

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DANIEL E. HAYS)	
Claimant)	
VS.)	
)	Docket No. 1,001,465
SUMMIT MASONRY, INC.)	
Respondent)	
AND)	
)	
LIBERTY REGIONAL AGENCY MARKETS)	
)	
and)	
)	
UNITED SECURITY INSURANCE COMPANY/ACE)	
USA)	
Insurance Carriers)	

ORDER

Respondent and its insurance carriers Liberty Regional Agency Markets and United Security Insurance Company/ACE USA appeal Administrative Law Judge Steven J. Howard's July 15, 2002, Order.

APPEARANCES

The claimant appeared by his attorney, John G. O'Connor of Pittsburg, Kansas. Respondent and its insurance carrier Liberty Regional Agency Markets appeared by their attorney, Gary R. Terrill of Overland Park, Kansas. Respondent and its insurance carrier United Security Insurance Company/ACE USA appeared by their attorney, J. Scott Gordon of Overland Park, Kansas.

RECORD

The record consists of the Transcript of Motion Hearing held before the Administrative Law Judge (ALJ) on July 9, 2002, and the documents contained in the Division of Workers Compensation administrative file.

ISSUES

On July 9, 2002, claimant's Motion for Penalties came on for hearing before the ALJ. After hearing the arguments of the parties, the ALJ entered the July 15, 2002, Order, that denied claimant's request for penalties. The ALJ also ordered previously awarded preliminary hearing benefits of temporary total disability compensation and medical treatment to be paid equally by both respondent's insurance carriers, Liberty Regional Agency Markets (Liberty) and United Security Insurance Company/ACE USA (ACE).

The claimant did not appeal the ALJ's Order that denied his request for payment of penalties. But both insurance carriers appealed the ALJ's Order that both insurance carriers equally pay the previously ordered preliminary hearing benefits.

Both insurance carriers contend the ALJ exceeded his jurisdiction in ordering them to equally pay the previously ordered preliminary hearing benefits.

As previously noted, claimant did not appeal the ALJ's denial of penalties. The claimant also did not file a brief in regard to the insurance carriers' appeal of the ALJ's July 15, 2002, Order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the respondent and its insurance carriers' arguments contained in their briefs, the Appeals Board (Board) makes the following findings and conclusions:

As a result of a March 5, 2002, preliminary hearing, the ALJ on April 1, 2002, entered a preliminary hearing Order that granted claimant's request for preliminary hearing benefits of temporary total disability compensation and medical treatment.

The ALJ ordered respondent's insurance carrier Liberty to pay those preliminary benefits. Respondent and Liberty timely appealed that preliminary hearing Order to the Board. In a May 22, 2002, Order, the Board affirmed the ALJ's April 1, 2002, preliminary hearing Order.

Thereafter, respondent and Liberty filed a Motion for Order Nunc Pro Tunc. The motion requested the Board to change its May 22, 2002, Order to modify the ALJ's April 1, 2002, preliminary hearing Order. The motion requests the Board to order ACE to pay the awarded preliminary hearing benefits instead of Liberty. In a July 31, 2002, Order, the Board denied the Motion for Order Nunc Pro Tunc.

The Board only has jurisdiction to review "[a]ll final orders, awards, modifications of awards, or preliminary hearing awards under K.S.A. 44-534a and amendments thereto

made by an administrative law judge...."¹ The Board finds the portion of the ALJ's July 15, 2002, Order that ordered both of respondent's insurance carriers to equally pay previously ordered preliminary hearing benefits is not a final order, award, modification of award, or a preliminary hearing order, as contemplated by K.S.A. 44-551(b)(1). The Board concludes, the subject order, is an interlocutory order made by the ALJ during the litigation of a workers compensation case. It is an order the ALJ has authority to make, during the trial process, and the Board lacks jurisdiction to review the order until it is contained in a final order or award.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the respondent and its insurance carriers' appeal of the ALJ's July 15, 2002, Order, should be, and is hereby, dismissed.

IT IS SO ORDERED.

Dated this ____ of December, 2002.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

cc: John G. O'Connor, Attorney for Claimant
Gary R. Terrill, Attorney for Liberty Regional Agency Markets
J. Scott Gordon, Attorney for United Security Insurance Company/ACE USA
Steven J. Howard, Administrative Law Judge
Director, Division of Workers Compensation

¹ See K.S.A. 44-551(b)(1).

DANIEL E. HAYS

4

DOCKET NO. 1,001,465