

brought by claimant. However, a review of the release fails to uncover any indication that it includes workers' compensation claims.

Prior to signing the release, claimant had begun developing upper extremity symptoms which were ultimately diagnosed as bilateral carpal tunnel syndrome. Claimant filed a workers' compensation claim against respondent for the carpal tunnel syndrome with the end result being the denial of benefits by the Administrative Law Judge, citing the release as justification for the denial.

As this is an appeal from a preliminary hearing, the Board must first determine whether it has jurisdiction to consider this issue.

The Board's review of preliminary hearings is limited by K.S.A. 44-534a and K.S.A. 2001 Supp. 44-551. K.S.A. 2001 Supp. 44-551 allows appeals from preliminary hearings if it is alleged that an administrative law judge exceeded his or her jurisdiction in granting or denying the benefits requested. K.S.A. 44-534a lists as jurisdictional the following issues which include (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 timely notice and timely written claim, and (4) whether certain defenses apply.

The term "certain defenses" refers to defenses which dispute the compensability of the injury under the Workers Compensation Act.

The term "certain defenses" in K.S.A. 1998 Supp. 44-534a refers to defenses subject to review by the Workers Compensation Board only if they dispute the compensability of the injury under the Workers Compensation Act.¹

The respondent does not dispute the compensability of claimant's injury in this instance, but rather alleges that claimant has waived all rights to file a workers' compensation claim because she voluntarily signed the release.

K.A.R. 51-21-1 states "[a] worker, under the act, cannot contract with the employer to relieve the latter of liability in case of an accident."

An administrative regulation has the force and effect of law, if it is not inconsistent with the statute.²

¹ *Carpenter v. National Filter Service*, 26 Kan. App. 2d 672, Syl. 3, 994 P.2d 641 (1999).

² *Amoco Production Co. v. Arnold, Director of Taxation*, 213 Kan. 636, 518 P.2d 453 (1974).

There is no indication in the statute that the administrative regulation above cited is in any way inconsistent with the Workers Compensation Act. Additionally, K.S.A. 44-501(g) states:

It is the intent of the legislature that the workers compensation act shall be liberally construed for the purpose of bringing employers and employees within the provisions of the act to provide the protections of the workers compensation act to both. The provisions of the workers compensation act shall be applied impartially to both employers and employees in cases arising thereunder.

The Board finds the release created by respondent and signed by claimant was a document created at the time of claimant's retirement with the intent to limit the liability of respondent from claims brought by claimant. However, as the release fails to indicate it covers workers' compensation actions and as K.A.R. 51-21-1 specifically prohibits any contract relieving respondent of a workers' compensation claim, the Board finds that the release does not apply to claimant's workers' compensation claim for her bilateral carpal tunnel syndrome. Therefore, the preliminary Order of the Administrative Law Judge denying claimant benefits is reversed and the matter remanded back to the Administrative Law Judge for proceedings consistent with this decision.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark dated January 24, 2003, should be, and is hereby, reversed and the matter remanded back to the Administrative Law Judge for further proceedings consistent with the above findings and conclusions.

IT IS SO ORDERED.

Dated this ____ day of May 2003.

BOARD MEMBER

c: R. Todd King, Attorney for Claimant
Edward D. Heath, Jr., Attorney for Respondent
John D. Clark, Administrative Law Judge
Director, Division of Workers Compensation