

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

SANTIAGO CASTILLO)	
Claimant)	
V.)	
)	AP-00-0471-335
COONROD & ASSOC.)	CS-00-0439-794
Respondent)	
AND)	
)	
TRAVELERS INDEMNITY CO.)	
Insurance Carrier)	

ORDER

Claimant appealed the October 5, 2022, Award issued by Administrative Law Judge (ALJ) Ali N. Marchant. The Board heard oral argument on February 23, 2023.

APPEARANCES

Jeff K. Cooper appeared for Claimant. Vince Burnett appeared for Respondent and its insurance carrier.

RECORD AND STIPULATIONS

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

1. The transcript of Regular Hearing held November 5, 2020;
2. Continuation of Regular Hearing taken by deposition, March 1, 2021, with Claimant's Exhibit 1 and Respondent's Exhibit 1;
3. Deposition of Pedro Murati M.D., March 31, 2021, with Exhibits 1-4;
4. Deposition of Brennan Knowles, April 9, 2021;
5. Deposition of Richard Thomas, April 12, 2021, with Exhibits 1 and 2;
6. Deposition of Steve Benjamin, April 23, 2021, with Exhibit1;
7. Deposition of John P. Estivo, D.O. May 4, 2021 with Exhibits 1-5;
8. Deposition of Terrence Pratt, M.D. May 10, 2021 with Exhibits 1-4;
9. The documents of record filed with the Division.

The Board also considered the briefs filed by the parties.

ISSUES

1. What is the nature and extent of Claimant's disability?
2. Is Claimant entitled to future medical treatment?

FINDINGS OF FACT

Claimant worked for Respondent from August 2003 until June 12, 2020, as a laborer working with blockers and bricklayers. On August 9, 2018, Claimant and his co-workers were driving to a job in Garden City, when their work truck broke down near Dodge City. They pulled off to the side of the road to check the vehicle. While the truck was parked another vehicle hit the rear of the truck. After the truck was hit, Claimant does not remember what happened until after he woke up in the hospital. Claimant sustained injuries to his head, low back, arms, and knees.

Claimant's injuries were treated with two months of physical therapy.

On October 28, 2018, Claimant was unable to walk and he was taken to the emergency room. Claimant was hospitalized and had surgery to relieve pressure in his head.

Claimant worked for Respondent from shortly after December 23, 2019, to June 12, 2020. According to Claimant, he was assigned work less physically demanding despite the lack of restrictions. Brennan Knowles, brick layer foreman for Respondent, was Claimant's supervisor from April 2020 until June 2020. Mr. Knowles testified Claimant performed all the duties of his job as a brick tender. Claimant was allowed to rest as needed. Mr. Knowles acknowledged Claimant sat more than other employees. Claimant was allowed time off for doctor appointments. Claimant did not tell Mr. Knowles about any problems or limitations he had preventing him from performing his job duties.

The job Claimant was working on in Wichita, Kansas ended on June 12, 2020. The next available job was outside of Wichita about 35 miles away. Claimant refused this work because he had other things going on. The pandemic hit and there was no regular work for anyone.

Claimant testified he is unable to return to work due to low back pain. This pain also affects his activity away from work. He can no longer lift heavy things and has difficulty walking when he wakes up. Claimant only drives short distances. Claimant has pain in his neck, shoulders, and arms from the head surgery. He did not have these problems before the injury.

Starting in June 2020, Claimant received unemployment benefits, \$400 per week of regular unemployment and, at times, an additional \$600 per week of the supplemental federal unemployment. In order to receive unemployment benefits, an individual must be able and available to work. Claimant is eligible for full Social Security retirement, but has not filed because he wants to get his workers compensation claim resolved.

Claimant testified he would return to work with restrictions for Respondent if the job was in Wichita and the work was light.

Dr. John P. Estivo, a board-certified orthopedist, examined Claimant on May 9, 2019, at the request of the Court. Claimant's complaints were cervical spine pain with occasional right and left arm pain and lumbar spine pain with occasional right and left leg pain.

Dr. Estivo diagnosed Claimant with: cervical spine pain; age-related degenerative changes throughout the cervical spine; lumbar spine pain; age-related degenerative changes throughout the lumbar spine; status post bilateral subdural hematomas requiring craniotomy by Dr. Lothers on October 22, 2018. He opined Claimant had not yet reached maximum medical improvement in relation to the August 9 injury. Dr. Estivo noted preexisting age-related degenerative changes throughout the cervical and lumbar spines were not related to the work injury. Claimant denied any prior pain in the cervical and lumbar spines. Dr. Estivo opined Claimant experienced some degree of injury to the cervical and lumbar spines due to the August 9 accident. He recommended an MRI of the cervical and lumbar spines to look for any further structural damage and recommended temporary restrictions of lifting no more than 25 pounds, no constant bending or twisting, and occasional overhead work allowed.

Claimant saw Dr. Estivo again on October 22, 2019. Claimant had undergone MRIs of the cervical and lumbar spines, which revealed age-related degenerative changes. There were no acute abnormalities or structural changes in either area. Claimant continued to complain of pain in these areas. Claimant denied any radicular symptoms in the upper and lower extremities. Dr. Estivo found the prevailing factor for Claimant's bilateral subdural hematomas and cervical and lumbar spine strains and need for medical treatment was the work accident on August 9, 2018. He recommended physical therapy three times a week for a month and Ibuprofen. Claimant was provided temporary restrictions of lifting no more than 25 pounds, no constant bending or twisting, and occasional overhead work.

Claimant returned to Dr. Estivo on November 5, 2019. Claimant recently began physical therapy (PT) for his cervical and lumbar spine. He continued to have pain and requested to go to PT twice a week instead of three for financial reasons. Claimant was provided temporary restrictions of lifting no more than 25 pounds, no constant bending or twisting, and occasional overhead work.

Claimant saw Dr. Estivo on December 3, 2019. Claimant had less cervical and lumbar spine pain and found PT to be beneficial. Claimant felt he was back to normal for the head injury. Dr. Estivo assigned temporary restrictions of lifting no more than 35 pounds, no constant bending or twisting, and occasional overhead lifting.

Claimant saw Dr. Estivo on December 23, 2019. Claimant completed physical therapy but continued to have some pain in the cervical and lumbar spine. He reported his lower back bothered him the most. He denied any radicular symptoms to the upper or lower extremities. Dr. Estivo found some mild discomfort throughout range of motion of the cervical spine and some mild discomfort in the lumbar spine with motion and tenderness to palpation. The diagnosis did not change, and Claimant was found to be at maximum medical improvement and did not require any further treatment in relation to the August 9 injury. Claimant was released without restrictions and was instructed to follow up with his family physician if the low back pain continues and to continue with his at home exercises. Claimant was discharged from physical therapy on February 12, 2020.

On May 4, 2020, Dr. Estivo rated Claimant's permanent functional impairment from the August 9 accident at 4 percent to the body as a whole impairment based on the *American Medical Association Guides to the Evaluation of Permanent Impairment, 6th Edition (The Guides)*, (2 percent body as a whole for the cervical spine strain; 2 percent body as a whole for the lumbar spine strain).

Under the *American Medical Association Guides to the Evaluation of Permanent Impairment, 4th Edition (The Guides, 4th Edition)* Dr. Estivo assigned 10 percent body as a whole impairment (5 percent body as a whole for the cervical spine strain; 5 percent body as a whole for the lumbar spine strain).

Dr. Estivo reviewed the task list prepared by Steve Benjamin and found Claimant was able to perform all 11 tasks for no task loss.

Dr. Pedro A. Murati examined Claimant on January 28, 2019, at the request of his attorney, for treatment recommendations. Claimant's chief complaints were: lower back pain; pain in his knees and legs; occasional neck pain; head tenderness and upper back pain while laying in bed; and dizziness when standing on occasion.

Dr. Murati diagnosed Claimant with: status post closed head trauma resulting in subdural hematomas; status post bilateral frontoparietal craniotomies for subdural hematomas - Dr. Lothes 10-23-18; occipital neuralgia; flexion contracture of the right elbow; impingement syndrome, bilaterally; cervical sprain; low back pain with signs of radiculopathy; myofascial pain syndrome of the bilateral shoulder girdles extending into the thoracic paraspinals; bilateral SI joint dysfunction, and flexion contracture of the left knee.

Dr. Murati assigned temporary restrictions based on an eight hour day of: no

bending, crouching, stooping; no climbing ladders; no crawling; no above the shoulder work with the left or right; no lifting, carrying, pushing or pulling more than 20 pounds occasionally and 10 pounds frequently; rarely climb stairs; rarely squat; occasionally sit, stand, and walk; alternate sitting, standing and walking; and avoid awkward positions of the neck.

Dr. Murati recommended the following treatment and diagnostic testing: time would heal the brain from the closed head trauma and recommended psychological counseling to learn coping techniques; for the impingement syndrome, appropriate physical therapy, anti-inflammatory and pain medications and if no improvement, an MRI of the shoulder to rule out a rotator cuff tear; for the myofascial pain syndrome, appropriate physical therapy with myofascial pain release techniques, cortisone trigger point injections and anti-inflammatory and pain medications as needed and Zanaflex for muscle spasms; for the cervical sprain, appropriate physical therapy, anti-inflammatory and pain medications; for the low back pain with signs of radiculopathy, an MRI of the lumbar spine to rule out any disc pathology, a bilateral lower extremity NCS/EMG to include the lumbar paraspinals to evaluate and/or document any radiculopathy and based on those results, appropriate physical therapy and anti-inflammatory and pain medications as needed and a series of lumbar epidural steroid injections and should this conservative treatment fail, a surgical evaluation would be appropriate. He felt Claimant would also benefit from a trial of Gabapentin or Lyrica. Dr. Murati recommended for SI joint dysfunction, cortisone injections to decrease inflammation and appropriate physical therapy with possible instruction on the use of the SI belt and/or gait training and anti-inflammatory and pain medications as needed and for the flexion contracture of the left knee, physical therapy, anti-inflammatory and pain medications as needed and if no improvement, an MRI to evaluate for pathology.

Dr. Murati opined the prevailing factor for Claimant's injuries to his head, left upper extremity, neck, back and knees was the August 9 accident.

Dr. Murati saw Claimant on January 27, 2020, at the request of his attorney, to obtain an impairment rating. Claimant's complaints were: constant lower back pain radiating into the hips; pain in knees and legs, greater on the left; occasional neck pain with popping, especially with turning; head tenderness and lower back pain with laying on the bed; light flashes in his vision, mostly in the morning; right arm pain; and pain on/around scars on the top of his head.

Dr. Murati's diagnoses were: status post closed head trauma resulting in subdural hematomas; status post bilateral frontoparietal craniotomies for subdural hematomas - Dr. Lothes 10-23-18; occipital neuralgia; flexion contracture of the right elbow; impingement syndrome, bilaterally; cervical pain with signs of radiculopathy; low back pain with signs of radiculopathy; myofascial pain syndrome of the bilateral shoulder girdles extending into the thoracic paraspinals; bilateral SI joint dysfunction; and bilateral patellofemoral syndrome.

Under *The Guides* Dr. Murati assigned an impairment rating of 39 percent to the body as a whole consisting of: 5 percent body as a whole for post-concussion syndrome; 1 percent body as a whole for occipital neuropathy on the right; 1 percent body as a whole for occipital neuropathy on the left; 10 percent impairment for the left upper extremity which converted to 6 percent body as a whole for loss of range of motion of the left shoulder; 2 percent for the left upper extremity for flexion contracture of the right elbow; 8 percent for the right upper extremity for loss of range of motion of the right shoulder and these ratings combined for a 10 percent right upper extremity rating, which converted to 6 percent body as a whole; 11 percent body as a whole for cervical radiculopathy; 12 percent body as a whole for lumbar radiculopathy; 2 percent body as a whole for myofascial pain syndrome; 3 percent right lower extremity for right patellofemoral syndrome, which converted to 1 percent body as a whole; and 3 percent left upper extremity for left patellofemoral syndrome, which converted to 1 percent body as whole.

When Dr. Murati was deposed, he changed his impairment rating for Claimant to 44 percent to the body as whole using *The Guides*. This change in impairment ratings was due, in Dr. Murati's opinion, because the post-traumatic brain injury was underrated and bilateral SI joint dysfunction.¹ Dr. Murati pointed out he deviated from *The Guides* as allowed by the Kansas Supreme Court case *Johnson v. U.S. Food Service*.²

Under *The Guides 4th Edition*, Dr. Murati found combined impairment rating of 48 percent body as whole: (10 percent body as a whole for status post closed head injury with craniotomies; 5 percent body as a whole for occipital neuropathy on the right; 5 percent body as a whole for occipital neuropathy on the left; 7 percent for left upper extremity (4 percent body as a whole) for loss of range of motion of the left shoulder; 6 percent right upper extremity for loss of range of motion of the right shoulder; 2 percent for left upper extremity for flexion contracture of the right elbow; (these combined for a 8 percent right upper extremity impairment or 5 percent body as a whole); 15 percent body as a whole for cervical radiculopathy; 10 percent body as a whole for lumbar radiculopathy; 5 percent body as a whole for myofascial pain syndrome; 5 percent right lower extremity for right patellofemoral syndrome (2 percent body as a whole); 5 percent left upper extremity for left patellofemoral syndrome (2 percent body as a whole).

Dr. Murati reviewed the task list of Richard Thomas who identified 12 tasks. He opined Claimant can no longer perform any of the 12 tasks for a 100 percent task loss.

Dr. Murati opined Claimant is essentially and realistically unemployable and assigned permanent restrictions based on a four hour workday: no bending, crouching, stooping; no climbing ladders; no crawling; no squatting; no manual driving, occasionally

¹ See Murati Depo. at 13-15.

² See *Johnson v. U.S. Food Services*, 312 Kan. 597, 478 P.3d 776 (2021).

automatic; no kneeling, no repetitive foot controls with the right or left; no heavy grasping more than 40 kg; no above the shoulder work with the left or right; no lifting, carrying, pushing or pulling more than 20 pounds, 20 pounds occasionally and 10 pounds frequently; rarely climb stairs; occasionally sit, stand, and walk; alternate sitting, standing and walking; avoid awkward positions of the neck; avoid trunk twist; no work more than 24 inches from the body on the right or left; no lift below knuckle height; allow rest for 15 minutes after 45 minutes of work within the four hours.

Dr. Murati recommended yearly medical follow-ups for the head, bilateral upper extremities, neck, knees and back. He also recommended anti-inflammatory medication, specifically Celebrex.

Dr. Terrence Pratt evaluated Claimant on June 25, 2020, at the request of the Court. Claimant presented with residual discomfort in his head, low back, and upper extremities. Claimant related his symptoms to his August 9, 2018, accident. Claimant reported he had intermittent slight pain only when laying down with discomfort in the bilateral occipital region of his head. His low back pain was continuous across the lumbosacral region and radiated posteriorly to his calves bilaterally. Claimant's work exacerbated these symptoms.

Upon further inquiry, Claimant reported pain in the cervical region and weakness in his right hand. These symptoms were exacerbated with stress and performing cervical range of motion. Dr. Pratt noted until he asked Claimant, Claimant had not reported any discomfort involving the cervical region.³ Claimant reported popping in his upper extremities pointing to the elbows and the forearms. The popping occurs with movement. Dr. Pratt noted Claimant was performing his normal job tasks and was independent in mobility and activities of daily living.

Dr. Pratt examined Claimant and his prior records and diagnosed Claimant with: history of bilateral subdural hematomas subacute, status post craniotomies and subdural hematoma evacuation bilateral; multilevel degenerative changes of the cervical spine; and degenerative lumbosacral region with anterolisthesis L4-L5. Dr. Pratt did not relate the degenerative changes in the cervical spine and the lumbosacral spine to the August 9, 2018, injury. Dr. Pratt confirmed the issues at L4-L5 could be aggravated by an injury.

Dr. Pratt did not anticipate Claimant would need future medical treatment.

Dr. Pratt rated Claimant's functional impairment, referencing *The Guides* combined 9 percent permanent partial impairment to the body as whole (5 percent body as a whole for head trauma; 2 percent body as whole for cervical involvement; and 2 percent body as a whole for lumbosacral involvement).

³ Pratt Depo. at 10.

Under *The Guides 4th Edition*, Dr. Pratt assigned 15 percent permanent partial impairment for the body as a whole (5 percent body as a whole for cervicothoracic involvement; 5 percent body as a whole for lumbosacral involvement; and 5 percent body as a whole for the head trauma without significant residual symptoms).

On January 4, 2021, Dr. Pratt provided an addendum to his June 2, 2020, report to include his opinion Claimant was not in need of any restrictions related to the work accident since Claimant returned to normal job duties.

Dr. Pratt reviewed the task list of Steve Benjamin and found Claimant was able to perform all 11 tasks for no task loss.

Richard Thomas interviewed Claimant by telephone on August 17, 2020, for a vocational assessment at the request of his attorney. Mr. Thomas prepared a task list and found Claimant performed 12 tasks within the 5 years preceding the work accident.

Mr. Thomas opined Claimant did not have any transferrable skills for substantial and gainful employment. Due to Claimant's lack of education and inability to speak or write English, Claimant was unable to gain employment in the open labor market under Dr. Murati's restrictions. Mr. Thomas acknowledged with no restrictions, according to Dr. Estivo, Claimant would be able to perform his job with Respondent. Mr. Thomas noted Claimant wanted to work light duty and only work in the Wichita area.

Steve Benjamin interviewed Claimant for a vocational assessment on November 16, 2020, at Respondent's request. Mr. Benjamin prepared a task list of 11 tasks Claimant performed in 5 years preceding the work accident. Claimant's average weekly wage was reported to be \$767.97, and in Mr. Benjamin's opinion Claimant could continue to earn. Mr. Benjamin did not have Dr. Murati's report at the time of his assessment but did have Dr. Estivo's and Dr. Pratt's reports. Mr. Benjamin acknowledged it would make a difference in Claimant's ability to access the open labor market if Claimant had restrictions. Mr. Benjamin testified Claimant told him he would not be able to return to his job which involves heavy lifting. If Mr. Benjamin had reviewed Dr. Murati's opinion and restrictions, it was his belief Claimant would not be able to return his job.

The ALJ found Claimant met his burden of proving personal injury by accident arising out of and in the course of his employment and the August 9, 2018, work-related accident was the prevailing factor causing his injuries. The ALJ found Dr. Pratt's opinion to be the most credible and adopted the 9 percent functional impairment to the body as a whole for Claimant's functional impairment rating. The ALJ did not believe Claimant met his burden of proving he is permanently and totally disabled as a direct result of his work-related injuries. Claimant is not entitled to work disability because the two physicians' opinions the ALJ found most credible did not find Claimant had any task loss and thus no wage loss. Respondent was ordered to pay all authorized medical expenses related to the

work injuries and Claimant was found to be entitled to future medical treatment upon application.

PRINCIPLES OF LAW AND ANALYSIS

Claimant argues the credible evidence supports he is essentially and realistically unemployable. Claimant also argues he will need future medical treatment for his ongoing back problems.

Respondent argues Claimant sustained 4 percent impairment to the body as a whole due to the work accident as opined by Dr. Estivo, the treating physician. In the alternative, Dr. Pratt's opinion of 9 percent to the body as a whole body should be adopted. Respondent argues Claimant is not entitled to work disability having failed to prove a wage and task loss and is not permanently disabled because he is capable of engaging in substantial and gainful employment despite the accident and injury. Respondent argues Claimant is not entitled to future medical, as he has not proven more probably than not additional medical treatment is necessary.

K.S.A. 44-508(h) states:

"Burden of proof" means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record unless a higher burden of proof is specifically required by this act.

This is a compensable accidental injury and the primary issue is nature and extent of Claimant's disability caused by the work accident of August 9, 2018.

Claimant's permanent functional impairment is 9 percent to the body as a whole.

Claimant argues he is permanently and totally disabled based on the opinions of Dr. Murati and Mr. Thomas.

K.S.A. 44-510c(a)(2) states:

Permanent total disability exists when the employee, on account of the injury has been rendered completely and permanently incapable of engaging in any type of substantial gainful employment. Expert evidence shall be required to prove permanent total disability.

Evaluation of the expert medical and vocational testimony is necessary to make the determination of total permanent disability.

Two doctors, one whom was the treating physician, Dr. Estivo, and Dr. Pratt, who was the court-ordered doctor, opined Claimant required no permanent restrictions as a result of his work injury. Dr. Murati opined Claimant was totally and permanently disabled. Mr. Thomas, the vocational expert, based on Dr. Murati's restrictions, alone, found Claimant totally and permanently disabled. Mr. Thomas acknowledged if he had Dr. Pratt's and Dr. Estivo's records, his opinion could have changed.

Claimant returned to work after his work accident for approximately five months and worked with little or no accommodation. Claimant applied for and received unemployment insurance benefits in June 2020. Receipt of unemployment insurance benefits requires the individual be able and available for work.⁴

The preponderance of the evidence shows Claimant is not permanently and totally disabled. Two doctors found Claimant had no permanent restrictions as a result of his work injuries. Claimant worked at his old job for at least five months after his injury. Claimant could continue to work for Respondent and declined to work 35 miles outside of Wichita because he wanted to remain in Wichita and "take care of things." Claimant's receipt of unemployment benefits required Claimant to be able and available for work. Mr. Thomas' opinion Claimant is totally disabled was not based on all the medical evidence which he acknowledges could have changed his opinion. Mr. Benjamin opined Claimant could return to work based on Dr. Estivo's and Dr. Pratt's opinions. For these reasons it is found and concluded Claimant is not permanently and totally disabled.

K.S.A. 44-510e(2)(A) states:

Permanent partial general disability exists when the employee is disabled in a manner which is partial in character and permanent in quality and which is not covered by the schedule in K.S.A. 44-510d, and amendments thereto.

K.S.A. 44-510e(2)(B) states:

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 the injuries occurring on or 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.

Three doctors testified to the nature and extent of Claimant's permanent

⁴ See K.S.A. 44-705.

impairment. Dr. Estivo, who was the authorized treating physician opined Claimant's functional impairment was 4 percent to the body as a whole; 2 percent impairment for the cervical spine strain, and 2 percent for lumbar spine strain. Dr. Pratt was requested by the Court to provide his opinion on the nature and extent of Claimant's impairment. Dr. Pratt opined Claimant's permanent impairment was 9 percent to the body as a whole, consisting of 5 percent impairment to the body as a whole for head injury, 2 percent impairment for the cervical spine strain and 2 percent impairment to the body as a whole for the lumbar spine strain. Dr. Murati opined Claimant had 44 percent impairment consisting of: 11 percent body as a whole for post-concussion syndrome; 1 percent body as a whole for occipital neuropathy on the right; 1 percent body as a whole for occipital neuropathy on the left; 10 percent left upper extremity which converted to 6 percent body as a whole for loss of range of motion of the left shoulder; 2 percent for the left upper extremity for flexion contracture of the right elbow; 8 percent for the right upper extremity for loss of range of motion of the right shoulder, and these ratings combined for 10 percent right upper extremity rating, which converted to 6 percent body as a whole; 11 percent body as a whole for cervical radiculopathy; 12 percent body as a whole for lumbar radiculopathy; 2 percent body as a whole for myofascial pain syndrome; 3 percent right lower extremity for right patellofemoral syndrome which converted to 1 percent body as a whole; 3 percent left upper extremity for left patellofemoral syndrome which converted to 1 percent body as a whole; and 2 percent impairment to the body as a whole for left SI joint dysfunction; and 2 percent impairment to the body as a whole for right SI joint dysfunction.

This Board agrees with the ALJ Dr. Pratt's impairment opinion of 9 percent to the body as a whole is the most credible and supported by the evidence. Dr. Pratt provided his opinion at the request of the Court. Dr. Estivo's opinion did not include impairment as a result of a head injury and subsequent surgery. Dr. Murati's opinions are less credible. Dr. Murati rated impairments or complaints not based on Claimant's testimony or what he told other physicians. It is found and concluded Claimant's permanent functional impairment is 9 percent to the body as a whole.

Where an employee sustains an injury to the body as a whole resulting in functional impairment in excess of 7.5 percent solely from the present injury, or in excess of 10 percent where there is preexisting functional impairment, and the employee sustains at least a 10 percent wage loss as defined in K.S.A. 44-510e(a)(2)(E), the employee may receive work disability compensation in excess of the percentage of functional impairment. In such cases, work disability is determined by averaging the post-injury task loss caused by the injury with the post-injury task loss caused by the injury with the post-injury wage loss caused by the injury.⁵

Two doctors opined as result of Claimant's work injury he did not require permanent

⁵ See K.S.A. 44-510e(2)(B)(C)(D)(E).

restrictions and was able to return to his job, which Claimant did. As result there is no task loss and Claimant returning to former job results in no wage loss. Claimant was capable of earning at least 90 percent of his pre-injury wage by continuing to work for Respondent, but declined the opportunity. Dr. Murati disagreed but Dr. Murati's opinion is not persuasive. Therefore, since Claimant has no wage loss or task loss he is not entitled to work disability compensation and is limited to an award based on 9 percent impairment to the body as a whole.

Claimant is entitled to future medical treatment upon proper application.

K.S.A. 44-510h(e) states:

It is presumed that the employer's obligation to provide the services of a health care provider, and such medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, ambulance, crutches, apparatus and transportation to and from the home of the injured employee to a place outside the community in which such employee resides, and within such community if the director, in the director's discretion, so orders, including transportation expenses computed in accordance with subsection (a) of K.S.A. 44-515, and amendments thereto, 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. The term "medical treatment" as used in this subsection (e) means only that treatment provided or prescribed by a licensed health care provider and shall not include home exercise programs or over-the-counter medications.

Claimant's injuries from the August 9, 2018 accidental injury, medical treatment for those injuries, including a craniotomy surgery, coupled with Claimant's ongoing complaints and the opinion of Dr. Murati, it is concluded Claimant met his burden to prove it is more probable than not he will require future medical treatment for his injuries. Future medical will be considered upon proper application.

AWARD

WHEREFORE, it is the finding, decision and order of the Board the Award of ALJ Ali N. Marchant dated October 5, 2022, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of March, 2023.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: (Via OSCAR)

Jeff Cooper, Attorney for Claimant
Vince Burnett, Attorney for Respondent and its Insurance Carrier
Hon. Ali N. Marchant, Administrative Law Judge