

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

EVERADO ESCOBAR-RAMIREZ)	
Claimant)	
VS.)	
)	Docket No. 1,003,607
NATIONAL BEEF PACKING COMPANY)	
Respondent)	
AND)	
)	
LIBERTY MUTUAL INSURANCE CO.)	
Insurance Carrier)	

ORDER

Respondent requests Appeals Board review of Administrative Law Judge Pamela J. Fuller's September 13, 2002, preliminary hearing Order for Medical Treatment.

ISSUES

The Administrative Law Judge (ALJ) appointed neurosurgeon Nazih Moufarrij, M.D. as claimant's authorized treating physician for a November 30, 2001, work-related low back injury.

Respondent appeals and contends that the ALJ's preliminary hearing Order "is vague and ambiguous and appears to interfere with respondent's right to direct medical treatment."¹

Neither party filed a brief as requested by the Appeals Board (Board) in this case. Claimant's attorney, however, in a letter to the Board dated November 6, 2002, requested the Board to consider his comments contained in the September 4, 2002, preliminary hearing transcript.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record, the Board makes the following findings and conclusions:

¹ Respondent's Application for Review (September 20, 2002).

At the September 4, 2002, preliminary hearing, no testimony was presented from either party. The preliminary hearing transcript contains the comments of the ALJ, claimant's attorney, and respondent's attorney. Also, the ALJ admitted into the preliminary hearing record claimant's Exhibit 1, the medical records of neurosurgeon Dr. Moufarrij, and respondent's Exhibit 1, the medical records of orthopedic surgeon Michael J. Baughman, M.D.

Claimant fell while working for the respondent on November 30, 2001, and injured his low back. Respondent provided medical treatment for claimant's low back injury through Dr. Moufarrij. Dr. Moufarrij had previously surgically treated claimant for a non-work related low back injury caused by an automobile accident. On February 27, 2001, as the result of that accident, Dr. Moufarrij performed an L4-5 hemilaminectomy and a L5 foraminotomy.

Dr. Moufarrij saw claimant on March 21, 2002, for the November 30, 2001, low back injury. He took claimant off work, placed claimant on bed rest and prescribed medication. On July 11, 2002, Dr. Moufarrij recommended surgery for claimant's lumbar canal stenosis at L4-L5. The surgery was scheduled for August 16, 2002. Before Dr. Moufarrij proceeded with the surgery, respondent notified the doctor that surgery was not authorized.

Respondent then referred claimant to orthopedic surgeon Dr. Baughman with the following instructions: 'you are requested to evaluate Mr. Escobar-Ramirez and review all the medical records provided. It is important that you distinguish between which injuries resulted from his motor vehicle accident and/or his pre-existing condition.'²

As a result of Dr. Baughman's August 27, 2002, examination, he recommended further diagnostic testing by bone scan and gadolinium enhanced MRI. At the same time, Dr. Baughman recommended the patient undergo a trial of work hardening and then an exit functional capacity assessment. Although respondent now contends that Dr. Baughman, as a result of this examination, has been appointed claimant's authorized treating physician, there was no recommendation for further treatment.

The Board finds that the dispute in this case is over the furnishing of medical treatment to relieve and cure the effects of claimant's work-related injury. The preliminary hearing statute grants the ALJ the authority to make a preliminary award of medical compensation to be in effect pending the conclusion of a full hearing on the claim.³ Thus, the Board finds it does not have jurisdiction to review the ALJ's decision concerning the appropriate medical treatment claimant needs to treat his work-related low back injury. The Board also finds the ALJ did not otherwise exceed her jurisdiction in awarding the

² P.H. Trans., Resp. Ex. 1.

³ See K.S.A. 44-534a(a)(2).

medical treatment.⁴ Moreover, the Board finds the issues raised by the respondent are not issues listed in the preliminary hearing statute as jurisdictional issues that grant the Board jurisdiction to review an appeal from a preliminary order.⁵

WHEREFORE, it is the finding, decision, and order of the Board that respondent's appeal should be dismissed and the ALJ's September 13, 2002, preliminary hearing Order, remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of November 2002.

BOARD MEMBER

c: Lawrence W. Gurney, Attorney for Claimant
Terry J. Malone, Attorney for Respondent
Pamela J. Fuller, Administrative Law Judge
Director, Division of Workers Compensation

⁴ See K.S.A. 2001 Supp. 44-551(b)(2)(A).

⁵ See K.S.A. 44-534a(a)(2).