

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

MAZHAR H. SHAH)	
Claimant)	
VS.)	
)	Docket No. 1,002,287
CESSNA AIRCRAFT CO.)	
Respondent)	
Self-Insured)	

ORDER

Claimant appeals the March 25, 2003 preliminary hearing Order of Administrative Law Judge John D. Clark. Claimant was denied benefits after the Administrative Law Judge determined that a prior Board decision in this matter limited the Administrative Law Judge's authority to determine the issues presented.

ISSUES

- (1) Did claimant suffer accidental injury arising out of and in the course of his employment?
- (2) Did claimant provide timely notice of accident and, if claimant failed to provide timely notice of accident, was there just cause for this failure on claimant's part?
- (3) Is the Administrative Law Judge bound by previous Board decisions in preliminary hearing matters where additional evidence is brought to bear on the subject matter in a later preliminary hearing?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board (Board) finds that this matter should be remanded to the Administrative Law Judge for determination of the issues presented.

This matter originally went to preliminary hearing before the Administrative Law Judge on May 7, 2002. At that time, claimant was awarded medical benefits and

respondent was ordered to furnish the names of three physicians for the selection of one by claimant for treatment. The preliminary hearing decision was appealed to the Board, which reversed, finding that claimant failed to prove that he suffered accidental injury arising out of and in the course of his employment and, further, that he failed to prove timely notice of accident.

The matter went to preliminary hearing a second time on March 25, 2003, before the Administrative Law Judge. Additional evidence was presented by claimant consisting of the testimonies of several representatives of respondent regarding whether claimant suffered accidental injury arising out of and in the course of his employment and whether timely notice was provided, the identical issues presented at the original preliminary hearing. The Administrative Law Judge in his Order of March 25, 2003, stated “[t]he Workers Compensation Board ruled on July 31, 2002, that this claim was not compensable. This Court has no authority to reverse the decision made by the Board. All benefits are denied.”

There was no determination made on the factual disputes presented to the Administrative Law Judge, nor any determination made regarding the new evidence presented to the court. The Administrative Law Judge simply concluded he did not have the authority to render a decision contrary to the Board’s decision entered on appeal from the first preliminary order.

An administrative law judge is not limited in the number of preliminary hearings that may be held on a case. This has been ruled on by the Board on several occasions.¹

The Board has also held that a preliminary hearing is a summary proceeding based upon the evidence presented at that preliminary hearing. Regardless of whether the orders are rendered by an administrative law judge or by the Board on appeal from a preliminary hearing, those determinations are not binding upon the parties, but subject to a full hearing on the claim.² Because new evidence may materially alter the basis for a prior preliminary decision, whether made by the Administrative Law Judge or by the Board, such decisions are subject to change. Therefore, the Administrative Law Judge did have the authority to determine the issues raised at the second preliminary hearing.³

The Board’s authority, on the other hand, is limited on a review from a preliminary hearing to consider only certain jurisdictional issues which have been determined by an

¹ *Crone v. Great Bend Cooperative Assoc.*, No. 239,263, 2001 WL 403285 (Kan. WCAB March 29, 2001).

² K.S.A. 44-534a(a)(2).

³ *Briggs v. MCI WorldCom*, No. 1,003,978, 2003 WL _____ (Kan. WCAB May 30, 2003).

administrative law judge.⁴ Because the Administrative Law Judge concluded he did not have the authority to rule, there were no factual findings made by the Administrative Law Judge on the issues raised by claimant and respondent at the preliminary hearing. Therefore, in the absence of findings by the Administrative Law Judge, this matter should be remanded to the Administrative Law Judge for findings and conclusions on those issues and any other remaining issues.

WHEREFORE, it is the finding, decision and order of the Board that the March 25, 2003 preliminary hearing Order of the Administrative Law Judge be reversed and the matter remanded to the Administrative Law Judge for the determination of the remaining issues.

IT IS SO ORDERED.

Dated this ____ day of June 2003.

BOARD MEMBER

c: Roger A. Riedmiller, Attorney for Claimant
Vincent A. Burnett, Attorney for Respondent
John D. Clark, Administrative Law Judge
Paula S. Greathouse, Director

⁴ See K.S.A. 44-534a and K.S.A. 44-551.