

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

<b>MILDRED BROWN</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,002,931
<b>YORK UPG WICHITA</b>	)	
Respondent,	)	
Self-Insured	)	

**ORDER**

Respondent appealed the July 17, 2003 preliminary hearing Order entered by Administrative Law Judge Jon L. Frobish.

**ISSUES**

This is a claim for a March 6 or 7, 2002 accident.

In a May 30, 2003 Order, Judge Frobish appointed Dr. Pedro A. Murati as an independent medical examiner and authorized the doctor to treat claimant in the event the doctor determined her back complaints were related to the March 2002 accident at work. The May 30, 2003 Order reads, in part:

Dr. Pedro Murati is appointed as a Court-Ordered independent medical examiner. If he finds the Claimant's back complaints are related to her injury, the Court would find that the Claimant has been denied treatment for her back. If the back complaints are related and further medical treatment is necessary, then Dr. Murati would be appointed as the authorized treating physician for all treatment, tests and referrals, except referrals to rehabilitation hospitals. Any change to Dr. Murati's authorization must be approved by the Court.

The Judge, however, in a July 17, 2003 Order authorized Dr. Murati to treat claimant's left knee. That Order reads:

Dr. Murati is authorized to treat the Claimant's left knee as well as her back.

Respondent contends the Judge exceeded his jurisdiction and denied respondent due process by entering the July 17, 2003 Order without providing respondent either notice

or an opportunity to address the issue of whether Dr. Murati should be authorized to treat claimant's knee. Accordingly, respondent requests the Board to set aside the July 17, 2003 Order.

Conversely, claimant argues the July 17, 2003 Order should be affirmed. Claimant argues the July 17, 2003 Order merely clarified the May 30, 2003 Order. Claimant also argues that the Board does not have jurisdiction to address the July 17, 2003 Order as the Judge did not exceed his jurisdiction by appointing Dr. Murati as the treating physician.

The only issues before the Board on this appeal are:

1. Does the Board have jurisdiction to review the July 17, 2003 Order?
2. Did the Judge violate respondent's right of due process by failing to afford respondent the opportunity to address whether Dr. Murati should be authorized to treat claimant's left knee?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record compiled to date and considering the parties' arguments, the Board finds and concludes:

The Workers Compensation Act specifically gives the Board jurisdiction to review preliminary hearing orders and preliminary hearing awards when a party alleges the judge exceeded his or her jurisdiction.<sup>1</sup> Accordingly, the Board has the jurisdiction to review the July 17, 2003 Order.

The Board concludes that the July 17, 2003 Order should be set aside as the Judge failed to provide respondent an opportunity to present evidence or to contest whether Dr. Murati should be authorized to treat claimant's knee.

The Workers Compensation Act provides that the Division of Workers Compensation is not bound by technical rules of procedure but the Division must give the parties a reasonable opportunity to be heard and present evidence.<sup>2</sup> But the Act also provides that "no preliminary award of benefits shall be entered without giving the employer the opportunity to present evidence."<sup>3</sup> Moreover, the Act provides a specific procedure for

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<sup>1</sup> K.S.A. 2002 Supp. 44-551(b)(2)(A).

<sup>2</sup> K.S.A. 2002 Supp. 44-523(a).

<sup>3</sup> K.S.A. 44-534a(a)(2).

requesting preliminary hearing orders and preliminary hearing awards, which requires written notice of the hearing.<sup>4</sup>

Before the Judge entered the July 17, 2003 Order, respondent did not receive the required notice of hearing nor was respondent otherwise afforded an opportunity to either present evidence or address the issue of medical treatment for claimant's left knee. In this instance, the Board finds that respondent has been denied due process of law and, therefore, the Judge exceeded his jurisdiction and authority in entering the July 17, 2003 Order.

The Board rejects claimant's argument that the July 17, 2003 Order merely clarified or corrected the May 30, 2003 Order, which only addressed claimant's back. The Board finds that the July 17, 2003 Order modified the doctor's authority to treat claimant and that the Order went beyond correcting a mere clerical error or omission. Consequently, respondent should have been afforded a hearing following proper written notice.

**WHEREFORE**, the July 17, 2003 Order entered by Judge Frobish is set aside and the Board remands this claim to the Judge for further proceedings.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of September 2003.

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BOARD MEMBER

c: David M. Bryan, Attorney for Claimant  
Matthew J. Schaefer, Attorney for Respondent  
Jon L. Frobish, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director

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<sup>4</sup> K.S.A. 44-534a(a)(1).