BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

LEANDER FIELDS	)	
Claimant	)	
V.	)	
	)	AP-00-0472-387
SPIRIT AEROSYSTEMS, INC.	)	CS-00-0227-643
Respondent	)	
AND	)	
	)	
NEW HAMPSHIRE INSURANCE CO.	)	
Insurance Carrier	)	
AND	)	
	)	
KANSAS WORKERS COMPENSATION FUND	)	

ORDER

Claimant requested review of the November 22, 2022, Award issued by Administrative Law Judge (ALJ) Ali Marchant. The Board heard oral argument on April 13, 2023.

APPEARANCES

David H. Farris appeared for Claimant. Kirby A. Vernon appeared for Respondent and its insurance carrier (Respondent). Kathryn Gonzales appeared for Kansas Workers Compensation Fund (Fund).

RECORD AND STIPULATIONS

The Board adopted the same stipulations and considered the same record as the ALJ, consisting of the transcript of the Regular Hearing held March 8, 2022; the transcript of the Preliminary Hearing held November 5, 2019; the transcript of the Evidentiary Deposition of Chris D. Fevurly, M.D., from September 1, 2021, with exhibits attached; the transcript of the Evidentiary Deposition of Pedro A. Murati, M.D., from April 5, 2022, with exhibits attached; the transcript of the Evidentiary Deposition of Christian S. Lothes, M.D., from April 12, 2022, with exhibits attached; the transcript of the Evidentiary Deposition of John P. Estivo, D.O., from April 19, 2022, with exhibits attached; the Court-Ordered Independent Medical Examination Reports of Terrence Pratt, M.D., dated February 25,

2019, and October 21, 2021; and the documents of record filed with the Division. The Board also reviewed the briefs filed by the parties.

ISSUES

The issues for the Board's review are:

1. Is work-related repetitive trauma the prevailing factor causing Claimant's cervical spine injury and related surgery?

2. What is the nature and extent of Claimant's impairment?

3. Is Respondent entitled to seek reimbursement from the Fund for medical expenses paid in relation to Claimant's cervical spine surgery?

FINDINGS OF FACT

Claimant worked for Respondent for approximately 15 years. At the time of the injury by repetitive trauma, Claimant was a composite mechanic. Claimant described his job duties as lifting and shaking containers of wax. Each container weighed approximately 75 to 100 pounds, and Claimant lifted each container 1,200 to 1,500 times per day. Claimant stated the job was repetitive in nature, and he looked down his entire shift.

Claimant had prior work-related injuries to his left right finger in 2010, left middle finger in 2017, and right carpal tunnel in 2014. Claimant underwent right carpal tunnel repair surgery and settled that case in June 2016, in an amount reflecting 14 percent permanent partial impairment to his right upper extremity. Claimant denied any problems with these body parts prior to July 13, 2018, other than numbness, pain, and tingling in his right hand. Claimant further denied similar symptoms in his neck, shoulders, or left arm prior to July 13, 2018.

Claimant began experiencing pain in his back, neck, and shoulders, in addition to numbness and tingling in his left arm, up to and including July 13, 2018. Claimant was referred to Dr. David Gwyn, who recommended a cervical spine MRI. On August 10, 2018, a cervical spine MRI was conducted and the radiologist's report read:

> Study limited by motion artifact does reveal reversal of the cervical lordosis which could be secondary to muscle spasm or positioning. There are moderate diffuse degenerative changes within the disc and associated endplates from C3 through T1 resulting in multilevel moderate spinal and bilateral neural foraminal stenoses. In

> addition, there is diffuse thinning of the cervical spinal cord with abnormal increased T2 signal indicating probable myelomalacia.[1]

Dr. Gwyn determined Claimant's symptoms were a result of cervical radiculopathy, not recurrent carpal tunnel/cubital tunnel syndrome, and recommended evaluation by a spine specialist.

Dr. John Estivo, board-certified in orthopedics, examined Claimant on October 10, 2018. Claimant's chief complaint was cervical spine pain with bilateral upper extremity pain and numbness. Dr. Estivo reviewed Claimant's history and medical records, including the MRI conducted on August 10, 2018. After performing a physical examination, Dr. Estivo concluded Claimant suffered from age-related degenerative disc disease throughout the cervical spine resulting in myelomalacia. Dr. Estivo explained myelomalacia is "damage to the spinal cord that develops from decreasing blood supply. It results usually from pressure on the spinal cord. It can develop over a long period of time from bone spurs and degenerative discs."[2]

Dr. Estivo opined Claimant's myelomalacia was a result of his degenerative condition. In his report, Dr. Estivo wrote:

> This patient's symptoms to his upper extremities appear to be directly related to his cervical spine degenerative condition. The degenerative condition of the cervical spine has caused him to develop myelomalacia within the cervical spinal cord. This is a condition that may have been aggravated by his work activities at [Respondent] but would not have been caused by the work activities at [Respondent]. The prevailing factor and need for medical treatment regarding this patients [*sic*] upper extremities symptoms would be his age related degenerative condition of the cervical spine unrelated to his injury claim of 07/13/2018. I would recommend that he follow up with his family physician for the treatment of his degenerative condition to the cervical spine unrelated to the claim of 07/13/2018.[3]

After Claimant completed medical treatment, Dr. Estivo reviewed Claimant's updated medical records. Dr. Estivo testified the records substantiated his original opinion, and the prevailing factor causing Claimant's cervical spine injury was his age-related degenerative condition.

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[1] Estivo Depo., Ex. 3 at 4.

[2] Estivo Depo. at 9.

[3] *Id.*, Ex. 2 at 3.

Dr. Terrance Pratt performed a court-ordered independent medical evaluation (IME) on February 25, 2019. Dr. Pratt reviewed Claimant's medical history and records, and performed a physical examination. He recorded the following impression:

> Diffuse cervical degenerative changes with probable myelomalacia.
> C5-6 and C6-7 central disc protrusions.
>
> Mild right carpal tunnel syndrome.
>
> Remote history of a right carpal tunnel release and right ulnar release at the elbow.[4]

Dr. Pratt further opined:

> A. Diagnoses for his repetitive activities through July 13, 2018 include cervical central disc protrusions and mild finding suggesting right carpal tunnel syndrome.
>
> B. He is a candidate for a spinal surgical assessment. The findings suggesting carpal tunnel syndrome on the right are mild and may relate to his postoperative status. A review of the preoperative electrodiagnostic study is warranted.
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> C. Prevailing factor for his cervical degenerative changes and myelomalacia would be unrelated to his reported vocationally related [activities]. For the disc protrusions he reports performed vocationally related activities moving object[s] between 75-150 pounds over a prolonged duration when he noted the symptoms. Based on the information available I would consider his vocationally related activities to result in the involvement. The degenerative changes are more significant than the disc protrusions.
>
> The spinal surgical consultation is needed before making any additional statements.[5]

Dr. Christian Lothes, a board-certified neurosurgeon, first evaluated Claimant on May 16, 2019. Dr. Lothes ordered a repeat cervical MRI, which he interpreted on July 23, 2019:

> MRI of his cervical spine demonstrates multilevel advanced degenerative changes. Specifically, there is moderate central canal narrowing at the C3-C4 level with moderate narrowing of both neural foramina. At the C4-C5 level, there is disc osteophyte complex with facet arthropathy, which contributes to severe central canal stenosis and severe narrowing of both neural foramina. At the C5-C6 level, there is moderate narrowing of the central spinal canal as well as moderate right and mild-to-moderate left foraminal narrowing. At C6-C7, there is mild-to-moderate

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[4] Pratt IME (Feb. 25, 2019) at 4.

[5] *Id*. at 5.

> narrowing of the central canal as well as moderate bilateral foraminal stenosis. At the C7-T1 level, there is facet arthropathy contributing to severe narrowing of the neural foramina and moderate central canal stenosis.[6]

Dr. Lothes recommended surgical intervention. On April 8, 2020, Dr. Lothes performed C4-5, C5-6, and C6-7 anterior cervical discectomy and interbody arthrodesis; C4 to C7 anterior cervical plate instrumentation; placement of structural intervertebral allograft at C4-5, C5-6, and C6-7; C3-T1 posterior laminectomy for spinal cord decompression; C3-T1 posterolateral arthrodesis; and C3-T1 posterior instrumentation. Dr. Lothes testified he repaired Claimant's C5-6 disc during surgery because it was a ruptured or herniated disc.

Dr. Lothes stated the primary purpose of the cervical surgery was decompression of Claimant's spinal cord, which would have been caused by a degenerative condition. Dr. Lothes testified he did not have an opinion whether Claimant's work activity aggravated, accelerated, or exacerbated a preexisting condition or whether Claimant's work activity rendered the preexisting condition symptomatic. Dr. Lothes agreed Claimant's treatment was billed through workers compensation insurance rather than Claimant's personal insurance.

Claimant treated with Dr. Lothes postoperatively through May 6, 2021, at which time he was considered to have reached maximum medical improvement. Claimant complained of occasional numbness and tingling to his bilateral upper extremities and reported significant improvement since surgery. A CT scan of Claimant's cervical spine indicated good osseous formation, good height of the grafts, and no evidence of hardware failure. Dr. Lothes released Claimant without permanent work restrictions.

Claimant returned to Respondent following treatment in a different, less strenuous and less repetitive position. Claimant testified he continues to experience pain in his neck, right arm, and both shoulders with tingling in both arms. Claimant stated the tingling in his right arm began after the cervical spine surgery, and he agreed the sensation is in the same area as his previous right carpal tunnel syndrome. Claimant currently takes Tylenol for his ongoing complaints.

On June 29, 2021, Claimant was examined at his counsel's request by Dr. Pedro Murati, board-certified in pain medicine and physical medicine and rehabilitation. Claimant complained of pain, numbness, tingling, and burning in his bilateral arms, primarily on the left; numbness in his bilateral hands and elbows; radiating pain in his hands, left worse than right; and pain in his neck. Dr. Murati reviewed Claimant's history and available medical records. After performing a physical examination, Dr. Murati concluded Claimant was status post cervical surgery as performed by Dr. Lothes and had recurrent right carpal

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[6] Lothes Depo., Ex. 2 at 21.

tunnel syndrome, left carpal tunnel syndrome, recurrent right ulnar cubital tunnel syndrome, left ulnar cubital tunnel syndrome, myofascial pain syndrome of the bilateral shoulder girdles extending into the cervical and thoracic paraspinals, bilateral bicipital tendon sprain, and bilateral shoulder rotator cuff sprain versus tear with probable labral involvement. Dr. Murati determined Claimant will require future medical treatment, including conservative treatment and surgical intervention. Dr. Murati opined the prevailing factor for the entirety of Claimant's diagnoses was the work activities performed at Respondent.

Using the AMA *Guides*,[7] Dr. Murati opined Claimant sustained 49 percent permanent impairment to the whole body as result of his repetitive work injury. This rating consists of 29 whole person impairment for the cervical surgery and 2 percent whole person impairment for myofascial pain syndrome affecting the thoracic paraspinals. For the right upper extremity, Dr. Murati assigned 17 percent permanent partial impairment, or 10 percent whole person impairment, consisting of 11 percent impairment for loss of range of motion of the right shoulder, 3 percent impairment for right shoulder labral pathology, and 3 percent impairment for right bicipital involvement. For the left upper extremity, Dr. Murati assigned 34 percent permanent partial impairment, or 10 percent whole person impairment, consisting of 11 percent impairment for loss of range of motion of the left shoulder, 3 percent impairment for left shoulder labral pathology, 3 percent impairment for left bicipital involvement, 14 percent impairment for left ulnar cubital syndrome, and 9 percent impairment for left carpal tunnel syndrome.

Dr. Murati stated he did not apportion any of Claimant's current impairment ratings to preexisting injuries, including his right carpal tunnel and right cubital tunnel syndrome. Dr. Murati examined Claimant on at least three occasions for upper extremity problems prior to this July 13, 2018, injury by repetitive trauma, including the assessment of impairment ratings for previous upper extremity injuries.

On August 16, 2021, Claimant was examined at Respondent's request by Dr. Chris Fevurly, who is board-certified in internal medicine and preventative medicine with specialization in occupational medicine. Dr. Fevurly reviewed Claimant's history, available medical records, and performed a physical examination. Dr. Fevurly concluded Claimant sustained recurrent right-sided median nerve entrapment, myelomalacia from advanced age-related cervical spondylosis and multilevel cervical spine degenerative disc disease, and mild bilateral shoulder impingement. Dr. Fevurly provided a causation opinion:

> The prevailing factor for the development of his multilevel degenerative disc disease and cervical spondylosis was his age and genetic factors. The myelomalacia resulting from the DDD and spondylosis is not an occupational condition or disease; however, the claimant reports the Lothes surgery to his cervical spine was paid for by worker's compensation. He reports little subjective improvement in his

[7] American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (6th ed.).

> symptoms following the Lothes surgery performed on April 8, 2020 (16 months ago). He does not perform significant overhead looking and his outlined job duties before 2018 would not have placed him at increased risk for accelerated cervical spine DDD or spondylosis.
>
> There is limited evidence for recurrence of the previous right sided carpal tunnel syndrome that was surgically released seven years ago (2014) and upon which there was a prior 20% RUE impairment accorded by Pedro Murati MD (see text above).
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> The prevailing factor for the development of bilateral shoulder impingement is his age. Studies have shown there is an increased risk of impingement in workers who perform frequent above shoulder reach or repetitive above shoulder push and pull. This claimant has not performed this degree of activity in his job duties at [Respondent]; subsequently, the condition of his shoulders is not an occupational disorder.[8]

Dr. Fevurly agreed Claimant's work activity may have aggravated his cervical spondylosis and degenerative cervical spine changes, but it was not the prevailing factor causing those conditions. Dr. Fevurly opined Claimant did not require future medical treatment related to his cervical myelomalacia or right carpal tunnel syndrome.

Using the AMA *Guides*, Dr. Fevurly opined Claimant sustained 3 percent whole person impairment for a three-level cervical disc decompression and instrumented fusion. Dr. Fevurly testified, although he did not find the prevailing factor for Claimant's cervical condition to be work-related, he provided the impairment rating because the surgery was authorized by the workers compensation carrier. Dr. Fevurly did not assign new impairment related to Claimant's other complaints.

Dr. Pratt performed another Court-ordered IME on October 21, 2021. Claimant provided a chief complaint of generalized body discomfort, with more specific involvement of the cervical region, right greater than left upper extremity, and shoulders. Dr. Pratt reviewed Claimant's updated medical history and available records, in addition to performing a physical examination. Dr. Pratt recorded the following impression:

> Cervical stenosis with myeloradiculopathy, status post C4-C5, C5-C6 and C6-C7 anterior cervical diskectomy and interbody arthrodesis, C4 to C7 anterior cervical plate instrumentation, placement of structural intervertebral allograft at C4-C5, C5-C6 and C6-C7, C3 through T1 posterior laminectomy for spinal cord decompression, posterolateral arthrodesis and posterior instrumentation.
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> Reported findings consistent with mild right carpal tunnel syndrome. History remote history of right carpal tunnel release and ulnar nerve release at the elbow.

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[8] Fevurly Depo., Ex. 2 at 11.

> Bilateral shoulder discomfort.
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> Generalized body discomfort which appears.[9]

Dr. Pratt was asked by the Court to provide his opinions regardless of compensability. Dr. Pratt suggested future medical treatment would include reassessment with the surgical specialist for any progression of Claimant's cervical symptoms, possible imaging of Claimant's shoulders for progression of shoulder symptoms, and repeat electrodiagnostic testing for peripheral nerve entrapment for progression of symptoms in the right upper extremity.

Dr. Pratt noted difficulty providing his opinions of Claimant's condition due to inconsistencies in the examination. Dr. Pratt observed Claimant's gait pattern was slow during the formal assessment and within normal limits while leaving the office. Dr. Pratt wrote:

> Unfortunately, the evaluation was limited by responses which were not considered as a true indication of his functional abilities including generalized giveaway weakness, near generalized diminished sensation to sharp stimulation and variations in range of motion shoulders, elbows and wrists.[10]

Dr. Pratt opined Claimant sustained 29 percent whole person permanent partial impairment utilizing the AMA *Guides*. Dr. Pratt assigned 6 percent impairment to the right upper extremity, or 4 percent whole person impairment, consisting of 1 percent impairment for nonspecific right shoulder pain and 5 percent impairment for findings suggesting peripheral nerve entrapment. Dr. Pratt assigned 1 percent impairment to the left upper extremity, or 1 percent whole person impairment, for nonspecific left shoulder pain. Dr. Pratt assigned 25 whole person impairment for cervical stenosis at multiple levels resulting in procedures with residual bilateral symptoms. Dr. Pratt did not assign impairment for generalized body aches, stating he could not identify consistent findings to result in functional impairment for musculoskeletal involvement.

The ALJ determined Claimant's work-related repetitive trauma was not the prevailing factor causing his cervical spine surgery. The ALJ adopted the opinions of Dr. Pratt and found Claimant sustained 5 percent impairment to the whole person as a result of his work-related repetitive trauma injuries. The ALJ found Claimant's repetitive trauma caused disc protrusions, but not Claimant's underlying degenerative disc disease. The ALJ explained, "Because Dr. Pratt only assigned impairment for Claimant's cervical spine in relation to degenerative stenosis and the related surgery and did not assign Claimant any impairment related to his cervical protrusions, the Court will not consider Dr. Pratt's impairment rating

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[9] Pratt IME (Oct. 21, 2021) at 6.

[10] *Id*.

attributable to Claimant's cervical spine."[11] The ALJ determined Claimant was entitled to future medical treatment upon proper application, and further noted Respondent was entitled to seek reimbursement from the Fund for amounts spent in relation to Claimant's cervical spine surgery.

PRINCIPLES OF LAW AND ANALYSIS

Claimant argues his work-related repetitive trauma was the prevailing factor causing his cervical spine injury and resulting surgery. Claimant contends he sustained 29 percent impairment to the whole body. Further, Claimant argues his surgical intervention is compensable, thus it was properly paid by the workers compensation insurance carrier.

Respondent maintains the ALJ's Award should be affirmed. Respondent argues Claimant failed to prove the prevailing factor for his cervical spine condition and related treatment, and he sustained 5 percent impairment to the whole body.

1. Is work-related repetitive trauma the prevailing factor causing Claimant's cervical spine injury and related surgery?

K.S.A. 44-508(f)(2) provides, in part:

> (2) An injury is compensable only if it arises out of and in the course of employment. An injury is not compensable because work was a triggering or precipitating factor. An injury is not compensable solely because it aggravates, accelerates or exacerbates a preexisting condition or renders a preexisting condition symptomatic.
>
> (A) An injury by repetitive trauma shall be deemed to arise out of employment only if:
>
> (i) The employment exposed the worker to an increased risk or hazard which the worker would not have been exposed in normal non-employment life;
> (ii) the increased risk or hazard to which the employment exposed the worker is the prevailing factor in causing the repetitive trauma; and
> (iii) the repetitive trauma is the prevailing factor in causing both the medical condition and resulting disability or impairment.

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

> "Prevailing" as it relates to the term "factor" means the primary factor, in relation to any other factor. In determining what constitutes the "prevailing factor" in a given case, the administrative law judge shall consider all relevant evidence submitted by the parties.

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[11] ALJ Award at 18.

It is undisputed Claimant engaged in repetitive work for Respondent. The majority of the doctors providing evidence agree Claimant's primary cervical spine condition is degenerative in nature, the prevailing factor of which is not Claimant's work-related repetitive trauma. Dr. Estivo diagnosed a degenerative condition of the cervical spine causing myelomalacia within the cervical spinal cord. Dr. Lothes considered the prevailing factor causing Claimant's cervical spine condition to be a degenerative condition, which preexisted the work injury. Dr. Lothes stated the primary purpose of the cervical surgery was decompression of Claimant's spinal cord, which was caused by a degenerative condition. Dr. Fevurly diagnosed cervical spondylosis and degenerative cervical spine changes. Dr. Fevurly opined the prevailing factor for the development of his multilevel degenerative disc disease and cervical spondylosis was his age and genetic factors. Dr. Pratt opined Claimant's cervical degenerative changes and myelomalacia were unrelated to any work-related activity, but the disc protrusions were related to the work activities.

Only Dr. Murati provided an opinion Claimant's work for Respondent was the prevailing factor causing the entire cervical condition. The weight of the medical evidence does not support Dr. Murati's conclusions. The medical evidence overwhelmingly supports finding Claimant failed to prove the work-related repetitive trauma is the prevailing factor causing his degenerative cervical spine condition.

The Board finds the opinions of the Court-ordered neutral examiner, Dr. Pratt, the most credible on causation. Dr. Pratt noted disc protrusions at C5-6 and C6-7. Dr. Pratt believed Claimant's work activities were the prevailing factor causing Claimant's cervical disc protrusions. However, he opined the degenerative changes were more significant than the disc protrusions. Based upon Dr. Pratt's opinions, the Board finds Claimant met his burden of proving a work-related injury by repetitive trauma causing C5-6 and C6-7 central disc protrusions, but the underlying degenerative conditions and myelomalacia are not compensable under the Workers Compensation Act.

2. What is the nature and extent of Claimant's impairment?

K.S.A. 44-510e(a)(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 injuries occurring on and after January 1, 2015, based on the sixth edition of the American medical association guides to the evaluation of permanent impairment, if the impairment is contained therein.

The extent of functional impairment shall be based on competent medical evidence, using the AMA *Guides* as a starting point.[12] Regarding the cervical spine, the Board finds no impairment related to Claimant's compensable disc protrusions. Dr. Pratt assigned 25 whole person impairment for cervical stenosis at multiple levels, which is unrelated to Claimant's work-related repetitive trauma. Dr. Pratt did not assess impairment for the work-related cervical disc protrusions.

Dr. Murati assessed 29 whole person impairment based upon the surgery performed by Dr. Lothes. Dr. Lothes testified the surgery was intended to cure or relieve Clamant's unrelated degenerative condition. Dr. Murati did not assess impairment related to the compensable cervical disc protusions. Claimant failed to prove impairment to the cervical spine related to the work-related repetitive trauma.

Regarding the upper extremities, Dr. Murati assigned 17 percent permanent partial impairment for the right upper extremity, or 10 percent whole person impairment. He assigned 34 percent permanent partial impairment for the left upper extremity, or 20 percent whole person impairment. Dr. Murati's opinions are given no weight because he failed to account for the extent of preexisting impairment. Dr. Murati examined Claimant prior to this injury on multiple occasions and provided treatment opinions and upper extremity impairment ratings. In like token, the Board does not find Dr. Fevurly's rating persuasive because it is not based on Clamant's compensable cervical disc protrusions.

Dr. Pratt was an independent medical evaluator appointed by the Court and is found to be the most credible of the testifying physicians. Dr. Pratt assigned 6 percent impairment to the right upper extremity and 1 percent impairment to the left upper extremity, resulting in a 5 percent whole person impairment. The Board finds Claimant suffered 5 percent whole body impairment as the result of his work-related repetitive trauma.

3. Is Respondent entitled to seek reimbursement from the Fund for medical expenses paid in relation to Claimant's cervical spine surgery?

Respondent is entitled to seek reimbursement pursuant to K.S.A. 44-534a(b), which states:

> If compensation in the form of medical benefits or temporary total disability benefits has been paid by the employer or the employer's insurance carrier either voluntarily or pursuant to an award entered under this section and, upon a full hearing on the claim, the amount of compensation to which the employee is entitled is found to be less than the amount of compensation paid or is totally disallowed, the employer and the employer's insurance carrier shall be reimbursed from the workers compensation fund established in K.S.A. 44-566a, and amendments thereto, for all amounts of compensation so paid which are in excess of the amount of

[12] *See Johnson v. U.S. Food Serv.*, 312 Kan. 597, 602, 478 P.3d 776 (2021).

> compensation the employee is entitled to less any amount deducted from additional disability benefits due the employee pursuant to subsection (c) of K.S.A. 44-525, and amendments thereto, as determined in the full hearing on the claim. The director shall determine the amount of compensation paid by the employer or insurance carrier which is to be reimbursed under this subsection, and the director shall certify to the commissioner of insurance the amount so determined. Upon receipt of such certification, the commissioner of insurance shall cause payment to be made to the employer or the employer's insurance carrier in accordance therewith. No reimbursement shall be certified unless the request is made by the employer or employer's insurance carrier within one year of the final award.

Pursuant to a preliminary order, Respondent paid for the surgery performed by Dr. Lothes. Dr. Lothes testified the surgery was intended to treat Claimant's degenerative spine condition. Dr. Pratt confirmed Claimant's degenerative condition was unrelated to his work-related repetitive trauma. The employer is responsible for providing medical treatment reasonably necessary to cure and relieve the effects of the work-related injuries.[13] Here, the surgery paid by Respondent did not cure or relieve the compensable disc protrusions and is not payable under K.S.A. 44-510h(a). Therefore, Respondent is entitled to reimbursement by the Fund under K.S.A. 44-534a(b).

AWARD

WHEREFORE, it is the finding, decision and order of the Board the Award of ALJ Ali Marchant, dated November 22, 2022, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of June, 2023.

_____
BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

[13] *See* K.S.A. 44-510h(a).

c: (Via OSCAR)

David H. Farris, Attorney for Claimant
Kirby A. Vernon, Attorney for Respondent and its Insurance Carrier
Kathryn Gonzales, Attorney for Kansas Workers Compensation Fund
Hon. Ali Marchant, Administrative Law Judge