is a provider of emergency services and the injury occurs while the employee is responding to an emergency.
3. Parking lot cases – key question is whether employer owns or controls the lot.

C. Fighting and Horseplay – K.S.A. 44-501(a)(1)
1. Voluntary participation in fighting or horseplay with a co-employee is not compensable whether related to work or not.

D. Violations of Safety Rules – K.S.A. 44-501(a)(1)
1. Compensation disallowed where injury results from:
    a. Employee's willful failure to use a guard or protection against accident or injury which is required pursuant to statute and provided for the employee
    b. Employee's willful failure to use a reasonable and proper guard and protection voluntarily furnished the employee by the employer
    c. Employee's reckless violation of safety rules or regulations.
2. Subparagraphs (a) and (b) do not apply if:
    a. It was reasonable under the totality of the circumstances to not use such equipment; or
    b. The employer approved the work engaged in at the time of an accident or injury to be performed without such equipment.

XV. OTHER ISSUES

A. Retirement Benefit Offset – K.S.A. 44-510(h)
1. Applies to Work Disability cases only.
2. Can offset payments including Social Security Retirement.

B. Medicare Issues
1. Mandatory reporting requirements
2. Reconciliation of Conditional Payment Lien
3. Consideration of Medicare Set-Aside when closing future medical

XVI. RECENT LEGISLATIVE CHANGES (effective July 1, 2018)

A. K.S.A. 44-510b - Death Benefits:
1. Maximum burial expenses increased from $5,000.00 to $10,000.00.
2. Initial lump sum payment increased from $40,000.00 to $60,000.00.
3. Surviving children will receive weekly benefits until the child becomes 18, unless the child is enrolled in high school. In that event compensation shall continue until May 30th of the child's senior year in high school or until the child becomes 19 years of age, whichever is earlier.
4. If the employee leaves no legal spouse or dependent children but leaves other dependents wholly dependent upon the employee's earnings, maximum amount payable to such dependents is $100,000.00 (increase from $18,500.00).
5. If the employee does not leave any dependents who were wholly dependent upon the employee's earnings but leaves dependent partially dependent on the employee's earnings, maximum amount payable to partial dependents is $100,000.00. (Increase from $18,500.00).
6. If an employee does not leave any dependents, a lump sum payment of $100,000.00 shall be made to the legal heirs of the employee in accordance with Kansas law. (Increase from $25,000.00).
    a. However, if the employer procured a life insurance policy with beneficiaries designated by the employee and in an amount not less than $50,000.00, then the amount paid to the legal heirs under this section shall be reduced by the amount of the life insurance policy up to a maximum deduction of $100,000.00.

Q. Is the AMA Guides, Sixth Edition constitutional in its application within the Kansas Workers Compensation Act?

A. Yes. K.S.A. § 44-510e(a)(2)(B) requires the use of competent medical evidence and the use of the AMA Guides, Sixth Edition is a starting point for medical providers.

Howard Johnson III sustained a cervical spine injury while working for U.S. Food Service. Dr. Harold Hess treated his cervical myeloradiculopathy and herniated discs by performing a neck fusion. After Mr. Johnson reached maximum medical improvement, Dr. Harold Hess provided a permanent partial impairment rating using the AMA Guides, Sixth Edition. He used the AMA Guides, Sixth Edition as prescribed by law per K.S.A. § 44-510e(a)(2)(B).

Mr. Johnson filed for workers' compensation benefits and among other issues, Mr. Johnson challenged the constitutionality of the Kansas Workers' Compensation Act's use of the AMA Guides, Sixth Edition to evaluate permanent partial general disability. The Kansas Court of Appeals held the use of the AMA Guides, Sixth Edition in the Kansas Workers' Compensation Act violated Section 18 of the Kansas Bill of Rights because it emasculated the Act to the point it no longer provided an adequate quid pro quo for injured workers who sustained permanent impairment for injuries on or after January 1, 2015.

The case was appealed to the Kansas Supreme Court.

The Kansas Supreme Court did not reach the constitutional questions addressed by the Kansas Court of Appeals. Instead, the Court held the language from K.S.A. § 44-510e(a)(2)(B) requires the use of the AMA Guides, Sixth Edition as a guideline supported by competent medical evidence.

The analysis involved the interpretation of K.S.A. § 44-510e(a)(2)(B) and its required use of the AMA Guides, Sixth Edition:

The extent of permanent partial general disability shall be the percentage of functional impairment the employee sustained on account of the injury as established by competent medical evidence and based on the fourth edition of the American medical association guides to the evaluation of permanent impairment, if the impairment is contained therein until January 1, 2015, but for injuries occurring on and after January 1, 2015, based on the sixth edition of the American medical association guides to the evaluation of permanent impairment, if the impairment is contained therein.

The Kansas Supreme Court dismissed the Court of Appeals interpretation which had removed the language "competent medical evidence" from injuries occurring on or after January 1, 2015. Further, the Kansas Supreme Court held "The use of the phrase 'based on' indicates the Legislature intended the Sixth Edition to serve as a starting point for the more important and decisive 'competent medical evidence.'" Ultimately, the Court held the percentage of functional impairment must always be proved by

competent medical evidence.

The AMA Guides, Sixth Edition remains the binding precedent for evaluation of an injured worker's permanent partial general disability. However, the Kansas Supreme Court held the AMA Guides, Sixth Edition is a starting point and the cases must be decided based on competent medical evidence. Thus, medical experts are not bound by the AMA Guides, Sixth Edition, but shall support an impairment rating with competent medical evidence.

Johnson v. U.S. Food Service, 478 P.3d 776 (Kan. 2021)

Q: Are the administrative law judge and board bound by the sixth edition in determining the extent of a claimant's permanent impairment for scheduled injuries pursuant to K.S.A. 44-510d(b)(23)?

A: Yes, while permanent partial general disability claims per K.S.A 44-510e(a)(B) allow for the use of competent medical evidence, permanent partial scheduled injury claims per K.S.A. 44-510d(b)(23) do not.

The claimant in this case worked for Goodyear Tire and Rubber Company for 10 years before sustaining an injury to the right shoulder in January of 2018. Claimant treated with Dr. Dempewolf for the right shoulder injury and ultimately Dr. Dempewolf issued an opinion on claimant's permanent impairment to the right shoulder. Using the AMA Guides 4th edition, Dr. Dempewolf opined claimant sustained 20% permanent partial impairment to the right upper extremity, and a 7% permanent partial impairment to the right upper extremity using the sixth edition.

In November 2019, claimant was evaluated by another orthopedic surgeon, Dr. Hopkins. Dr. Hopkins opined claimant sustained a 26% permanent partial impairment of the right upper extremity pursuant to the AMA Guides 4th Edition. Under the 6th edition, Dr. Hopkins determined claimant sustained a 16% permanent partial impairment of the right upper extremity. Claimant still works for his employer and therefore this claim is limited to functional impairment only.

K.S.A. 44-510e(a)(B) requires the extent of permanent partial general disability for unscheduled injuries to be established by competent medical evidence and based on the sixth edition. *Johnson v. U.S. Food Service,* 478 P.3d (2021) held that specifically, 44-510e(a)(2)(B) requires functional impairment rating be proved by competent medical evidence and use of the sixth edition is only a starting point for any medical opinion. "The use of the phrase 'based on' indicates the legislature intended the sixth edition to serve as a standard starting point for the more important and decisive competent medical evidence." *Id.* However, this language is different from 44-510d(b)(23) which says impairment of function related to a scheduled injury shall be determined using the sixth edition if the impairment is contained therein. 44-510d(b)(23) does not contain the phrase "competent medical evidence". As this case requires analysis under an impairment of function related to a scheduled injury, it shall be evaluated based upon the sixth edition and no other criteria.

This case scrutinizes two statutes against each other, resulting in a statutory interpretation issue. The court uses the plain meaning of each statute to evaluate its guidelines. As one statute simply leaves out a method of evaluation for an injury (using

competent medical evidence), the court reasoned that it must have been the drafters' intentions to remove that language from the statute even though a similar statute has the phrase in there. Further, this court was in no position to overturn this ruling based on a constitutional argument. This could likely see a further appeal based on constitutionality.

Butler v. The Goodyear Tire and Rubber Company, CS-00-0285-928 (2021).

Q: Under the "Heart Amendment" to the Workers Compensation Act, K.S.A. Supp. 44-501(c)(1), is evidence that an employer said a job duty is no longer a job duty and subsequently still required that employee to perform the duty enough to entitle a claimant to compensation?

A: No, even when an employer tells an employee a job duty is not their job duty, but then the employer changes their mind and requires the employee to perform that task, the job duty is within the normal scope of their employment for the purposes of determining compensation.

Thomas Larson's job duties required him to engage in domestic travel to address quality deficiencies impacting production. After suffering a heart attack in June 2016 on a trip, Thomas asked his supervisor to not travel anymore, and the supervisor agreed. However, shortly thereafter Excel switched supervisors, and Larson was again required to travel for his job. He became nervous and anxious about these trips. Thomas Larson suffered a fatal heart attack after returning from an out-of-town business trip with his employer in November 2016. This business trip was a bit more stressful and included many delays and changeover flights. His widow, Pamela Larson, sought surviving spouse benefits, but the Kansas Workers' Compensation Appeals Board determined she was not entitled due to what is commonly referred to as the heart amendment to the Workers' Compensation Act, K.S.A. Supp. 44-501(c)(1), because she failed to prove that Thomas' heart attack was caused by exertion beyond that usually required his job.

First, Pamela Larson argues that the Board misinterpreted K.S.A. Supp. 44-501(c)(1). The heart amendment provides, "Compensation shall not be paid in case of coronary or coronary artery disease . . . unless it is shown that the exertion of the work necessary to precipitate the disability was more than the employee's usual work in the course of the employee's regular employment." The heart amendment does not create a day-to-day test to measure usual exertion, usual work, or regular employment. Pamela argues that the Board misinterpreted the meaning of the heart amendment because it found an employee cannot recover under the heart amendment when performing the employee's usual work in the course of regular employment when the employee suffers a cardiac event. The Court of Appeals ruled that the Board did not misinterpret this provision. The Board's order found that the business trip was part of his usual work in the course of his regular employment.

Pamela then attempted to argue that the critical fact in this case is that the trip Thomas went on that resulted in a heart attack was *after* Thomas had complained to his boss about traveling and was told he would no longer have to travel, thus making traveling not part of his job duties. She also adds that this particular trip required more hours

than his job description. Both arguments failed due to the standard for determining what is usual exertion is the work history of the individual involved. While evidence existed that Thomas was told he would no longer be required to travel, he was also told by his new supervisor that travel *is* still included in his job duties. Beyond this, his previous job duties included travel, and this trip was no different than previous ones. The previous trips are to be evaluated and compared to this current trip, not the official job description.

The only chance Pamela has left of recovering is to show that an external factor was the precipitating cause of claimant's death. This alternative theory was dismissed as moot by the Board. To show an external force was the precipitating cause of the injury or disability, Pamela must prove "[1] the presence of a substantial external force in the working environment must be established and [2] there must be expert medical testimony that the external force was a substantial causative factor in producing the injury and resulting disability " *Mudd v. Neosho Memorial Regional Medical Center*, 275 Kan. 187, 191, 62 P.3d 236 (2003). Here, Pamela argued Thomas' stress arose from the severe winter weather cancelling his flight as well as a delay that led him to run out of medicine. The Court held "the fact that Pamela failed to prove that Thomas' heart attack was triggered by unusual exertions as part of his job does not necessarily preclude a claim that an external force triggered Thomas' heart attack. Thus, Pamela's alternative claim is not moot and remains unaddressed. The Board has a duty to evaluate Pamela's external force theory of recovery absent an explanation of why it is somehow moot." The Court remanded this issue to the Board.

Larson v. Excel Indus., Inc., 483 P.3d 1067, 1071 (Kan. Ct. App. 2021)

Q: Can a claimant who has a workers compensation act claim also pursue a negligence claim against his employer for the same accident?

A: No. The exclusive remedy provision of the Workers Compensation Act prevents a claimant from also suing for negligence when they are pursuing a workers compensation award.

On September 5, 2014, Loren Hopkins alleged he sustained an injury to his low back at work. After the injury he filed two subsequent claims: 1) a claim under the Kansas Workers' Compensation Act (the Act); and 2) a civil action against his employer, Great Plains Manufacturing, Inc. (Great Plains), alleging negligence.

First, with regard to the workers' compensation claim, there were conflicting medical opinions on whether claimant's work accident was the prevailing factor causing his low back condition or whether his low back symptoms were solely in aggravation of a preexisting condition. Ultimately, the Administrative Law Judge issued an award finding that the claimant suffered a strain as a result of the 2014 accident, but he had recovered from the strain and had failed to show that the accident caused any permanent injury or impairment. The workers' compensation award limited benefits to those already paid and denied any future benefits.

Second, with regard to the civil negligence lawsuit, Great Plains moved for summary judgment alleging that the exclusive remedy provision of the Act barred Hopkins' negligence claim. The district court agreed and granted the summary judgment

motion, in turn rejecting that if the Act barred his civil action, it violated Hopkins's rights under section 18 of the Kansas Constitutional Bill of Rights. Hopkins appealed this decision which is the subject of this case.

The Court of Appeals of Kansas turned to interpreting K.S.A. 2020 Supp. 44-501b(d) to decide this case. The provision states.

> "Except as provided in the workers' compensation act, no employer, or other employee of such employer, shall be liable for any injury, whether by accident, repetitive trauma, or occupational disease, for which compensation is recoverable under the workers' compensation act nor shall an employer be liable to any third party for any injury or death of an employee which was caused under circumstances creating a legal liability against a third party for which workers compensation is payable by such employer." K.S.A. 2020 Supp. 44-501b(d).

The court interpreted this statute to mean "that if a worker can recover benefits from an employer under the act for an injury, he or she cannot maintain a common-law action against that employer for damages based on a theory of negligence." *Fugit v. United Beechcraft, Inc.,* 222 Kan. 312, 314, 564 P.2d 521 (1977).

Hopkins argued that his injury was not recoverable under the Act because the court found that the work accident was not the prevailing factor causing the injury and thus did not award him permanent disability benefits or ongoing medical care. Accordingly, Claimant argued the exclusive remedy provision should not apply to bar a civil action. However, the Court highlighted that claimant had submitted into evidence a report from Dr. Fluter who found that claimant's work accident was the prevailing factor causing his low back condition. The Court explained, "Under these circumstances, it is incorrect to say that Hopkins could not recover under the Act as a matter of law for his ongoing medical needs. Hopkins would have fully recovered for his claims had the ALJ and the Board adopted Fluter's opinion. It was *possible* for Hopkins to fully recover for his claims under the Act, he simply failed to meet his burden of proof—at least according to the ALJ and the Board—and Hopkins made no attempt to seek judicial review of the Board's decision."

Ultimately, the Court held, "In sum, Hopkins recovered some compensation under the Act for his 2014 forklift accident, just not nearly as much as he wanted to recover because the Board rejected his claim that his work injury was the prevailing factor in causing his current back pain. Because compensation was recoverable under the Act, the exclusive remedy provision bars a civil action against Great Plains."

Hopkins v. Great Plains Mfg., Inc., 485 P.3d 1210 (Kan. Ct. App. 2021)

Q: *Does K.S.A. 44-503 extend to subcontractors in foreign states, and if so, would this offend the Due Process Clause by imposing personal jurisdiction over a subcontractor despite its limited contacts with Kansas as the forum state?*

A: Yes. **By contracting with a Kansas business for onsite labor, RGV submitted to personal jurisdiction in Kansas for workers compensation proceedings, consistent with the Due Process Clause of the Fourteenth Amendment to the United States Constitution.**

RGV owns and operates 45 Pizza Hut restaurants in Texas. The franchise agreement between RGV and Pizza hut details that RVG must adhere to many specific guidelines regarding how RGV operates each Pizza Hut, including what color the roofs are and how the roofs are maintained. RVG has no restaurants nor regularly conducts business in Kansas. However, over the years RGV has contracted with Shomberg, a Kansas corporation, from time to time to clean, repair, and paint the roofs on its Pizza Hut restaurants. For this project, the communications between RGV and Shomberg were mainly over e-mail; the two companies never signed a written contract for the 2016 work. Shomberg placed an ad for skilled workers and hired Christian White. White, Shomberg, and a third worker went to Texas in November 2016 to do the work for RGV. While working, White fell from the roof of one of the restaurants and seriously injured his leg. Shomberg is not available as a source of workers' compensation benefits, and the company has been dismissed from the action. White is now seeking to use K.S.A. 44-503 to claim workers' compensation benefits from RVG as the principal contractor.

K.S.A. 44-503(a) explains that the Workers' Compensation Act provides that those commercial entities contracting out work may in some circumstances become liable for benefits due to the subcontractor's employees for on-the-job injuries sustained while performing the subcontract. This statute shifts liability from Shomberg to RGV if it subcontracts work that is "part of its trade" or that it "contracted to perform". RGV attempted to argue that neither of these requirements applied, because there was no contract, and because roofing maintenance was not part of its trade, selling pizzas. The court held that RGV did not merely sell pizza, it sold Pizza Hut Pizzas, and maintaining the roof was part of operating a Pizza Hut. Because White was employed by Shomberg and then subcontracted out to RGV to do roofing work, an integral part of RGV's business, RGV is liable for White's injury.

As for the personal jurisdiction issue, the Court of Appeals of Kansas held that White's workers' compensation claim equally and plainly related to the contractual relationship. This was enough to satisfy the requirements of the Due Process Clause for personal jurisdiction over RGV in Kansas to adjudicate White's claim. Here, RGV purposefully sought out Shomberg in Kansas, and in doing so, RGV knew full well it was contracting with a Kansas corporation. This was not the result of randomness or general advertising. In addition, the Court viewed the work performed as more than an "incidental transaction." RGV likely knew that workers performing hazardous work on ten restaurants would be entitled to benefits should they become injured. This constitutes a direct solicitation of Shomberg to perform work with the known and ever-present risks that one or more workers might be injured on the job. This is sufficient to constitute minimum contacts.

White v. RGV Pizza Hut, No. 122,239, 2021 WL 2387963, at *2 (Kan. Ct. App. June 11, 2021).

Q: Can the Workers Compensation Fund sue a "Principal contractor" for benefits paid in a workers' compensation claim even if the principal contractor was not involved in the workers' compensation suit and is not "uninsured, insolvent, or a vanished employer" as mentioned in mentioned in K.S.A. 2020 Supp. 44-532a(a)?

A: Yes, K.S.A. 2020 Supp. 44-532a(b), gives the Fund a cause of action to recover what it has paid as workers' compensation benefits to injured workers.

Trademark is a contractor that hired Ballin as a subcontractor. Ballin subsequently hired Medina to perform physical labor for Ballin. Medina fell on the job and filed a workers' compensation action against Ballin. Ballin failed to maintain proper insurance, leaving Medina unable to recover from Ballin. Instead, Medina attempted to collect from the workers' compensation fund, and was able to collect $17,432.87. During Medina's action to collect from the fund, the fund tried to implead Trademark as the original contractor, but there was no statute to allow Trademark to be impleaded. Instead, the fund paid out the award and sued Trademark in a separate action for the full balance of the payment. The court ordered Trademark to pay the fund the full balance. Both parties now appeal, Trademark for a reversal, and the workers' compensation fund for an additional award of attorney's fees.

The Court of Appeals makes it clear that when Ballin failed to pay the workers' compensation claim, Medina could have received compensation from Trademark instead of the Fund. "The principal contractor is secondarily liable if the subcontractor fails to provide workers' compensation benefits to its employees." K.S.A. 44-503(g). In other words, if the subcontractor cannot pay, then the contractor will. The Court emphasized that the overall goal of workers' compensation cases are for the claimants to be paid out quickly and efficiently, and that who is going to ultimately be responsible for the payment can be sorted out later, such as it was in this case. The Court explained, "The creation of the Fund did not displace the long-standing rule that a principal remains contingently liable should a subcontractor be unable to pay an award. The worker is entitled to implead the Fund so the worker can be expeditiously paid. After the Fund satisfies a claim to the employee, the Fund "steps into the shoes of the employee" and may pursue a claim against the principal. This is all part of the sorting out process mentioned above." Ultimately, the Court held, "To sum up the law, we hold that for many reasons, the district court correctly granted judgment to the Fund over Trademark. The judgment promotes the aims of the Act—the prompt payment of benefits to injured workers, the responsibility of contractors to provide benefits for injured workers of their subcontractors, and duty of employers to reimburse the Fund."

Schmidt v. Trademark, Inc., No. 122,078, 2021 WL 2171608, at *1 (Kan. Ct. App. May 28, 2021)

Q. When an employee tests positive for use of illicit substances, can he still maintain a compensable Kansas workers' compensation claim?

A. Yes. An injured worker can maintain a compensable claim.

The law creates a rebuttable presumption that the accident was contributed to by the

drug impairment. The injured employee can overcome the presumption with clear and convincing evidence. The Kansas Supreme Court affirmed a decision by the Board of Appeals that the presumed impairment did not contribute to an employee's injury.

Gary Woessner died when he fell off of a catwalk. It was later determined that he had marijuana in his symptoms of at least over 50 nanograms per milliliter. It was later confirmed that his exact impairment was 189 nanograms per milliliter. The case was originally heard by the Administrative Law Judge who deemed the case non-compensable stating that the statutory requirements of K.S.A. 44-501 (b)(3) do not apply to the case as the employer did not take the sample directly. Specifically, K.S.A. 44-501 (b)(3) has six additional requirements if the employer took the drug test themselves. This includes collecting and labeling the samples under the supervision of a licensed health care professional, various laboratory requirements, the obtaining of a split sample, and additional rules of chain of custody. Ultimately, this was appealed to the Board of Appeals who found that the K.S.A. 44-501 (b)(3) was applicable and even if it was not, they felt that the claimant had established by clear and convincing evidence that his marijuana use did not contribute to the fall off of the catwalk causing his death. Apparently, the Board reviewed coworker's testimony indicating that prior to his death he did not see signs that the claimant was impaired.

The Court of Appeals addressed the issue and stated that they did not believe K.S.A. 44-501 (b)(3) applied but they believed that there were some questions regarding impairment and if it contributed to the injury and remanded the case back to the Appeals Board to make further determinations. Ultimately, the case was heard by the Kansas Supreme Court who found the Board appropriately weighed the evidence against the presumption: there was clear and convincing evidence showing that the marijuana usage did not contribute to claimant's death.

Woessner v. Labor Max Staffing, 471 P.3d 1 (Kan. 2020)

Q. What are the requirements when pursuing a psychological injury as a result of a work accident?

A. In order to establish a compensable claim for traumatic neurosis under the Kansas Workers' Compensation Act, K.S.A. 44-501 et seq., the claimant must establish: (a) a work-related physical injury; (b) symptoms of the traumatic neurosis; and (c) that the neurosis is directly traceable to the physical injury.

Most recently, in *Hughes v. City of Hutchinson*, the Court of Appeals affirmed the Board's finding that a worker did not sustain psychological injury after the Board: (1) noted the worker's hired psychologist was the sole professional to diagnose the worker with depression; (2) expressed concern Hughes did not seek opinions from treating medical professionals concerning depression; (3) the worker only consulted his hired psychologist 29 months after his injury and only based on his attorney's request; (4) the worker did not seek a preliminary hearing to request court-ordered mental health treatment while the matter was pending; and (5) the worker did not testify before the ALJ regarding his claims for depression and anxiety.

Hughes v. City of Hutchinson, 468 P.3d 348 (Kan. Ct. App. 2020)

Q. May preliminary orders be appealed from the Kansas Workers' Compensation Appeals Board to the Kansas Court of Appeals?

A. No. K.S.A. 2018 Supp. 44-556(a) provides for the appeal of final orders of the Board to the Court of Appeals, not preliminary orders. K.S.A. 2018 Supp. 44-534(a) states that preliminary hearings are "summary in nature" which provide an opportunity for a "full presentation of the facts" at the "full hearing on the claim." K.S.A. 2018 Supp. 44- 534a(a)(1) and (2).

In this case, employer appealed an ALJ's order directing claimant be treated by Dr. Eva Henry. Employer claimed that the administrative law judge had denied employer due process by ordering that Dr. Henry provide the treatment without first allowing the employer to submit two names of treatment providers for the judge to choose from under K.S.A. 2018 Supp. 44-510(h).

Employer argues that the Court of Appeals has jurisdiction because the administrative law judge denied it due process by failing to follow a statutory directive (that the employer be allowed to submit the names of two health-care providers for consideration if the administrative law judge decides a change in treatment provider is called for). This is distinguishable from previously decided cases concerning a preliminary order for continued medical treatment after the award of benefits had already been made. *Naff v. Davol, Inc.,* 28 Kan. App. 2d 726, 20 P.3d 738 (2001). Naff was a post award decision wherein a decision on the merits had already been decided after a full presentation of the facts. Naff is distinguishable as the case at point has not been decided in a final hearing.

There's a limited right of review for key issues that are jurisdictional to the workers'-compensation proceeding itself, like whether the injury arose out of the employment and whether the employee suffered an accident. But preliminary orders on those issues are subject to review by the board not a court. K.S.A. 2018 Supp. 44-534a(a)(2). The statute specifically precludes judicial review of preliminary orders even on these key issues. Preliminary orders are still subject to a full hearing on the claim and are not binding in resolving the underlying issues. Employer still has a chance to contest the decision made by the ALJ. Furthermore, if Employer makes payments it should not have made but for the ALJ's preliminary orders, the Employer shall seek compensation from the Fund.

Blakeslee v. Mansel Constr., 440 P.3d 627 (Kan. Ct. App. 2019).

Q. Is a claimant required to request an extension within three years of filing an application of hearing to avoid dismissal?

A. Yes. K.S.A. 2011 Supp. 44-523(f)(1) states that if a claim has not proceeded to a regular hearing, settlement hearing or a final award within three years from the filing of an application for hearing, an ALJ may grant a dismissal unless claimant has moved for an extension within the three years.

In this case claimant filed an application for hearing on December 5, 2012. Employer filed an application for dismissal on January 4, 2016 stating claimant had failed to move the claim toward regular hearing or settlement within three years pursuant to K.S.A. 2011 Supp. 44-523(f) . Claimant filed a request for extension of time to

schedule depositions and a regular hearing after the application for dismissal was filed. The ALJ dismissed the claim stating K.S.A. 2011 Supp. 44-523(f)(1) required the dismissal because claimant had not moved for an extension within three years of filing his application for hearing.

Glaze petitioned for the court's review of the following issues: (1) whether the panel erred in interpreting K.S.A. 2011 Supp. 44-523(f)(1) and dismissing his claim; (2) whether the panel erred when it held that K.S.A. 2011 Supp. 44-523(f)(1) requires dismissal of a claim when a motion to extend is not filed within three years of filing an application for hearing; and (3) whether the panel's interpretation of K.S.A. 2011 Supp. 44-523(f)(1) deprived him of due process under section 18 of the Bill of Rights of the Kansas Constitution. Review was granted on the first two issues.

The Board has consistently interpreted K.S.A. 2011 Supp. 44-523(f)(1) to mean that when a claim has not proceeded to a regular hearing, settlement hearing or a final award within three years from the filing of an application for hearing, an ALJ may grant an extension only if the claimant moved for an extension within the three years. See *Hackler v. Peninsula Gaming Partners, LLC*, No. 1060758, 2016 WL 858312 (Kan. Work. Comp. App. Bd. February 25, 2016); *Hoffman v. Dental Central*, No. 1058645, 2015 WL 4071473

(Kan. Work. Comp. App. Bd. June 26, 2015); *Ramstad v. U.S.D*. 229, No. 1059881, 2015 WL 5462026 (Kan. Work. Comp. App. Bd. August 31, 2015). The ALJ and the Board interpreted it in the same way here. The Court agrees that K.S.A. 2011 Supp. 44-523(f)(1) unambiguously prohibits an ALJ from granting an extension unless a motion for extension has been filed within three years of filing the application for hearing. Any other interpretation strains the common reading of the statute's ordinary language. This conclusion is confirmed when general rules of grammar and punctuation are applied. The Court of Appeals' conclusion that the statute unambiguously requires a party to move for extension within three years of filing an application for hearing is correct.

Glaze v. J.K. Williams, LLC, 439 P.3d 920 (Kan. 2019).

***Q. Is a claim which occurred prior to the 2011 Amendments but which had an* application for hearing filed after the 2011 Amendments took effect, subject to the 2011 Amendments?**

A. Yes. The Supreme Court concluded that K.S.A. 2011 Supp. 44-523(f)(1) requires the dismissal of a claim if claimant has not filed a motion for extension within three years from the filing of her application for hearing. In addition, the Supreme Court rejected claimant's argument that her claim shall be governed by the 2009 laws, rather than 2011 law, as she had not yet filed her application for hearing when the 2011 laws went into effect.

In this case, Knoll was injured while working for the school district on October 29, 2009. Knoll filed an application for hearing with the Kansas Division of Workers Compensation on November 14, 2011. On February 15, 2015, the school district and its insurer moved to have Knoll's claim dismissed pursuant to K.S.A. 2011 Supp. 44-523(f)(1), because the claim had not proceeded to a final hearing within three years of

the filing of an application for hearing. Knoll argued the motion to dismiss should be denied because K.S.A. 2009 Supp. 44-523(f) actually governed her claim and that version of the statute gives a claimant five years from the date of filing an application for hearing to file a motion for extension.

In a worker's compensation cases, the substantive rights between the parties are determined by the law in effect on the date of injury. However, amendments to the compensation act that are merely procedural or remedial in nature and that do not prejudicially affect substantive rights of the parties apply to pending cases. Generally, statutes of limitations are considered procedural. The 2011 amendment is not exactly a statute of limitations, but it is very similar. K.S.A. 2011 Supp. 44-523 establishes a time limit on completing a claim based on the date when the claim was filed. Similar to a statute of limitations, this statute cuts off a remedy and can be waived, lost, or extended by statute. If a workers compensation claimant filed an application for hearing under K.S.A. 44-534 after K.S.A. 2011 Supp. 44-523(f)(1) took effect, the 2011 statute governs the claim.

The Court concluded that K.S.A. 2011 Supp. 44-523(f)(1) applies to any cases that were pending during its enactment when the claimant did not file an application for hearing until after the 2011 amendments took effect. Though Knoll suffered her injury in 2009, she filed her application for hearing six months after the 2011 amendments became effective. Accordingly, K.S.A. 2011 Supp. 44-523(f)(1) controlled her claim. Because Knoll did not file her motion for extension until after the three-year time limit provided for therein, the Court of Appeals was correct when it reversed the Board's decision affirming the ALJ's denial of the school district's motion for dismissal.

Knoll v. Olathe Sch. Dist. No. 233, 439 P.3d 313, 317 (Kan. 2019).

Q. What is an "idiopathic cause" under Kan. Stat. Ann. 44-508(f)(3)(A)(iv)?

A. The Kansas Supreme Court defined the term "idiopathic causes" to refer to medical conditions or medical events of unknown origin that are peculiar to the injured individual under the Kansas Workers Compensation Act.

In this case, claimant worked as a forklift operator and was required to attend a paid safety meeting at the nearby headquarters. When the meeting ended, claimant walked to a restroom near the stairs and ended up face down on a landing at about the midpoint on the stairway, shattering or breaking three vertebra in his neck. The accident's cause remains a mystery.

Employer argued the fall's cause was unknown, which meant claimant's injuries arose from an idiopathic cause and were not compensable under the 2011 Amendments which excluded compensation for any accident or injury that arose either directly or indirectly from idiopathic causes. The 2011 Amendments however did not define the term idiopathic cause.

The court determined "idiopathic causes" refers to medical conditions or medical events of unknown origin that are peculiar to the injured individual. The court's decision reversed the interpretation given by the Workers Compensation Appeals Board, which denied Graber compensation. The court returned the claim to the board for reconsideration based on the court's definition.

Estate of Graber v. Dillon Companies, 439 P.3d 291, 301 (Kan. 2019).

***Q. Is prior authorization required for an employer to be liable for a claimant's medical* treatment?**

A. Yes.

In this case, the claimant sustained a compensable injury to her neck, lower back, and right arm. She then settled her case in 2013, leaving open her right to future medical care and review and modification. After her settlement, she received authorized care from multiple doctors. Her employer had also informed her that any referral from one doctor to another would not be authorized unless either her employer or the Administrative Law Judge preauthorized the treatment with the new doctor. However, the claimant also sought care from a podiatrist in 2014 to treat numbness, burning, and pain in her feet but did not obtain her employer's prior approval. The podiatrist recommended claimant to a neurologist who in turn recommended a biopsy. The biopsy did not determine the cause of her pain, and she was again referred to another doctor who the claimant treated with for seven to nine months before the doctor was designated as an authorized treating physician.

Claimant filed for a post-award medical hearing in September 2016 for reimbursement of her medical mileage. At the hearing, Claimant admitted she knew "no referrals from doctors were authorized unless either [her employer] or the ALJ clarified the orders beforehand." And that she ran four 5Ks, two 10Ks, one regular triathlon and one short course triathlon, and two half-marathons between November 2014 and June 2016. The Administrative Law Judge held the employer was not responsible for any of the mileage reimbursements for treatment claimant received without prior authorization and that the treatment was not related to her original work injury. Rather, it was related to her athletic activities. This decision was adopted by the Board, which held the treatment was unauthorized but did not address whether claimant's treatment was related to her work injury.

The Court of Appeals also did not determine whether the treatment was related to claimant's work injury or her athletic activities. The court did, however, affirm the Judge's and Board's determination that the treatment claimant was seeking reimbursement for was unauthorized. The court found it persuasive that throughout the period claimant was seeking unauthorized treatment, her employer had provided her with an authorized treating physician, she had attended appointments with that physician even after her settlement, and she had never received a bill for that treatment. Additionally, the court emphasized that claimant knew she had to seek prior approval of any referrals or medical treatment for it to be authorized and because she failed to do so, the treatment and any related travel expenses was unauthorized, and was not the employer's responsibility to pay.

Christenson v. Home Depot, No. 118,450, 2019 WL 985526 (Kan. Ct. App. Mar. 1, 2019).

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