BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

JOHN NUNNELEY, JR.	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,002,983
LANEY, INC.	)	
Respondent	)	
AND	)	
	)	
COMMERCE & INDUSTRY INSURANCE COMPANY	)	
Insurance Carrier	)	

ORDER

Respondent and its insurance carrier requested review of the preliminary hearing Order for Compensation entered by Administrative Law Judge Brad E. Avery on June 28, 2002.

ISSUES

This is a claim for an October 18, 2001 accident. On that date claimant injured his neck and back. For purposes of preliminary hearing, the parties have agreed claimant's accident arose out of and in the course of employment. In the June 28, 2002 Order for Compensation, the Judge awarded claimant temporary total disability benefits and medical treatment with Dr. Andrew F. Revelis.

Respondent and its insurance carrier contend Judge Avery lacked the authority and jurisdiction to order temporary total disability compensation. They argue claimant failed to introduce medical evidence that proves claimant was unable to work. They also contend the Judge lacked the authority to authorize Dr. Revelis' treatment as claimant had not seen the doctor selected by them. Accordingly, respondent and its insurance carrier request the Board to reverse the Order for Compensation and deny claimant's request for benefits.

Conversely, claimant argues this appeal should be dismissed because respondent and its insurance carrier do not raise an issue that is subject to review from a preliminary hearing order. In the alternative, claimant requests the Board to affirm the Order for Compensation.

The only issues before the Board on this review are:

1. Does the Board have jurisdiction to review the preliminary hearing Order for Compensation?

2. If so, is claimant entitled to receive temporary total disability benefits and medical benefits?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Board finds and concludes:

The issues raised by respondent and its insurance carrier in this appeal are not subject to review from a preliminary hearing order. Accordingly, this appeal should be dismissed.

This is an appeal from a preliminary hearing order. Therefore, the Board's jurisdiction to review preliminary hearing findings is limited. At this stage of the claim, not every alleged error is subject to review. Generally, the Board can review preliminary hearing orders in which an administrative law judge has exceeded his or her jurisdiction.[1] Moreover, the Board has specific authority to review the preliminary hearing issues listed in K.S.A. 44-534a, which are:

(1) whether the worker sustained an accidental injury,

(2) whether the injury arose out of and in the course of employment,

(3) whether the worker provided the employer with timely notice and with timely written claim, and

(4) whether certain other defenses apply.

The term "certain defenses" refers to defenses that dispute the compensability of the injury under the Workers Compensation Act.[2]

The issues of whether a worker needs ongoing medical treatment or whether the worker satisfies the definition of being temporarily and totally disabled are not jurisdictional issues listed in K.S.A. 44-534a that are subject to review from a preliminary hearing order. Those issues do, however, comprise questions of law and fact over which an administrative law judge has the jurisdiction to determine at a preliminary hearing.

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[1] K.S.A. 2001 Supp. 44-551(b)(2)(A).

[2] *Carpenter v. National Filter Service*, 26 Kan. App. 2d 672, 994 P.2d 641 (1999).

> Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.[3]

Respondent and its insurance carrier's argument that the Judge exceeded his jurisdiction by awarding temporary total disability benefits without medical evidence is without merit. Temporary total disability benefits can be awarded on claimant's testimony alone.[4] In this instance, claimant testified as to his condition, what treatment he had undergone, and when he was taken off work. The record also contains numerous medical records regarding claimant's treatment and his medical condition.

Likewise, respondent and its insurance carrier's argument that the Judge lacked jurisdiction to appoint a specific doctor to treat claimant is also without merit. At a preliminary hearing, the Judge has the authority to determine whether an employer and its insurance carrier have failed or neglected to provide appropriate medical treatment and, if so, the Judge may appoint a doctor to provide such treatment.

As provided by the Act, preliminary hearing findings are not final but subject to modification upon a full hearing of the claim.[5]

WHEREFORE, the Board dismisses respondent and its insurance carrier's appeal.

IT IS SO ORDERED.

Dated this ____ day of August 2002.

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BOARD MEMBER

c: Jeff K. Cooper, Attorney for Claimant
Matthew S. Crowley, Attorney for Respondent and its Insurance Carrier
Brad E. Avery, Administrative Law Judge
Director, Division of Workers Compensation

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[3] *Allen v. Craig*, 1 Kan. App. 2d 301, 303-304, 564 P.2d 552, *rev. denied* 221 Kan. 757 (1977).

[4] See *Overstreet v. Mid-West Conveyor Co., Inc.*, 26 Kan. App. 2d 586, 587, 994 P.2d 639 (1999).

[5] K.S.A. 44-534a.