BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

STEVEN LANGVARDT	)	
Claimant	)	
V.	)	
	)	
INNOVATIVE LIVESTOCK SERVICES	)	AP-00-0463-900
Respondent	)	CS-00-0450-935
AND	)	
	)	
KANSAS LIVESTOCK ASSOCIATION	)	
Insurance Carrier	)	

ORDER

The respondent and its insurance carrier (the respondent), through D. Shane Bangerter, requested review of Administrative Law Judge Bruce Moore's Award dated February 25, 2022. Scott Mann appeared for the claimant. The Board heard oral argument on June 16, 2022.

RECORD AND STIPULATIONS

The Board considered the same record as the ALJ, consisting of the: (1) deposition transcript of John Dickerson, M.D., taken April 14, 2020; (2) deposition transcript of the claimant, taken May 26, 2020; (3) preliminary hearing transcript, held August 12, 2020; (4) court ordered IME report of Theodore Koreckij, M.D., dated September 22, 2020; (5) deposition transcript of Paul Stein, M.D., taken September 30, 2020; (6) deposition transcript of Theodore Koreckij, M.D., taken September 30, 2020; (7) regular hearing transcript, held April 20, 2021; (8) deposition transcript of Harold Hess, M.D., taken May 11, 2021; (9) stipulations filed May 24, 2021; (10) deposition transcript of Joshua Klemp, M.D., taken June 7, 2021; (11) deposition transcript of Alexander Bailey, M.D., taken October 5, 2021; (12) deposition transcript of John Estivo, M.D., taken October 15, 2021; (13) stipulation filed July 6, 2022, limiting the claimant to $75,000 for a 50% functional impairment to the body as a whole; (14) all exhibits; (15) documents filed with the Division; and (16) the Settlement Hearing transcript dated May 17, 2009.

ISSUES

1. Was the claimant's work accident the prevailing factor causing his thoracic spine injury, medical condition, and resulting disability or impairment?

2. Are the claimant's medical expenses incurred on his own subject to the $500 reimbursement cap for unauthorized medical under K.S.A. 44-510? Is the claimant entitled to future medical treatment?

3. Is the respondent entitled to a credit for voluntary payment of unearned wages?

FINDINGS OF FACT

The claimant began working for the respondent as an accountant on August 1, 2006. During the course of his employment, the claimant had lumbar spine difficulties, including lumbar spinal stenosis. The claimant had difficulty walking long distances and prolonged standing. The claimant underwent imaging scans, epidural steroid injections, and a posterior decompression of L1-2, L2-3 and L3-4 on November 20, 2014. Subsequently, the claimant underwent a lumbar fusion from L1 to L4 on November 8, 2016. Both surgeries were performed by Raymond Grundmeyer, M.D.

On October 15, 2018, while working the claimant walked sideways or backwards and fell through an open access door, i.e., a trap door, in the floor, striking his thoracic spine on the edge of the floor and falling approximately six feet, landing flat on his back. The claimant also injured his shoulders. He was transported by ambulance to the Rice County Hospital and referred to Wesley Woodlawn Hospital, where a thoracic spine MRI was conducted. It was interpreted by a radiologist as showing no evidence of traumatic injury to the thoracic spine, but it showed degenerative changes worse at T6-7, T7-8 and T8-9. The claimant then received authorized medical treatment at the Hutchinson Clinic.

John Estivo, D.O., a board-certified orthopedic surgeon, became the claimant's treating physician on November 26, 2018. The claimant walked with a normal gait. On physical examination, the claimant had no sensory or motor deficits of the lower extremities. The doctor diagnosed a thoracic sprain, pain to the claimant's shoulders and a nondisplaced fracture of the claimant's left small finger. Dr. Estivo interpreted the MRI dated October 15, 2018, as showing age-related degenerative changes without any acute abnormalities. The doctor ordered shoulder MRI scans, which were performed on December 6.

Dr. Estivo's December 13, 2018 report stated the claimant was using a cane due to a preexisting chronic lumbar spine condition, but his gait was non-antalgic. The doctor diagnosed a thoracic spine strain, a right shoulder labral tear, a left shoulder acromioclavicular separation, and rotator cuff tendinitis of the shoulders, the prevailing factor being the work accident. A subsequent narrative report, dated July 16, 2020, stated the doctor's physical examination showed no neurological issues, and the claimant had normal reflexes and strength of his lower extremities.[1]

Dr. Estivo testified the claimant did not mention lower extremity weakness until his appointment on December 20, 2018. The claimant reported noticing lower extremity weakness after getting out of bed on December 15, 2018. The claimant mentioned using

[1] This report, Ex. 2 to Dr. Estivo's deposition, identifies the date of the December 13, 2018, evaluation as occurring on December 15, 2018. This seems to be a typographical error, as no evaluation occurred on December 15, 2018.

a cane occasionally to stand or walk for long periods of time prior to October 2018. Further, the claimant reported difficulty standing and walking due to generalized leg weakness. Dr. Estivo ordered an MRI of the lumbar spine. On physical examination, Dr. Estivo found no explanation for the claimant's perceived leg weakness. The doctor's later report dated July 16, 2020, indicated the claimant's physical examination showed normal lower extremity reflexes and strength.

The claimant testified he woke up about two months after the accident and noticed leg weakness. He testified his leg weakness progressed in the next month and he "went from not needing anything to walk to a cane."[2] The claimant denied any other accidents between the October 15, 2018 accident and his onset of leg symptoms in the middle of December 2018.

The lumbar spine MRI, taken on January 4, 2019, showed evidence of a previous lumbar spine fusion and degenerative changes, but no other abnormalities, such as a compressed spine. Dr. Estivo testified the claimant's lumbar spine MRI did not explain his lower extremity complaints.

On January 11, 2019, Dr. Estivo noted the claimant no longer had thoracic spine pain, but continued to complain of lower extremity weakness and was using a walker because he felt his legs were too weak to support him. Dr. Estivo's physical examination of the claimant's lower extremities revealed nothing to explain leg weakness, as he detected no sensory or motor deficits. The doctor testified he never observed any hyperactive lower extremity reflexes. Dr. Estivo released the claimant at maximum medical improvement and stated:

> I did explain to the patient and his wife that I cannot relate the lower extremity weakness to the fall that occurred on 10/15/2018. MRI of the lumbar spine does not reveal any structural change that would explain those symptoms. I would recommend that he follow up with Dr. Grundmeyer for evaluation of the lower extremity weakness, unrelated to [the] injury claim of 10/15/2018.[3]

Dr. Estivo opined the claimant required no further medical treatment or permanent work restrictions for the October 15, 2018, accident. Subsequently, Dr. Estivo issued an impairment rating report. Using the *American Medical Ass'n, Guides to the Evaluation of Permanent Impairment* (6th ed.) (hereinafter the *Guides*), the doctor gave a 0% impairment for a completely resolved thoracic strain, a 10% left upper extremity rating and a 4% right upper extremity rating.

---

[2] P.H. Trans., Claimant's Depo. at 48.

[3] Estivo Depo., Ex. 3 at 30.

According to the claimant, Dr. Estivo, upon releasing him from authorized workers compensation treatment, suggested he be seen by a neurosurgeon as soon as possible.

Within days of being released by Dr. Estivo, the claimant consulted with his primary care physician, Dr. Richman, who ordered MRIs of the thoracic and cervical spine, which were conducted on January 18, 2019. The cervical spine MRI showed disc bulges and hypertrophic changes. The thoracic spine MRI showed what the radiologist termed a moderate broad-based disc bulge at T6-7 with severe canal stenosis. Dr. Richman referred the claimant to a neurologist at the Hutchinson Clinic, Dr. Isaac. According to the claimant, Dr. Isaac suggested he go to a hospital in Wichita immediately. The claimant went to Via Christi Hospital St. Francis, where John Dickerson, M.D., a board-certified neurosurgeon, was on call.

Dr. Dickerson first saw the claimant on January 19, 2019. The claimant presented with lower extremity weakness and reported increased difficulty with walking over the last four weeks. He reported falling in October and striking his back in an open crawl space. He complained of significant back pain and had gone from using a cane, to a walker, to a wheelchair to get around at work. A CT scan of the thoracic spine was done on January 20, 2019, with the indication for the study being a "fall."[4] On January 21, 2019, Dr. Dickerson performed laminectomies at T6-7 to decompress the claimant's spinal cord. The claimant last worked for the respondent just before his treatment at the hospital.

At a post-operative followup on March 4, 2019, the claimant was seen by Dr. Dickerson's APRN, Joel Weninger. The claimant reported difficulty walking more than fifty feet using a walker. Mr. Weninger recorded the claimant had surgery after being "injured after a workplace fall . . . ."[5] The report states the treatment concerned a workers compensation case and coordination with the insurance company was required.

Dr. Dickerson's deposition contains Exhibit 3, a letter dated March 7, 2019, noted as being signed electronically by Dr. Dickerson. The letter states the October 15, 2018 thoracic spine MRI did not show a T6-7 herniation which was later seen on a January 18, 2019 thoracic spine MRI. The letter indicated the claimant's work accident was not the prevailing factor causing the claimant's acute T6-7 disc herniation and severe stenosis.

The claimant got up from his wheelchair in April 2019 and felt a pop in his back. He had progressive left lower extremity weakness. An MRI conducted April 16, 2019, showed a "blown out" disc in Dr. Dickerson's opinion.[6] On April 16, 2019, Dr. Dickerson performed

---

[4] Stipulation #3 filed May 24, 2021(Dickerson Depo., Ex. 2 at 16).

[5] *Id*. (Dickerson Depo., Ex. 2 at 6).

[6] Stipulation #2 filed May 24, 2021 (Dickerson Depo. at 10).

a transpedicular microdiskectomy to remove T6-7 disc fragments that had broken off and were pressing on the spinal cord.

Around this same time, not entirely clear from the record, the claimant and the respondent entered into a "SEVERANCE AGREEMENT INCLUDING RELEASE AND COVENANT NOT TO SUE."[7] The parties indicate this document was entered into on either April 15 or April 17, 2019. The document stated the claimant's employment ended on April 11, 2019, and the respondent would still pay him $2,269.26 biweekly, with a final payment on August 30, 2019, when the claimant was eligible for social security retirement benefits. Beginning August 30, 2019, the claimant began receiving social security retirement benefits of $1,640 per month.

On May 17, 2019, a settlement hearing was held. The claimant appeared by phone while hospitalized at a rehabilitation hospital. He agreed to a lump sum payment of $20,512.50, closing out all issues. Shortly thereafter, the claimant changed his mind after being told by physical therapists his condition was permanent, he would never walk again and he would need modifications to his home. According to the claimant, he advised the respondent, particularly Norbert Schneider, he wanted to reverse the settlement, at least in part due to the cost of ongoing medical treatment, which he attributed to the work accident.

The claimant appealed the settlement to the Board. In an Order dated November 4, 2019, the Board set aside the settlement. The respondent appealed to the Kansas Court of Appeals. The appeal was dismissed for not stemming from a final agency action. Following the second thoracic spine surgery, the claimant was in the rehabilitation hospital until March 20, 2020.

At the claimant's attorney's request, Paul Stein, M.D., a retired board-certified neurosurgeon, performed a medical records review and authored a report dated October 31, 2019. Dr. Stein practiced from 1974 until 2001 and had a consulting business from 2001 to 2015. In addressing prevailing factor, Dr. Stein testified:

> My conclusion was that it was more likely than not that the primary and prevailing factor in his problems subsequent to 10-15-18 was the injury itself. The reasoning behind it was that the thoracic spine is very different from the lumbar spine in that the thoracic spine, you have the rib cage which stabilizes the spine considerably. You have a lot of movement in the cervical spine, you have a lot of movement in the mid to lower lumbar spine, you have very little movement in the thoracic spine, and the pathology, like disk herniation or spinal stenosis in the thoracic spine is very uncommon, very, very, very uncommon. I think in all of my years of doing active surgery I operated on maybe three cases. The literature suggests -- although it's not one hundred percent or by any means near that, but

[7] P.H. Trans., Severance Agreement.

> the literature suggests that it is very common for a history of trauma to precede a thoracic stenosis, thoracic disk herniation and myelopathy, and I felt that that was an important factor. Now, one of the things that I had to consider was the fact that in Mr. Langvardt the spinal cord symptoms themselves were delayed. He started out with pain, with injury from the trauma, but he didn't really have any symptoms of spinal cord compression until later. That was not a major concern for me because it's not an uncommon finding, that you can have the trauma, edema usually takes days to weeks to develop typically, and then even with the minor aggravation of the area from normal daily living it progresses on to become symptomatic, so the time difference really did not change my opinion in any way. I guess the simple fact is that I believed through a reasonable degree of medical certainty that the force of the accident caused damage to the disk and -- at T6-7, but when I say the disk I'm talking about the supporting structures, the ligaments. The disk placements were later found to be edematous. All of those supporting structures were injured, and as a result of that progressively he developed more spinal stenosis and wound up having surgery. I don't know that I stated it specifically in my report but you will note that at the first surgery he did not have an actual diskectomy. Doctor Dickerson did not take out any disk, he just took out a lot of bone and ligament to make more room for the spinal cord, and I'm not saying that was inappropriate, that was appropriate, but what happened as a result of all of that is that he became even more unstable in that area and that's what resulted in that large disk rupture that he subsequently went in to remove, and that's my opinion.[8]

Dr. Stein's report states most thoracic herniations are at T9 to T12 (the lower thoracic region). Dr. Stein testified the initial MRI showed preexisting degenerative disc disease of the thoracic spine and some bulging, but no herniation. Still, Dr. Stein testified the claimant's accident was quite sufficient to cause the claimant's later symptomatology. Dr. Stein's report states the second MRI of January 18, 2019, showed mild disc herniation, swollen ligaments, significant cord compression and bone marrow edema at T6, which is not a usual component of a simple disc herniation and suggests trauma. Dr. Stein testified the progression of the claimant's thoracic spinal stenosis was not likely to have happened, and was in fact unexpected, absent the work accident.

Further, Dr. Stein testified the claimant's preexisting degenerative disc disease of the spine was not likely to cause myelopathy, absent trauma. Dr. Stein testified the claimant's age was not the prevailing factor, nor was the claimant getting out of bed on December 15, 2018, nor was the claimant's prior lumbar spine surgeries. According to the doctor, the claimant's prior use of a cane was due to his lumbar fusion and irrelevant to the current injury. The claimant's preexisting cervical spine and lumbar spine issues were red herrings and "[a]bsolutely not" the problem.[9] The doctor testified all of his opinions were based on medical probability.

---

[8] Sipulation #3 filed May 24, 2021 (Stein Depo. at 17-19).

[9] *Id*. (Stein Depo. at 22).

Dr. Dickerson, in a letter dated April 3, 2020, stated he did not write the letter dated March 7, 2019. He testified the March 7, 2019 letter was written by a midlevel employee, Jarrad, who summarized medical records. Dr. Dickerson stated the letter did not represent his medical opinions. Rather, Dr. Dickerson indicated the October 15, 2018 accident was the prevailing factor for the T6-7 herniation and two surgeries thereafter. Dr. Dickerson repeatedly testified he erred in not reading the letter closely and it was his mistake. The doctor testified the claimant's large recurrent herniated disc at T6-7 was the natural and probable consequence of the claimant's work injury and first surgery. The letter dated April 3, 2020, was drafted by the claimant's attorney, following a conference with Dr. Dickerson.

Dr. Dickerson testified the claimant's prior back treatment was irrelevant. Dr. Dickerson testified trauma is almost always involved in a thoracic disc herniation.

Dr. Dickerson agreed the thoracic MRI dated January 18, 2019 showed a T6-7 herniation not present on the MRI dated October 15, 2018, but he testified a disc herniation can show up months later. The doctor attributed the herniation to the October 15, 2018 fall. The doctor had no concern the MRI dated October 15, 2018, did not show a herniation. He testified the fall damaged the lining of the disc and it progressively tore, probably until December 15, 2018, when the claimant noticed leg weakness after getting out of bed. Dr. Dickerson testified the claimant getting out of bed on December 15, 2018, was not the prevailing cause of the thoracic herniation.

Dr. Dickerson doubted Dr. Estivo's physical examinations in December 2018 and January 2019 revealed no sensory or motor deficits of the lower extremities because the claimant was using a walker in January 2019. Dr. Dickerson viewed the leg weakness on December 15, 2018, as a progression of the October 15, 2018 injury.

At the respondent's request, Alexander Bailey, M.D., a board-certified orthopedic surgeon, performed a medical records review and generated a report dated June 15, 2020. In addressing prevailing factor, Dr. Bailey testified:

> This patient has been identified through the years to have significant history of degenerative changes throughout his back. It's represented through the thoracic and lumbar spine. He has previous multiple treatments on the low back with ongoing clinical symptomatologies. He has advanced degenerative changes in the thoracic spine.
>
> The fall is documented. The imaging following the fall is reviewed showing advanced degenerative changes multilevel thoracolumbar spine extending up into the cervical spine. No acute process is identified on the MRI scan following fall. He is diagnosed with a strain within reason.

> He subsequently develops progressive difficulty with findings of disc herniation in his thoracic spine, which I find to be unrelated to the patient's fall previously and is based on a degenerative spine with sequelae.[10]

Dr. Bailey opined the prevailing factor is the random event of progression of spine degeneration. The cause is "unknown specific reason."[11] Dr. Bailey found it reasonable for the claimant to have had an acute T6-7 herniation in December 2018, coinciding with leg weakness.

Dr. Bailey testified the claimant had gait intolerance for years. He testified the temporal relationship showed no connection between the accident and the herniation. Dr. Bailey agreed the claimant's prior treatment to the lumbar and cervical spine was unrelated to the current injury. Dr. Bailey testified the claimant does not have ankylosing spondylitis. The doctor testified the claimant's initial MRI did not show a high-intensity zone or an annular tear.

Dr. Bailey stated Dr. Dickerson only changed his opinion after the claimant worsened and was paralyzed. Ninety percent of Dr. Bailey's workers compensation opinions are for the defense. Dr. Bailey testified his opinions were within a reasonable degree of medical certainty.

Dr. Estivo's narrative report dated July 16, 2020, states there was a very clear change between the October 15, 2018 MRI (extensive degeneration, but no structural change or acute abnormalities) and the January 18, 2019 MRI (T6-7 herniation and spinal stenosis not present on the first MRI). The doctor stated the claimant had no neurological deficits, and had normal lower extremity reflexes and motor function throughout his treatment. Dr. Estivo opined the prevailing factor for the claimant's injury, medical condition, impairment or disability was preexisting, age-related advanced degenerative disc disease of the thoracic spine, not the work accident. In his testimony, Dr. Estivo agreed most thoracic herniations are in the lower thoracic spine (T9 to T12) and if the claimant's T6-7 herniation was due to age-related degeneration, it is not the norm.

In his testimony, Dr. Estivo agreed the claimant's leg symptoms were due to the T6-7 herniation and had nothing to do with his lumbar or cervical spine.

Dr. Estivo testified it would be very unusual and not typical to have damage to the thoracic spine that would later progress to a herniation. Instead, if the force is great enough to herniate a disc, the damage should be done at the time of trauma. However, Dr. Estivo testified:

---

[10] Bailey Depo. at 7-8.

[11] *Id*. at 24.

> Q. And that kind of gets back to my initial questioning; have you ever seen where a disc is damaged and partially herniates or bulges and then over time progresses or herniates at a later date?
>
> A. It can certainly happen, but I haven't seen that that I can recall, no.
>
> Q. Well, it happened in this case.
>
> A. It did, but you asked me if I have seen that and I haven't seen that happen. It would be very unusual. And after the surgery there is instability in the spine at that area making it very prone to re-herniate or herniating.[12]

Dr. Estivo testified he did not think trauma was required to cause edema in the claimant's thoracic spine because the claimant's spinal degeneration by itself was bad enough to cause daily activity to result in edema.

A preliminary hearing was held on August 12, 2020. The claimant sought authorized medical treatment, home health care, reimbursement of out-of-pocket medical expenses and temporary total disability benefits. Following the hearing, the ALJ ordered a neutral independent medical evaluation with Theodore Koreckij, M.D., a board-certified orthopedic surgeon.

Dr. Koreckij examined the claimant on September 22, 2020. Dr. Koreckij testified he looked very closely at the October 15, 2018 MRI, but found nothing significant. The doctor testified the October 15, 2018 MRI showed no herniation or spinal cord compression. Dr. Koreckij testified if the accident caused spinal edema, it should have been on the October 15, 2018 MRI. He saw no ligamentous injury on any MRI. He testified thoracic herniations are due to degeneration or trauma. The doctor agreed the claimant's leg weakness on December 15, 2018, was a symptom of a herniated T6-7 disc. According to Dr. Koreckij, the claimant's herniation within 60 days of the accident was just a coincidence.

Dr. Koreckij opined the claimant's disc herniation was not related to the work injury, stating, "I don't have a cause for the actual disc herniation. I did not feel it was related to the work injury in question."[13] Dr. Koreckij further testified, "I don't have a good reason as to why he had a disc herniation."[14]

---

[12] Estivo Depo., pp. 26-27.

[13] Koreckij Depo. at 9.

[14] *Id*.

Dr. Koreckij's report stated the accident was not the prevailing factor because the initial MRI was negative on the date of accident, the claimant returned to work and could walk. Two or three months later, the claimant had leg weakness. The claimant's condition, in Dr. Koreckij's view, was due to preexisting spinal ankylosis above and below T6-7, which put increased force on T6-7. Dr. Koreckij clarified, "I believe the disc herniation occurred for him where it did because he unfortunately has an ankylosed spine whereby he has multiple areas of his spine fused together, which imparts, basically, two long bones of your bone. And, unfortunately, he does not have the ankylosing occurring at the T6-7 level."[15] Basically, T6-7 acted like a "hinge" in the spine.

Of all of the testifying doctors, only Dr. Koreckij diagnosed ankylosing spondylitis, and such diagnosis was never listed in any imaging study report, but he insisted his diagnosis was absolutely correct based on a CT scan dated January 20, 2019.

Dr. Koreckij agreed the claimant's lumbar fusion and his preexisting cervical spine conditions had nothing to do with the thoracic spine herniation.

Using the *Guides,* Dr. Koreckij assigned the claimant a 50% whole person impairment. The doctor testified his opinions were within a reasonable degree of medical certainty.

Ninety-five percent of Dr. Koreckij's independent medical evaluations are for insurance companies.

Judge Moore issued a preliminary hearing Order on December 11, 2020. The judge concluded the claimant failed to sustain his burden of proving his October 15, 2018 work accident was the prevailing factor causing his T6-7 herniation. Preliminary orders are subject to change following a full presentation of evidence.

At the claimant's request, Dr. Harold Hess, a board-certified neurosurgeon who actively practiced medicine from 1988 until 2018, reviewed medical records and generated a report dated January 28, 2021.

Dr. Hess testified the MRI dated October 15, 2018, which was of poor quality, did not show a T6-7 herniation, but it showed an increased T2 signal at T6-7, a tear at T6-7, increased T2 signal in the T6-7 facet joints, and a mild T6-7 bulge without spinal cord compression. Dr. Hess noted the three MRIs showed progression of the T2 signal and showed an annular tear at T6-7, an injury to the disc. Dr. Hess disagreed the MRI dated October 15, 2018, failed to show an acute injury. Instead, he testified the MRI showed disc disruption. The doctor testified he frequently disagrees with radiologists.

---

[15] Koreckij Depo. at 10.

When asked what caused the annular tear at T6-7, Dr. Hess testified the claimant sustained a significant trauma, a sheer injury, on October 15, 2018, and the annular tear progressed from October through January 2019, causing the claimant's leg weakness, inability to walk, and hyperactive reflexes. Dr. Hess surmised Dr. Estivo did not see the increased T2 signal on the October 15, 2018 MRI. By April 2019, the disc area between T6-7 had blown out both in a posterior and anterior direction. The doctor testified thoracic herniations are rare absent trauma because of the stability provided by the rib cage. Dr. Hess testified absent a significant trauma, the claimant would not have developed a T6-7 large disc herniation compressing his spinal cord.

Dr. Hess testified the accident of October 15, 2018, was the prevailing factor. He testified the claimant's preexisting lumbar and cervical spine issues were not relevant. The doctor acknowledged the claimant's entire spine, pre-accident, was basically fused, either due to surgery or degenerative disc disease, above and below T6-7. This would cause all stress, in the event of a trauma, to concentrate on T6-7.

Dr. Hess did not review reports from Drs. Stein, Bailey, Koreckij, Grundmeyer or the Hutchinson Hospital.

At the claimant's attorney's request, Dr. Joshua Klemp, a neurosurgeon (not board certified), performed a medical records review and generated a report dated May 7, 2021. The doctor testified the claimant's initial pain was in the lower mid-scapular region which is within the T6-7 thoracic region. Dr. Klemp observed the claimant first had indication of thoracic myelopathy when he awoke with leg weakness on December 15, 2018. Dr. Klemp noted the claimant was still having symptoms of thoracic myelopathy when he was released by Dr. Estivo on January 11, 2019. According to Dr. Klemp, the claimant probably had leg weakness and reflex abnormality when he was discharged by Dr. Estivo.

Dr. Klemp's review of the October 15, 2018 MRI, upon adjusting resolution, showed ligamentous disruption at T6-7, demonstrating a traumatic injury, and explained why a progressive disc herniation "may have started to occur."[16] The doctor testified the initial MRI was of lesser quality, and absent adjusting resolution, did not make the ligamentous disruption apparent. Dr. Klemp testified the benefit of hindsight made him focus on T6-7 when reviewing the MRI films.

Dr. Klemp's review of the January 18, 2019 MRI revealed, among other things, a disruption of the anterior longitudinal ligament, hyper-intensity within the vertebral bodies, a T6-7 disc herniation and separation of the endplate at T6. The doctor indicated these findings were acute. Further, Dr. Klemp testified a January 20, 2019 CT scan was consistent with ligamentous disruption and showed a non-calcified disc at T6-7. The lack of calcification indicated the disc injury was acute (within 24 to 48 hours) or subacute

[16] Klemp Depo. at 29.

(within months). Dr. Klemp testified all three MRIs show a likely anterior longitudinal ligament injury at T6-7. He wrote the initial MRI, which is of poor quality, might show some edema.

Dr. Klemp opined the accident – an extension injury anteriorly which progressed and precipitated the events that have subsequently occurred – was the prevailing factor causing the claimant's injury, subsequent events, treatment and outcome. This opinion was based on the initial medical records, the imaging studies, the claimant's examination findings and the mechanism of injury.

Dr. Klemp testified thoracic herniations are rare without trauma. Dr. Klemp testified the claimant's advanced degenerative changes in his lumbar and cervical spine were not a contributing factor for his T6-7 issue and were unrelated to this injury. In Dr. Klemp's opinion, the claimant having no thoracic symptoms to paralysis in five months is too short of a time period to attribute the problem to degeneration.

Dr. Klemp did not review reports from Drs. Stein, Bailey, Koreckij, Grundmeyer or the Hutchinson Hospital.

All the testifying doctors agreed thoracic herniations are extremely rare and account for only 1-5% of all disc herniations. The general consensus was the rib cage helps protect the thoracic spine from injury.

The claimant engaged in competitive weightlifting for about 20 years, stopping in the early-1990s, perhaps as late as 1993 or 1994. No doctor attributed the claimant's T6-7 injury to weightlifting or the long-term consequences of such activity.

The claimant is relegated to a wheelchair. He is unable to stand without the assistance of a machine to support him and cannot walk. He uses a catheter 100% of the time and has a colostomy. He has no sexual function. He is not working.

After the submission of all evidence and arguments, the ALJ found the claimant's work accident was the prevailing factor for his subsequent thoracic spinal cord injury and resulting paraplegia. The ALJ awarded the claimant a 50% functional impairment to the body as a whole, or $130,000 in permanent partial disability benefits, and payment of medical expenses previously incurred or paid, including expenses for remodeling the house, purchasing a hospital bed, wheelchair and wheelchair accessible van.

PRINCIPLES OF LAW AND ANALYSIS

The respondent argues the claimant's preexisting degenerative condition was the prevailing factor for his subsequent thoracic spinal cord injury. In the alternative, the respondent argues it should receive a credit for voluntary payment of unearned wages and

the claimant should be limited to $500 under K.S.A. 44-510 for unauthorized medical expenses. The claimant maintains the Award should be affirmed.

K.S.A. 44-501b(c) and K.S.A. 44-508(h) require the worker to prove the right to an award based on the whole record using a more probable than not probable burden of proof, but an employer must prove any affirmative defenses.[17]

K.S.A. 44-508(f)(2)(B) says an injury by accident shall be deemed to arise out of employment only if: (i) there is a causal connection between the conditions under which the work is required to be performed and the resulting accident; and (ii) the accident is the prevailing factor causing the injury, medical condition, and resulting disability or impairment.

Subsection (g) of K.S.A. 44-508 states "prevailing" means "primary" and all relevant evidence must be considered in determining the prevailing factor. Proof of "prevailing factor" is not dependent on medical evidence alone.[18] Preexisting degenerative conditions can be the prevailing factor,[19] but the presence of a preexisting condition does not always preclude compensability after an accident.[20]

There are statutory exceptions to what arises out of and in the course of employment, such as an injury due to the natural aging process or by the normal activities of day-to-day living, as well as an accident or injury which arose from a neutral risk with no particular employment or personal character, or arose out of a risk personal to the worker, or arose either directly or indirectly from idiopathic causes.[21]

1. The claimant's work accident of October 15, 2018, was the prevailing factor causing his thoracic spine injury, medical condition, and resulting disability or impairment.

The medical theories of injury are conflicting. There are two basic theories: (1) the claimant's October 15, 2018 injury by accident caused or set in motion his T6-7 injury,

---

[17] See *Smalley v. Skyy Drilling*, No. 111,988, 2015 WL 4366531 (Kansas Court of Appeals unpublished opinion filed June 26, 2015).

[18] See *Fish v. Mid America Nutrition Program*, No. 1,075,841, 2018 WL 3740430, at *5 (Kan. WCAB July 12, 2018).

[19] See *Shook v. Waters True Value Hardware*, No. CS-00-0368-737, 2019 WL 6695514, at *5, fn. 14 (Kan. WCAB Nov. 19, 2019).

[20] See *id.* at fn. 15.

[21] See K.S.A. 44-508(f)(3)(A).

spinal stenosis and resulting medical treatment, or (2) the cause was coincidental progression of preexisting, age-related, degenerative disc disease.

For the reasons set forth below, the Board agrees with the ALJ the prevailing factor causing the claimant's thoracic spine injury, medical condition, and resulting disability or impairment was the work accident of October 15, 2018.

As a starting point, thoracic disc herniations are very rare because of protection and stability afforded by the rib cage. All the doctors agreed thoracic disc herniations account for only 1% to 5% of all disc herniations. Of those herniations, most are to the lower thoracic spine (T9 to T12), according to Drs. Stein and Estivo. The claimant's T6-7 herniation was higher up the spine.

The general medical consensus was thoracic disc herniations can be caused by trauma or age-related degeneration. Here, the claimant sustained a significant traumatic injury when falling through an open trap door. He struck his back in the area of T6-7, he had back pain and underwent an MRI of his thoracic spine. Dr. Stein testified the accident caused the claimant's thoracic injury. Drs. Hess and Klemp testified the claimant sustained significant trauma to his thoracic spine on October 15, 2018. Dr. Dickerson indicated trauma was almost always involved in a thoracic disc herniation. There is ample, credible evidence the claimant's T6-7 herniation and resulting stenosis was due to his work-related accident.

The respondent argues the initial MRI did not show a T6-7 disc herniation, but the second MRI showed a T6-7 herniation, as testified to by Drs. Bailey, Estivo and Koreckij. These three doctors agreed the claimant's leg weakness in mid-December 2018 was due to the T6-7 herniation. Dr. Bailey attributed the claimant's T6-7 herniation to random progression of degeneration and saw no temporal connection between the accident and the herniation. Dr. Estivo attributed the claimant's T6-7 herniation to age-related, advanced degenerative disc disease. Dr. Koreckij, the court-ordered examiner, opined the T6-7 herniation was due to preexisting spinal ankylosis above and below T6-7, which put increased force on T6-7. Dr. Koreckij viewed the herniation as a coincidence.

However, there is conflicting information regarding the interpretation of the October 15, 2018 MRI, which was not of optimal quality. Other doctors either saw deficits on the initial MRI or explained the only likely cause of the claimant's subsequent disc herniation was trauma.

Dr. Stein testified the initial MRI did not show a T6-7 disc herniation or significant stenosis. The initial MRI did not show edema, but Dr. Stein was not concerned because it can develop later. The second MRI of January 18, 2019, showed mild disc herniation, swollen ligaments, significant cord compression (stenosis), and bone marrow edema at T6, which suggested trauma occurred in Dr. Stein's opinion. The only identifiable trauma was the claimant's work accident.

Dr. Stein opined the T6-7 disc and supporting structures, the ligaments, were all damaged by the force of the accident. As a result of this damage, the claimant progressively developed more spinal stenosis and required surgery. Dr. Stein testified the three MRIs showed progression of the stenosis. Dr. Stein was rather clear: absent trauma, the progression of the thoracic stenosis was unexpected.

Dr. Hess testified the October 15, 2018 MRI did not show a T6-7 herniation, but it showed an increased T2 signal at T6-7, a tear at T6-7, increased T2 signal in the T6-7 facet joints, and a mild T6-7 bulge without spinal cord compression. Dr. Hess noted the three MRIs showed progression of the T2 signal, and the initial injury at T6-7 progressed to a herniation. Dr. Hess somewhat echoed Dr. Stein's opinion: the T6-7 herniation would not have occurred absent significant trauma.

Dr. Klemp testified the October 15, 2018 MRI showed an anterior longitudinal ligament injury at T6-7, and the injury was shown to have progressed on subsequent MRI scans. Dr. Klemp testified the claimant having no thoracic symptoms to being paralyzed below the waist in five months is too short of a time to attribute the problem to spinal degeneration.

Essentially, Drs. Stein, Hess and Klemp testified the claimant sustained significant trauma to his back, he either had findings of a disc injury on the initial MRI, or findings suggestive of trauma in the second MRI. These doctors agreed the original injury of October 15, 2018, progressed until the claimant needed the first surgery, and the progression of the injury and the spinal stenosis would not have occurred absent trauma. Again, the only trauma was the October 15, 2018 accident. These doctors also agreed the second surgery was the direct and natural consequence of the work injury and the first thoracic surgery. Additionally, while not crucial to our ruling, even Dr. Estivo agreed the claimant sustained a damaged disc, either partially herniated or bulging, and the injury progressed or herniated at a later date.[22]

The Board concludes the claimant's accident was the prevailing factor in causing his injury, medical condition, impairment or disability. The Board concludes the claimant's leg weakness, which he noticed on December 15, 2018, showed he had a T6-7 herniation, as testified to by Drs. Hess, Dickerson, Koreckij, Bailey and Estivo. The Board rejects the argument degenerative disc disease was the prevailing factor and it was simple coincidence the claimant had a full-blown herniated T6-7 disc as of the middle of December 2018.

The claimant was not using a cane when he initially saw Dr. Estivo on November 26, 2018. The claimant had normal gait. The claimant presented to Dr. Estivo on December 13, 2018, and was using a cane, which he attributed to prior lumbar problems.

---

[22] See Estivo Depo. at 26-27.

The claimant told Dr. Estivo he had leg weakness at the December 20, 2018 appointment, and he was still using a cane. At the January 11, 2019 appointment, the claimant presented to Dr. Estivo with leg weakness and he was using a walker. Dr. Dickerson's January 19, 2019 report indicated the claimant progressively worsened the prior month and he went from using a cane, to a walker, to a wheelchair to get around at work. The claimant testified he went from needing nothing to walk to needing a cane.

The Board concludes the claimant had a herniated T6-7 disc as of December 15, 2018. The Board concludes the claimant did not have an identifiable T6-7 herniation or spinal stenosis as of October 15, 2018. Is it medically and legally probable, based on a more likely than not likely burden of proof, the claimant developed a disc herniation and corresponding leg weakness within 60 days of his accident as a matter or mere coincidence? The Board thinks not. The credible evidence is the claimant sustained a T6-7 injury on the date of accident. The injury progressed and the claimant sustained the full herniation as of December 15, 2018. Based on the greater weight of the credible medical evidence, the Board finds this scenario not only happened, but it would not have happened absent the trauma, and the progression of the injury within just two months could not be explained by coincidence and the simple passage of time.

Consideration of other causes is important. Alternative theories as to why the claimant sustained a T6-7 injury are less credible than the cause being the work accident.

Drs. Stein, Hess, Klemp and Koreckij indicated the claimant's prior lumbar surgery and prior treatment involving the lumbar spine and the cervical spine were not pertinent to a distinct T6-7 disc herniation and spinal stenosis. Dr. Dickerson indicated the claimant's prior back treatment was basically irrelevant. Dr. Bailey testified the claimant's prior cervical spine and lumbar spine treatment were unrelated to the claimant's T6-7 herniation. Dr. Estivo agreed the claimant's leg weakness was due to the T6-7 herniation, not prior lumbar or cervical spine conditions.

The claimant's prior fusion of his lumbar spine and age-related fusion of his cervical spine are only pertinent to the extent the claimant basically had a fused lumbar spine and a fused cervical spine, leaving T6-7 vulnerable as a "hinge," as explained by Dr. Koreckij. However, the susceptibility of a T6-7 injury was still contingent on trauma. That trauma, the accident of October 15, 2018, was the prevailing factor in causing the claimant's injury, medical condition, disability or impairment.

The claimant's prior intermittent use of a cane to ambulate in connection with his lumbar spine is separate and distinct from the claimant's paralysis due to the T6-7 herniation and stenosis. Here, the claimant's T6-7 injury progressed and caused him to require a cane, then a walker, and finally a wheelchair.

The claimant's age did not cause his T6-7 herniation and stenosis. Dr. Stein testified the claimant's age and prior use of a cane to ambulate in relation to lumbar

difficulties was not relevant. Dr. Estivo agreed the claimant's T6-7 herniation, if it was caused by age-related degeneration, was not the norm.

The claimant getting out of bed on December 15, 2018 was not the cause of his T6-7 herniation, according to Drs. Stein and Dickerson.

To sum up, the claimant's October 15, 2018 injury by accident was the prevailing factor causing his injury, medical condition, impairment or disability.

2. The respondent is not required to pay all of the claimant's unauthorized medical bills and expenses as authorized medical treatment. However, the respondent is required to pay for the claimant's medical treatment and expenses incurred after the settlement hearing, which is when the respondent was on notice the claimant was seeking medical treatment due to his work-related accidental injury. The claimant is awarded future medical treatment.

Plainly-worded workers compensation statutes should be interpreted literally.[23] K.S.A. 44-510h, states:

> (a) It shall be the duty of the employer to provide the services of a health care provider, and such medical, surgical and hospital treatment . . . as may be reasonably necessary to cure and relieve the employee from the effects of the injury.
>
> (b)(1) If the director finds . . . that the services of the health care provider . . . are not satisfactory, the director may authorize the appointment of some other health care provider. In any such case, the employer shall submit the names of two health care providers who, if possible given the availability of local health care providers, are not associated in practice together. The injured employee may select one from the list who shall be the authorized treating health care provider. If the injured employee is unable to obtain satisfactory services from any of the health care providers submitted by the employer under this paragraph, either party or both parties may request the director to select a treating health care provider.
>
> (2) Without application or approval, an employee may consult a health care provider of the employee's choice for the purpose of examination, diagnosis or treatment, but the employer shall only be liable for the fees and charges of such health care provider up to a total amount of $500.
>
> . . .

[23] See *Bergstrom v. Spears Mfg. Co.*, 289 Kan. 605, 607-08, 214 P.3d 676 (2009).

> (e) It is presumed that the employer's obligation to provide [medical treatment] shall terminate upon the employee reaching maximum medical improvement. Such presumption may be overcome with medical evidence that it is more probably true than not that additional medical treatment will be necessary after such time as the employee reaches maximum medical improvement. . . .

K.S.A. 44-510j(h) states, in part:

> If the employer has knowledge of the injury and refuses or neglects to reasonably provide the services of a health care provider required by this act, the employee may provide the same for such employee, and the employer shall be liable for such expenses subject to the regulations adopted by the director.

"[T]here is no provision requiring an employer or an employer's insurance carrier to pay for the medical expenses incurred solely at the employee's discretion."[24] The undersigned Board Members acknowledge K.S.A. 44-510j(h) states, in part, "If the employer has knowledge of the injury and refuses or neglects to reasonably provide the services of a health care provider . . . , the employee may provide the same for such employee, and the employer shall be liable for such expenses . . . ."

Smith[25] says when an employer authorizes medical treatment and the insurance carrier does nothing after knowing the worker needs treatment, all referrals, including emergency surgery, are authorized. *Smith* was issued before *Bergstrom's* emphasis on plain statutory interpretation. Also, recent cases say the law "makes no other provision for emergency treatment other than to charge the first $500 of such treatment to the employer . . . ."[26]

The claimant never asked the respondent to authorize treatment he received through Dr. Dickerson, including the two surgeries. The respondent provided medical treatment through Dr. Estivo. At the time, the respondent reasonably relied on Dr. Estivo's opinion the claimant was at maximum medical improvement and needed no additional medical treatment. There is no evidence the claimant requested additional medical treatment from the respondent after he was released from the care of Dr. Estivo, at least until telling the respondent on the day of the settlement hearing, May 17, 2019, he wanted

---

[24] *Thompson v. Hasty Awards, Inc.*, No. 106,359, 2012 WL 1970241, at *9 (Kansas Court of Appeals unpublished opinion filed May 25, 2012); see also *Evans v. Cessna Aircraft Co.*, No. 115,258, 2017 WL 1295710, at *7 (Kansas Court of Appeals unpublished opinion filed April 7, 2017).

[25] See, e.g., *Smith v. Sophie's Catering & Deli, Inc.*, No. 99,713, 2009 WL 596551 (Kansas Court of Appeals unpublished opinion filed Mar. 6, 2009).

[26] *Thompson*, 2012 WL 1970241, at *9; see also *Mohamed v. Tyson Fresh Meats, Inc.*, No. 112,436, 2015 WL 4094333, at *3-4 (Kansas Court of Appeals unpublished opinion filed June 19, 2015), *rev. denied* 303 Kan. 1078 (2015).

to get out of the agreement because of the future medical expenses he would incur on behalf of his work accident. There is no evidence of a conversation, email, text message, or any other communication between the claimant and the respondent in which the claimant asked for additional medical treatment after being released from Dr. Estivo and his obtaining unauthorized treatment with Dr. Dickerson.

The respondent did not unreasonably refuse or neglect to provide medical treatment. Rather, the respondent was following the statutory duty to do so. The medical treatment the claimant directed on his own is subject to the $500 limit for unauthorized medical treatment.

However, the medical expenses listed in Judge Moore's Award on page 10 ($164,028) were incurred after the settlement hearing. By this time, the respondent knew the claimant was attributing his ongoing medical treatment and expenses to his work accident. At the time, the respondent had the right to direct medical treatment, but did nothing. The claimant was within his rights to pursue treatment on his own behalf. This part of the judge's Award is affirmed.

Having found the case compensable, and recognizing the claimant's obvious need for future medical treatment, the Board awards the claimant the right to pursue ongoing medical treatment under the Workers Compensation Act.

3. The respondent is not entitled to a credit for payment of unearned wages.

K.S.A. 44-510f states, in part:

> (a) Notwithstanding any provision of the workers compensation act to the contrary, the maximum compensation benefits payable by an employer shall not exceed the following:
>
> . . .
>
> (4) for permanent partial disability, where functional impairment only is awarded, $75,000 for an injury. The $75,000 cap contained in this subsection shall apply whether or not temporary total disability or temporary partial disability benefits were paid.
>
> (b) If an employer shall voluntarily pay unearned wages to an employee in addition to any amount of disability benefits to which the employee is entitled under the workers compensation act, the excess amount paid:
>
> (1) Shall be allowed as a credit to the employer in any final settlement, or
>
> (2) may be withheld from the employee's wages in weekly amounts equal to the weekly amount or amounts paid in excess of compensation due. The excess

> amount paid may only be withheld from the employee's wages if the employee's average weekly wage for the calendar year exceeds 125% of the state's average weekly wage, determined as provided in K.S.A. 44-511, and amendments thereto.

Under strict construction, the credit under K.S.A. 44-510f(b) only applies to settlements or as a credit against future wages. Neither scenario is applicable. The claimant's litigation resulted in an Award, not a settlement:

• "[T]he credit under K.S.A. 44-510f(b) is only applicable when there is a final lump sum settlement and the award entered in a litigated claim does not satisfy the definition of a final lump sum settlement."[27]

• "[T]he language of K.S.A. 44-510f . . . is clear. Respondent is entitled to a credit for the overpayments voluntarily made. However, the method of credit is restricted by statute to either a final lump-sum settlement or to be withheld from the employee's wages in weekly amounts the same as those paid in excess of the compensation due."[28]

• "K.S.A. 44-510f(b) limits any credit for unearned wages to a lump-sum settlement. The only other method to recoup excess unearned wages under the Workers Compensation Act is through wage withholding. And neither of those situations apply."[29]

While these citations are from a prior version of K.S.A. 44-510f, the language is similar, and is being applied as written.

The respondent is commendable for having paid unearned wages. However, the Kansas workers compensation statutory system is not worded to allow a credit for the payment of unearned wages, so no credit may be awarded.

AWARD

WHEREFORE, the Board modifies the February 25, 2022, Award. The parties stipulated the claimant was seeking permanent partial disability benefits for functional impairment only, subject to K.S.A. 44-510f(a)(4). The claimant is entitled to permanent partial disability benefits for a 50% functional impairment, not to exceed $75,000, pursuant to K.S.A. 44-510f(a)(4). The claimant is also entitled to the temporary total disability benefits he previously received. The $75,000 cap applies whether temporary total disability benefits were paid or not.

---

[27] *Loy v. State of Kansas*, Docket No. 264,079, 2004 WL 485720, at *5 (Kan. WCAB Feb. 27, 2004).

[28] *Schickedanz v. Wolf Creek Nuclear Operating Commission*, Docket No. 248,461, 2003 WL 22401244, at *4 (Kan. WCAB Sept. 25, 2003).

[29] *Titus v. U.S.D. 229*, Docket No. 1,031,642, 2007 WL 4662016, at *5 (Kan. WCAB Dec. 17, 2007).

The claimant is entitled to 31.57 weeks of temporary total disability compensation at the rate of $645 per week or $20,362.65, followed by $75,000 of permanent partial disability compensation at the rate of $645 per week or a total of $95,362.65, all due and owing, less amounts previously paid.

The claimant is entitled to payment of medical treatment and out-of-pocket expenses incurred on or after May 17, 2019, when the respondent was on notice the claimant was asserting his medical treatment and expenses were due to his work-related accident. The Claimant's unauthorized medical treatment received prior to May 17, 2019 is not ordered to be paid by the respondent or insurance carrier as authorized medical under the Kansas Workers Compensation Act and is subject to the $500 allowance for unauthorized medical treatment. Future medical remains open.

IT IS SO ORDERED.

Dated this _____ day of July, 2022.

_____
BOARD MEMBER

_____
BOARD MEMBER

_____
BOARD MEMBER

DISSENT

The undersigned Board Member agrees with the finding of compensability relative to prevailing factor, and agrees with the finding denying a credit for voluntary payment of unearned wages. However, I dissent regarding the Board finding the respondent not responsible for medical treatment and expenses he incurred on his own.

Judge Moore concluded the respondent gave the claimant no option but to control his own medical care and the corresponding medical care was deemed authorized. The respondent always had the right of control of medical treatment. Dr. Estivo was authorized. However, Dr. Estivo released the claimant at maximum medical improvement as of January 11, 2019. At the time, the claimant was using a walker due to leg weakness. Dr. Estivo's physical examination did not reveal a cause for the claimant's perceived leg weakness. In hindsight, the claimant's leg weakness was explained by a herniated T6-7 disc. At the time, releasing the claimant from medical treatment was not reasonable. Not

providing additional medical treatment was not reasonable. The claimant still needed medical treatment for his work-related injury. At the time the claimant sought treatment on his own, the respondent, through Dr. Estivo, had stopped providing authorized medical treatment. As the judge indicated, this left the claimant to fend for himself. The employer's duty to provide medical treatment is self-effecting, by operation of law.

Evans,[30] a Court of Appeals case limiting a claimant to $500 in unauthorized medical, is different. In *Evans*, the treating doctor, Dr. Estivo, in March 2012, opined the claimant did not need lumbar surgery. In August 2012, Dr. Dickerson recommended surgery. Dr. Stein, as a court-ordered independent medical examiner, indicated in October 2013 the claimant did not need surgery. The claimant, without seeking the respondent's or the court's approval of surgery, had surgery about one year after Dr. Stein said she did not need surgery. The Court noted the respondent provided "adequate" medical care and the claimant did not follow the rules to get authorized treatment, and denied payment of the surgery as authorized.

In this situation, the claimant attended his appointments with Dr. Estivo. On January 11, 2019, the doctor released the claimant from medical treatment, finding no explanation for the claimant's leg weakness. The Board now knows the claimant's leg weakness was due to a herniated T6-7 disc. The respondent was not providing medical treatment after January 11, 2019. Thereafter, the claimant, on his own, obtained reasonable and necessary medical treatment to cure and relieve him of the effects of his work injury.

I would affirm the judge's ruling and find the respondent responsible for the claimant's medical treatment he obtained after he was released from authorized medical treatment.

_____
BOARD MEMBER

c: (via OSCAR)
Scott Mann
D. Shane Bangerter
Hon. Bruce Moore

[30] *Evans v. Cessna Aircraft Co.*, No. 115,258, 2017 WL 1295710 (Kansas Court of Appeals unpublished opinion filed April 7, 2017).