BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

RAJWINDER WALIA	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,006,825
TRIMODAL, INC.	)	
Respondent	)	
AND	)	
	)	
WARD NORTH AMERICA, INC.	)	
Insurance Carrier	)	

ORDER

Claimant appealed the July 26, 2007, Order entered by Administrative Law Judge Kenneth J. Hursh. The Workers Compensation Board heard oral argument on November 6, 2007. E. L. Lee Kinch of Wichita, Kansas, served as Board Member Pro Tem in place of Board Member Julie A. N. Sample, who recused herself from this proceeding.

APPEARANCES

The Application for Hearing that initiated this docketed claim indicated Trimodal, Inc., of Kansas City, Kansas, was the employer and Ward North America, Inc., was its insurance carrier. Clifford K. Stubbs signed the application as the attorney for the applicant. On December 17, 2002, a document entitled Dismissal of Claim, which indicated the respondent/employer was Association of Professional Truck Drivers of America/Trimodel *[sic]*, Inc., and Ward North America, Inc., was the insurance carrier, was filed with the Division of Workers Compensation. Moreover, a January 21, 2003, Agreed Award was entered indicating Trimodal was the employer and Ward North America, Inc., was the insurance carrier. Mr. Stubbs signed the Agreed Award as the attorney for the respondent and its insurance carrier. Finally, the July 26, 2007, Order entered by Judge Hursh shows Trimodal, Inc., as the respondent and Ward North America, Inc., as the insurance carrier. That document, however, indicates that both Mr. Stubbs and Wade Dorothy appeared for respondent and its insurance carrier.

After claimant filed this appeal, the parties filed their briefs with the Board. Mr. Stubbs filed a Response to Claimant's Appeal that initially listed Trimodal, Inc., and Risk

Enterprise Management as the respondents in this claim but also separately listed APTDA and Ward North America as respondents. Mr. Stubbs signed the document as the attorney for respondent. Douglas A. Dorothy then wrote the Board naming Trimodal, Inc., as the respondent in this claim and Pacific Employers Insurance Company as the insurance carrier. But Mr. Dorothy's letter also indicated he was writing on behalf of Risk Enterprise Management, LTD, or R.E.M.

At oral argument before the Board, the parties announced their appearances as follows: Frank D. Taff of Topeka, Kansas, appeared for claimant; John D. Jurcyk of Roeland Park, Kansas, appeared for APTDA and its insurance carrier, Ward North America; and Douglas A. Dorothy of Overland Park, Kansas, appeared for Trimodal, Inc., and its insurance carrier, Pacific Employers Insurance Company/Risk Enterprise Management.

There is confusion both as to the appropriate parties and whom the attorneys represent. Some of the confusion may be due to clerical error. Nonetheless, there are documents in this claim that indicate Mr. Stubbs, for example, represents Trimodal, Inc.; Ward North America, Inc.; Risk Enterprise Management; and APTDA. Moreover, the respondent and insurance carrier have changed following the initial Application for Hearing with no explanation.

Hopefully, the parties and Judge will address these concerns as the proceeding moves forward.

RECORD

The July 26, 2007, Order was generated after a telephone conference between the Judge and the parties' attorneys. No record was made of that conversation. Accordingly, the only documents for review in this appeal are the contents of the file compiled by the Division of Workers Compensation and the transcript of the July 12, 2007, Review and Modification Hearing with Claimant's Exhibits 4 and 5 and Respondent's Exhibits A and B.

ISSUES

On May 30, 2007, claimant filed an Application for Review and Modification of the January 21, 2003, Agreed Award. In that application, claimant alleges the Agreed Award should be modified as it "was entered in violation of K.A.R. 51-3-1, without authority and was the result of fraud and 'serious misconduct' and is inadequate." During the litigation

of the review and modification proceeding, claimant filed a notice to take Mr. Stubbs' deposition. APTDA and Ward North America filed a Motion to Quash.[1]

After a telephone conference with the parties' attorneys, Judge Hursh issued the July 26, 2007, Order, in which the Judge quashed Mr. Stubbs' deposition.

Claimant contends Judge Hursh erred. Claimant requests the Board to reverse the Order quashing Mr. Stubbs' deposition so claimant may present to the Judge all competent evidence in support of the fraud alleged to have been committed against claimant and the Workers Compensation Fund that culminated with the January 21, 2003, Agreed Award.

In Mr. Stubbs' brief to the Board, APTDA and Ward North America contend it is inappropriate for claimant to take Mr. Stubbs' deposition. They argue: (1) the information sought in Mr. Stubbs' deposition is not relevant since he does not have any information regarding the communications between claimant and his former attorney; (2) the only information that claimant's attorney has not already obtained from Mr. Stubbs is protected by the attorney-client privilege; and (3) any further inquiry of Mr. Stubbs regarding the Agreed Award would be unduly cumulative and meant merely to harass. APTDA and Ward North America request the Board to affirm the July 26, 2007, Order.

A letter to the Board from Douglas A. Dorothy indicates Trimodal, Inc., and Pacific Employers Insurance Company/Risk Enterprise Management rely on the arguments asserted in Mr. Stubbs' brief. Likewise, during oral argument to the Board, Mr. Dorothy concurred with the statements of counsel for APTDA and Ward North America.

The issues before the Board on this appeal are:

1. Does the Board have jurisdiction to rule on interlocutory evidentiary rulings that are made during the litigation stage of a claim?

2. If so, did the Judge err by quashing Mr. Stubbs' deposition?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the parties' arguments, the Board finds and concludes this appeal should be dismissed.

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[1] That motion identified the respondents in this claim as Trimodal, Inc.; Risk Enterprise Management; APTDA; and Ward North America.

As indicated above, the matter now before the Board stems from claimant's request to review and modify a January 21, 2003, Agreed Award, which claimant alleges was the product of fraud, serious misconduct or the lack of authority to enter into such agreement.

The issue before us is whether Judge Hursh erred by quashing the deposition of Mr. Stubbs, who represents APTDA and Ward North America, Inc., who is the named insurance carrier in the Agreed Award. The Judge has not ruled on claimant's request to review and modify the Agreed Award. Clearly, this is an interlocutory appeal of an evidentiary matter over which the Board does not have jurisdiction to review at this time.

The Workers Compensation Act creates the Board's jurisdiction to review orders from the administrative law judges. First, the Board is empowered under K.S.A. 44-534a to review certain findings from preliminary hearings. But this is not a preliminary hearing matter and, therefore, that statute is not applicable. Second, the Board is empowered to review *all final orders, awards, or modifications of awards*. K.S.A. 2006 Supp. 44-551(i)(1) provides, in part:

> Administrative law judges shall have power to administer oaths, certify official acts, take depositions, issue subpoenas, compel the attendance of witnesses and the production of books, accounts, papers, documents and records to the same extent as is conferred on the district courts of this state, and may conduct an investigation, inquiry or hearing on all matters before the administrative law judges. ***All final orders, awards, modifications of awards, or preliminary awards*** under K.S.A. 44-534a and amendments thereto made by an administrative law judge shall be subject to review by the board upon written request of any interested party within 10 days. (Emphasis added.)

In its wisdom, the legislature did not intend the Board to have jurisdiction to review the myriad of evidentiary rulings that a judge makes during the litigation stage of a claim. The legislature recognized that such an obligation would be unduly burdensome.

The Board does not have jurisdiction at this juncture over the Order quashing Mr. Stubbs' deposition. In short, the Order is interlocutory in nature rather than a final order. Consequently, this appeal is premature.

WHEREFORE, the Board dismisses this appeal.

IT IS SO ORDERED.

Dated this ____ day of November, 2007.

_____
BOARD MEMBER

_____
BOARD MEMBER

_____
BOARD MEMBER

c: Frank D. Taff, Attorney for Claimant
John D. Jurcyk, Attorney for APTDA and Ward North America
Clifford K. Stubbs, Attorney for APTDA and Ward North America
Douglas A. Dorothy, Attorney for Trimodal, Inc., and Pacific Employers/R.E.M.
Kenneth J. Hursh, Administrative Law Judge