

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

KENDALL TURNER)	
Claimant)	
v.)	
)	AP-00-0452-449
PLEASANT ACRES LLC)	CS-00-0058-238
Uninsured Respondent)	
and)	
)	
KANSAS WORKERS COMPENSATION FUND)	

ORDER ON REMAND

On March 18, 2022, the Kansas Court of Appeals affirmed in part and reversed in part the Board’s December 16, 2020, Order. This matter was remanded for a determination of the amount of the Fund's subrogation lien and the credit against the workers compensation award under K.S.A. 44-504(b).

The Court of Appeals noted:

Consequently, based on the plain and unambiguous language of K.S.A. 44-504, we find that the Fund has a subrogation lien against any duplicative recovery Turner received by way of settlement in his federal lawsuit against the uninsured motorist carrier arising out of the same work-related accident that is the subject of this workers compensation action. We also find that under K.S.A.44-504(b), the Fund is “subrogated to the extent of the compensation and medical aid” awarded in this workers compensation action. Moreover, we find that the Fund’s subrogation lien is “against the entire amount of such recovery, excluding any recovery, or portion thereof, determined . . . to be loss of consortium or loss of services to a spouse.” K.S.A. 44-504(b).

Under the Circumstance presented, we remand this workers compensation action to the Board for determination of the amount of the Fund’s subrogation lien. The Board may receive additional evidence to resolve this question or may remand this matter to the administrative law judge for additional fact-finding. After this determination has been made, the Board is directed to give the Fund credit against the workers compensation award to the extent provided by statute. In this way, the intent of the Kansas Legislature will be preserved in that Turner will receive

compensation for the injuries that he suffered as a result of the work-related accident, but not receive a double recovery.¹

The Board’s review is limited to the evidence presented to the administrative law judge.² Therefore, pursuant to the decision issued by the Court of Appeals, this matter is remanded to the administrative law judge with instructions to receive evidence and to make findings of fact regarding the following:

- What portion of the third party settlement is devoted to past and future medical and disability.
- How much, if any, of the third party settlement was set aside for loss of consortium or loss of services to a spouse.
- The date Claimant received recovery from the third party settlement, i.e., date of the settlement and/or the date Claimant received a settlement check.
- The amount of disability and medical benefits paid by the Fund and the dates they were paid.

IT IS SO ORDERED.

Dated this _____ day of May, 2022.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: (Via OSCAR)

Randy S. Stalcup, Attorney for Claimant
Chris Shepard, Attorney for Respondent
Timothy A. Emerson, Attorney for Kansas Workers' Comp. Fund
Hon. Ali Marchant, Administrative Law Judge

¹ See *Turner v. Pleasant Acres LLC*, 62 Kan.App.2d 122, 138-139, 506 P.3d 963 (2022)

² See K.S.A. 44-555c(a).