BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

DONALD ADAM Claimant V. **ASHBY HOUSE LTD** Respondent AND **WESCO INSURANCE COMPANY** Insurance Carrier	))))))))))	CS-00-0443-901 AP-00-0455-555

ORDER

The claimant, through E. Thomas Pyle, III, requested review of Administrative Law Judge (ALJ) Bruce Moore's Award dated December 8, 2020. Samantha Benjamin-House appeared for the respondent and its insurance carrier (respondent). The Board heard oral argument on March 25, 2021.

RECORD AND STIPULATIONS

The Board considered the record and adopted the stipulations listed in the Award.

ISSUES

1. Should the case be reversed and remanded so the parties may present medical evidence in light of the Kansas Supreme Court's opinion in *Johnson*?[1]

2. What is the nature and extent of the claimant's disability?

3. Is the claimant entitled to future medical treatment?

FINDINGS OF FACT

The respondent is a homeless shelter for women and families. The claimant started as a volunteer at the facility. In September 2015, he was hired as a full-time employee. As of September 25, 2018, he managed the "Free Store," performed maintenance and did other shelter work.

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[1] *Johnson v. U.S. Food Service*, ___ Kan. ___, 478 P.3d 776 (Kan. 2021).

On September 25, 2018, the claimant went to a local Dillons with another employee to pick up groceries, a work activity. After loading groceries into his vehicle, the claimant reentered the store. A Dillons employee operating a pallet jack ran over the claimant's right foot and bumped his left foot. The Dillons worker then put the pallet jack in reverse and ran over the claimant's right foot a second time. The claimant was able to return to his vehicle by riding a motorized scooter. He returned to the respondent's facility and a supervisor sent him to Salina Regional Health Emergency Department for treatment.

The claimant was diagnosed with a fracture of the proximal phalanx of the right great toe and chip fractures of the cuboid. He was treated conservatively, including crutches and two different walking boots. As a result, the claimant testified his gait was uneven for four to six weeks, and he began experiencing problems with his knees, hips and low back. The claimant also testified the insurance carrier sent him to Dr. Frederickson, a podiatrist, who prescribed custom orthotics. The claimant denied ever having custom orthotics before his accident, but he used shoe liners, like Odor Eaters or Dr. Scholl's inserts. According to the claimant, Dr. Frederickson opined he would need to keep using the custom orthotics, which would need to be replaced over time.

The claimant denied prior problems involving his low back, right hip, left knee or feet. He had a work injury to his right knee in 1979. Since 2013 or 2014, he had hammer toes affecting both feet. He denied any active problems at the time of his accident.

At his attorney's request, the claimant saw George Fluter, M.D., on August 14, 2019, for an independent medical evaluation. Following a physical examination, the doctor diagnosed the claimant with a right foot fracture; fracture of blister; probable right peroneal neuropathy; low back pain/tenderness; and probable sacroiliac joint dysfunction. The doctor noted the claimant had tenderness over the left greater trochanter, but such condition was not listed as a diagnosis. Dr. Fluter opined the claimant's low back pain, sacroiliac joint dysfunction, and trochanteric bursitis were probably due to weightbearing restrictions and altered gait occasioned by the foot injury. Dr. Fluter noted the claimant had slight right foot discoloration. Dr. Fluter provided temporary restrictions and recommended additional medical treatment.

The respondent designated John Estivo, D.O., as the treating physician. The claimant first saw Dr. Estivo on January 15, 2020. The doctor diagnosed right foot pain after a crush injury, left foot contusion, lumbar spine strain, bilateral knee strains, preexisting age-related degenerative joint disease of the knees, and bilateral hip bursitis. Dr. Estivo ordered several physical therapy sessions and prescribed medication. The doctor examined the claimant twice in February 2020, and diagnosed bilateral greater trochanteric bursitis of the hips. The claimant was evaluated by Dr. Estivo once in March 2020, and told the doctor his knee conditions were returning to pre-injury status. On April 1, 2020, Dr. Estivo released the claimant at maximum medical improvement. Dr. Estivo opined the claimant would not require any further medical treatment, would not need custom orthotics due to the work injury, and did not need permanent restrictions.

Dr. Estivo acknowledged not having all of the claimant's medical records at the time of his treatment. Dr. Estivo testified the claimant's right foot was neither discolored nor swollen on physical examination. If those conditions were present, the doctor testified he would have made a record. Dr. Estivo noted the claimant could have lower extremity swelling and discoloration due to congestive heart failure. The doctor opined any such complaints were unrelated to the accidental work injury.

On May 7, 2020, the claimant returned to Dr. Fluter. Dr. Fluter reviewed additional treatment records from Dr. Estivo and performed another physical examination. At that time, Dr. Fluter diagnosed right foot fractures (proximal phalanx of the great toe and chip fractures of the cuboid), a left foot contusion, "possible" right peroneal neuropathy, low back pain, a "probable" lumbosacral strain/sprain, "probable" sacroiliac joint dysfunction and right knee pain, preexisting but "likely" aggravated by the work accident. Dr. Fluter's rating report did not list trochanteric bursitis as a diagnosis. Dr. Fluter noted the claimant had no right foot effusion, but had slight right foot discoloration. The doctor noted the claimant had right knee tenderness and pain. However, Dr. Fluter opined the claimant's right knee condition was preexisting and only aggravated by the work injury.

Using the AMA *Guides to the Evaluation of Permanent Impairment*, 6th ed. (*Guides,* 6th ed.), Dr. Fluter assigned the claimant a 15% right lower extremity impairment (6% whole person rating) for loss of right ankle range of motion; a 1% left lower extremity impairment (1% whole person rating) for loss of left ankle range of motion; and a 3% whole person impairment for low back pain. Using the Combined Values Chart, Dr. Fluter assigned the claimant a 10% whole person impairment. The doctor provided the claimant a 16% whole person impairment under the AMA *Guides to the Evaluation of Permanent Impairment,* 4th ed. (*Guides,* 4th ed.)

Dr. Fluter imposed permanent restrictions of lifting, carrying, pulling and pushing to 35 pounds occasionally and 15 pounds frequently; restrict bending, stooping, crouching and trunk twisting to occasionally; and restrict squatting, kneeling, crawling and climbing to occasionally. The doctor recommended future medical treatment, including follow-up appointments, diagnostic and therapeutic interventions, diagnostic testing, prescription medications, physical therapy, interventional pain management procedures and/or surgery. Dr. Fluter also indicated the claimant will require periodic replacement of his orthotics and may benefit from the use of a soft abdominal/lumbar support brace.

On July 1, 2020, Dr. Estivo authored two rating reports. Using the *Guides*, 6th ed., the doctor assigned the claimant a 2% whole person impairment for the lumbar spine strain; a 7% right lower extremity impairment (3% whole person rating) for right trochanteric bursitis; a 7% left lower extremity (3% whole person rating) for left trochanteric bursitis; a 2% right lower extremity impairment (1% whole person rating) for the right knee strain; a 2% left lower extremity (1% whole person rating) for the left knee strain; a 1% left lower extremity impairment (1% whole person rating) for the left foot contusion; and a 3% left lower extremity impairment (1% whole person impairment) for the left foot fracture. Using

the Combined Values Chart, Dr. Estivo assigned the claimant a 12% whole person impairment for the work-related accident. The doctor provided the claimant an 11% whole person impairment under the *Guides,* 4th ed. Dr. Estivo testified his opinions were within a reasonable degree of medical certainty.

On September 1, 2020, Dr. Fluter, without examining the claimant, authored a third report after reviewing Dr. Estivo's ratings. Based on Dr. Estivo's reports and review of his initial report documenting "some findings of trochanteric bursitis,"[2] Dr. Fluter revised the impairment rating he previously provided. Dr. Fluter added a 3% whole person impairment for trochanteric bursitis and a 1% whole person impairment for a right knee strain under the *Guides,* 6th ed., for a 14% whole person impairment. Using the *Guides,* 4th ed., the doctor added a 3% whole person impairment for trochanteric bursitis, resulting in a 19% whole person impairment. Dr. Fluter stated there would be no impairment to the right knee under the *Guides,* 4th ed., because there was no provision for knee strain. Dr. Fluter testified his opinions were based upon a reasonable degree of medical probability and certainty.

As of the regular hearing on September 2, 2020, the claimant continued working full-time for the respondent. He experienced cramping at night, swelling and discoloration in his right foot, with pain and a loss of sensation. His left foot condition had basically resolved. He had pain in his right knee most of the time with occasional left knee pain. The low back and hip pain waxed and waned. The claimant testified he walks with an altered gait or slight limp and walking for extended periods increases the pain and discomfort in his right foot, right knee, hips and back.

On pages 7 and 8 of the Award, the ALJ stated:

> The court has before it three opinions as to Adam's residual functional impairment, two from Dr. Fluter, and one from Dr. Estivo, the authorized treating physician. Dr. Fluter's first rating report summarized his findings on physical examination and his opinions as to Adam's impairment. The second report increased the rating, not because of any accidental omission, and not because of an additional examination or any change in Adam's condition or complaints. Rather the second rating was increased simply because Dr. Estivo had rated conditions that Dr. Fluter had not. The court places very little value on a rating increased "just because," rather than due to a change since the original rating. If Dr. Fluter had felt that Adam had, and was impaired by trochanteric bursitis, it should have been reflected in his original report. Similarly, Dr. Fluter expressly considered rating the right knee prior to issuing his first rating report, but chose not to do so, believing the conditions to be preexisting. Nothing about Adam's right knee changed in the interval between Dr. Fluter's first and second ratings. The only thing that changed was Dr. Estivo's assessment of a rating for the right knee.

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[2] Fluter Depo. at 49.

> Dr. Fluter's issuance of a higher rating just because Dr. Estivo rated something he did not undermines the reliability and credibility of Dr. Fluter's ratings. The ratings do not appear to be based on an objective assessment of Adam's condition, but rather on how to achieve a higher rating tha[n] Dr. Estivo. The court considers it highly unlikely that Dr. Fluter would remove a rating from his report if Dr. Estivo did not offer a comparable rating. Indeed, while adding ratings to his second report based on Dr. Estivo's inclusion of a rating for trochanteric bursitis and right knee complaints, Dr. Fluter did not delete his ratings for bilateral sacroiliac joint dysfunction despite the omission of those diagnoses in Dr. Estivo's report.
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> The court adopts Dr. Estivo's functional impairment ratings, and finds that Adam has suffered an 11% impairment of function to the body as a whole as measured by the 4th edition of the AMA Guides, and a 12% impairment of function to the body as a whole as measured by the 6th edition of the AMA Guides. For purposes of this Award, the 6th edition controls, and Adam has suffered a 12% impairment of function of the body as a whole.
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> . . .
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> The burden is on Adam to demonstrate that it is more probably true than not that he will require future medical care for the September 25, 2018 work injuries. Adam suffered a broken toe that healed without surgery. He did not take prescription pain medication for the fractured toe or subsequent subjective complaints in the back, hips and knees. He is not on prescription medication now, and only occasionally takes over-the-counter Tylenol for pain. He is on the same prescription medications now as he was prior to the accident and in the same dosages. He was wearing insoles for hammer toes prior to the work accident, and there is no competent testimony that he now requires prescription orthotics for his fractured big toe, as opposed to his preexisting hammer toes. Dr. Fluter recommends regular follow-up with a physician to monitor Adam's circumstances, and defers to that physician to suggest additional treatment, depending on Adam's presentation at the time. A recommendation for follow-up monitoring is not the same as a recommendation for "treatment." Dr. Estivo, the authorized treating physician does not believe that any future medical care or prescription orthotics are or will be necessary as a result of these work injuries.
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> Adam has failed to sustain his burden of proof that it is more likely than not that he will require future medical treatment for his work injuries, and has failed to overcome the statutory presumption.

The claimant argues Dr. Fluter's opinions are more credible, entitling him to a 14% whole person impairment under the *Guides*, 6th ed., and future medical treatment. The claimant asserts Dr. Estivo's opinions should be completely rejected because the doctor did not review all of the medical records and he did not review the claimant's testimony prior to giving his opinions. The respondent maintains the Award should be affirmed.

PRINCIPLES OF LAW, ANALYSIS & CONCLUSIONS

1. Based on *Johnson,* the Board vacates and remands the ALJ's decision regarding the claimant's permanent impairment of function. On remand, the parties may request the ALJ permit them to present evidence of "competent medical evidence" limited to the claimant's permanent impairment of function.

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 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.

In part, K.S.A. 44-551(l)(1) states, "On any such review, the board shall have authority to . . . remand any matter to the administrative law judge for further proceedings." The Board may remand a matter to an ALJ for the taking of additional evidence.[3]

In *Johnson,* the Kansas Supreme Court stated, "K.S.A. 2019 Supp. 44-510e(a)(2)(B) has never dictated that the functional impairment is set by guides."[4] *Johnson* held K.S.A. 44-510e(a)(2)(B) requires functional impairment ratings must be proved by competent medical evidence and use of the *Guides*, 6th ed., is only a starting point for any medical opinion.[5] Johnson states:

> The use of the phrase "based on" indicates the Legislature intended the Sixth Edition to serve as a standard starting point for the more important and decisive "competent medical evidence." That is, "the application of a standard, while setting the legal parameters of any possible final resolution, leaves work to be done. See Sunstein, *Problems with Rules*, 83 Cal. L. Rev. 953, 959-68 (1995) (in depth analysis of the 'continuum from rules to untrammeled discretion, with factors, guidelines, and standards falling in between')." *Apodaca v. Willmore*, 306 Kan. 103, 136, 392 P.3d 529 (2017) (Stegall, J., dissenting).[6]

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[3] See *Neal v. Hy-Vee, Inc.*, 277 Kan. 1, 24-25, 81 P.3d 425 (2003).

[4] See *Johnson v. U.S. Food Service*, ___ Kan. ___, 478 P.3d 776, 780 (2021).

[5] *Id.*

[6] *Id.*

The Supreme Court's ruling in *Johnson* represents a new interpretation of K.S.A. 44-510e(a)(2)(B). Before *Johnson*, K.S.A. 2019 Supp. 44-510e(a)(2)(B) was interpreted as mandating the use of the *Guides*, 6th ed., without deviation, in assessing functional impairment for whole-body injuries. The Board ruled use of the *Guides*, 6th ed., was mandatory.[7] The Board did not consider ratings based on methodology deviating from the *Guides*, 6th ed.[8] The Board rejected the argument a physician's discretion continued to play a role in assessing impairment.[9] In like token, the Court of Appeals interpreted K.S.A. 2019 Supp. 44-510e(a)(2)(B) as mandating use of the *Guides*, 6th ed., in assessing whole-body impairment, and ruled the statute was unconstitutional because it left no room for the knowledge and expertise of the evaluating physician.[10]

Here, the parties were in no position to predict the outcome in *Johnson*. The parties would not be expected to portend use of the *Guides*, 6th ed., was a mere starting point, permitting medical experts to further explain opinions based on competent medical evidence. Before *Johnson*, such evidence was irrelevant. The parties should be allowed to present additional medical evidence relevant to the claimant's impairment of function, especially focused on competent medical evidence as contemplated in *Johnson*.

Recently, in *Pimenta-Stone*,[11] the Board was asked to remand the case to an ALJ for reconsideration and potential additional expert medical testimony to explain the doctor's medical opinion consistent with *Johnson*. However, such request was conditioned upon the Board being unwilling to determine the worker's impairment based on the testimony and arguments presented. The Board declined to remand the case because the evidence was sufficient to determine the worker's impairment.

Unlike *Pimenta-Stone*, the Board concludes the evidence in the present case is insufficient to determine the claimant's impairment. As such, the ALJ's determination of the claimant's functional impairment is vacated and remanded for further proceedings consistent with *Johnson*.

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[7] *See, e.g., Struckhoff v. DH Pace Co., Inc.*, No. CS-00-0440-513, 2020 WL 2991822, at *4-5 (Kan. WCAB May 29, 2020); *Carpenter v. Healthcare Resort of Topeka*, No. CS-00-0307-857, 2020 WL 2991820 at *3 (Kan. WCAB May 8, 2020).

[8] *See Venditti v. Cessna Aircraft Co.*, No. CS-00-0003-734, 2020 WL 719924, at *4 (Kan. WCAB Jan. 18, 2020); *Cantrell v. Securitas Security Services USA, Inc.*, No. 1,078,294, 2018 WL 3326975, at *4 (Kan. WCAB June 28, 2018).

[9] *See Cantrell*, 2018 WL 3326975, at *4.

[10] *See Johnson v. U.S. Food Service*, 56 Kan. App. 2d 232, 253-54, 427 P.3d 996 (2018), *reversed*, ___ Kan. ___, 478 P.3d 776 (2021).

[11] *Pimenta-Stone v. Parker Hannifin Corp.*, CS-00-0373-186, AP-00-0452-538, 2021 WL 1270396 (Kan. WCAB Mar. 15, 2021).

2. The claimant is not entitled to future medical treatment.

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

> It is presumed that the employer's obligation to provide the services of a health care provider . . . 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.

K.S.A. 44-525(a) states, in part:

> . . . No award shall include the right to future medical treatment, unless it is proved by the claimant that it is more probable than not that future medical treatment, as defined in subsection (e) of K.S.A. 44-510h, and amendments thereto, will be required as a result of the work-related injury.

While the claimant testified Dr. Frederickson prescribed custom orthotics due to the work injury and further indicated the custom orthotics would be a continuing need, Dr. Frederickson did not testify. The claimant's understanding of Dr. Frederickson's recommendations are not "medical evidence" as contemplated by K.S.A. 44-510h(e). While Dr. Fluter recommended continued use of custom orthotics, Dr. Estivo testified the claimant's injuries did not require custom orthotics. Further, Dr. Estivo testified future medical treatment was not required by the claimant. Here, the Board affords Dr. Estivo more credence as the treating physician than a hired medical expert. The claimant is not taking prescription medication and has had no medical treatment subsequent to being released at maximum medical improvement by Dr. Estivo. The Board agrees with the ALJ's conclusion the claimant failed to prove he will require future medical treatment by a preponderance of the credible evidence.

CONCLUSIONS

1. The Board vacates and remands the ALJ's decision regarding the claimant's permanent impairment of function so the parties may present additional medical evidence in light of the Kansas Supreme Court's opinion in *Johnson*.

2. The claimant did not prove entitlement to future medical treatment.

AWARD

WHEREFORE, the Board vacates the December 8, 2020, Award, in part, with respect to the claimant's impairment of function and the Board remands the Award for further determination of the claimant's impairment of function consistent with *Johnson*. However, the Board affirms the ALJ's determination the claimant did not prove entitlement to future medical treatment.

IT IS SO ORDERED.

Dated this _____ day of April, 2021.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

DISSENT

I respectfully dissent from the Board's decision to remand the case based on *Johnson*.

For an expert opinion on permanent impairment of function, *Johnson* requires use of the *Guides*, 6th ed., as a starting point, and competent medical evidence.

Judge Moore reviewed the evidence presented by the parties and reached a well-reasoned result. The judge plainly awarded the claimant benefits based on impairment using the *Guides*, 6th ed., and explained by competent medical evidence, including the testimony of Dr. Estivo.

Competent medical evidence is basically an opinion from a doctor. In *Clayton,* the Kansas Court of Appeals apparently adopted the parties' agreement the term "competent medical evidence," in the context of workers compensation, means an opinion asserted by a health care provider expressed in terms of "reasonable degree of medical probability" or similar language.[12] In a case in which a doctor provided a sufficient opinion and stated his opinion was within a reasonable degree of medical certainty, the doctor's testimony was sufficient competent evidence.[13] However, medical certainty is not required: a valid medical opinion must be based on probability and may not rely on conjecture.[14] To be reliable, a medical opinion should be based on more than speculation.[15]

Judge Moore relied on Dr. Estivo's opinions. The opinions from Dr. Estivo are competent medical evidence. Dr. Estivo testified his opinions were based on medical certainty. Dr. Estivo's opinions were not based on conjecture or speculation.

The Board's rationale the parties could not have predicted the Kansas Supreme Court's ruling in *Johnson* should not be the focus. *Johnson* does not present unfair surprise. *Johnson* requires rating with the *Guides*, 6th ed., that is also based on competent medical evidence. So, the questions should be: (1) does the record contain a reliable medical opinion which uses the *Guides*, 6th ed., as a starting point and (2) is the medical opinion further supported by competent medical evidence? For this case, the answer to both questions is "yes."

Additionally, parallels may be drawn between analysis of cases decided for injuries occurring before January 1, 2015, under the *Guides*, 4th ed., and cases now decided under the *Guides*, 6th ed.:

- In a case involving the *Guides*, 4th ed., the Board adopted the opinion of a physician who used his own judgment to assign impairment which arguably varied from the strict language of the *Guides*.[16] The doctor's opinion was based on low back pain, sacroiliac dysfunction (which was not a condition listed in the *Guides*), the claimant's pain, the claimant's limitations in activities of daily living,

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[12] *Clayton v. Univ. of Kansas Hosp. Auth.*, 53 Kan. App. 2d 376, 388 P.3d 187 (2017).

[13] See *Webber v. Auto. Controls Corp.*, 272 Kan. 700, 705, 35 P.3d 788 (2001).

[14] See *Turner v. State*, No. 110,508, 2014 WL 3022644, at *5 (Kansas Court of Appeals unpublished opinion filed June 27, 2014).

[15] See *Buchanan v. JM Staffing, LLC*, 52 Kan. App. 2d 943, 955, 379 P.3d 428 (2016).

[16] See *Smith v. Sophie's Catering & Deli Inc.*, No. 99,713, 2009 WL 596551 (Kansas Court of Appeals unpublished opinion filed Mar. 6, 2009), *publication denied* Nov. 5, 2010.

and, most importantly, physician discretion. This decision was affirmed by the Kansas Court of Appeals.

- In a case based on the *Guides*, 4th ed., the Board indicated it need not fully reject the entirety of a doctor's opinion based on some deviation from the *Guides*.[17] This decision was also affirmed by the Kansas Court of Appeals.

The conclusions reached in these *Guides*, 4th ed., cases would seem equally applicable to *Guides*, 6th ed., cases, even prior to *Johnson*. Attorneys have always been able to ask doctors questions about the sufficiency of any edition of the *Guides* in assessing a worker's impairment. Doctors have always been free to explain why any edition of the *Guides* may be inadequate in determining an injured worker's impairment. While adherence to the *Guides* has historically been viewed as a mandate, some deviation from the *Guides* has been allowed by fact finders. My point is having a doctor present competent medical evidence to explain why an impairment rating under the *Guides* is insufficient to explain a worker's impairment would be equally possible when operating under the *Guides*, 4th ed., or the *Guides*, 6th ed. The claimant had the opportunity to ask Dr. Fluter to explain any preference for the prior edition of the *Guides* or to explain why a rating based on the *Guides*, 6th ed., does not fairly represent the residuals of his injury. If Dr. Fluter wanted to express a medical opinion concerning the claimant's impairment which might deviate from a strict reading of the *Guides*, 6th ed., he had the opportunity to do so.

Additionally, outside litigants argued over the adequacy of the *Guides*, 6th ed., in *Johnson*, before the Court of Appeals, two years before physician testimony was secured in this case. In *Johnson*: (1) at the administrative level, a medical expert for the injured worker testified there was no scientific support for reduced impairment ratings under the *Guides*, 6th ed., and (2) it was noted impairment ratings under the *Guides*, 6th ed., were 40% to 70% lower than those provided in the *Guides*, 4th ed.[18] Highly condensed, the Court of Appeals in *Johnson* found use of the *Guides*, 6th ed., was unconstitutional as violating the quid pro quo. Of course, the Court of Appeals' ruling was reversed. However, the litigation and evidence presented in *Johnson* demonstrates fair warning to subsequent litigants that arguments may be raised as to the differences between versions of the *Guides* and whether competent medical evidence might explain whether the *Guides*, 6th ed., fairly accounts for an injured worker's impairment.

For these reasons, I would have affirmed Judge Moore's Award.

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[17] See *Pierce v. L7 Corp./Wilcox Painting*, No. 103,143, 2010 WL 3732083, at *4 (Kansas Court of Appeals unpublished opinion filed Sept. 17, 2010).

[18] *Johnson v. U.S. Food Serv.*, 56 Kan. App. 2d 232, 255, 427 P.3d 996, 1012 (2018), *rev'd*, ___ Kan. ___, 478 P.3d 776 (2021).

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BOARD MEMBER

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