

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

ROBERT COURVILLE)	
Claimant)	
)	
VS.)	Docket No. 1,008,206 &
)	1,010,932
CITY OF TOPEKA)	
Self-Insured Respondent)	

ORDER

Claimant requests review of the January 8, 2004 preliminary hearing Order entered by Administrative Law Judge (ALJ) Bryce D. Benedict.

ISSUES

The ALJ denied claimant's request for psychiatric medical treatment and temporary total disability benefits after concluding the reports authored by Dr. Guillermo Ibarra and Dr. Patrick L. Hughes were more persuasive than the evidence offered by claimant's physician, Dr. Gilbert R. Parks.

The claimant requests review of this decision alleging his present need for psychiatric treatment stems from his compensable accidental injury that occurred on December 31, 2001. Claimant maintains the ALJ's decision to decline benefits was based upon the finding that claimant's psychiatric injury did not arise out of and in the course of his employment. Thus, the argument goes, the Appeals Board (Board) has jurisdiction to hear this appeal under K.S.A. 44-534a.

Respondent argues the Board has no jurisdiction to consider this appeal. Simply put, respondent contends the ALJ's denial of benefits was within his exclusive jurisdiction and is not a proper issue for appeal under K.S.A. 44-534a. Even if there is jurisdiction, respondent requests the Board affirm the ALJ's decision as the opinions of Dr. Hughes and Dr. Ibarra are more credible and substantiate the denial of benefits.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

The Legislature empowered the Board under K.S.A. 44-534a to review preliminary findings pertaining to the following issues: (1) whether the employee suffered an accidental injury; (2) whether the injury arose out of and in the course of the employee's employment; (3) whether notice was given or claim timely made; and (4) whether certain defenses apply.

There is additional authority to review those preliminary decisions when it is alleged the ALJ exceeded his or her jurisdiction¹ although neither party indicates that is the case in this matter.

The issue of the nature and extent of a claimant's injury is not a preliminary finding that the Board may review. The same is true for appeals from preliminary hearings relating to the entitlement to temporary total disability benefits. Thus, claimant's allegation that the ALJ erred in not granting him temporary total disability benefits is not one the Board has jurisdiction to consider at this juncture of the claim. That portion of claimant's appeal is hereby dismissed.

Independent of his claim for temporary total disability benefits, claimant also asserts he is entitled to psychiatric treatment for the injuries he sustained as a result of his compensable injury. Thus, the Board must consider whether there is jurisdiction to consider that issue.

The parties agree claimant has suffered an accidental injury arising out of and in the course of his employment with the respondent. Nevertheless, there is a dispute as to whether claimant is in need of psychiatric treatment as a result of his compensable work injury. In the past, the Board has determined it had no jurisdiction to address this particular issue. The Board viewed the question of whether a claimant's alleged present psychiatric difficulties were causally connected to a work-related accident, or some other source of distress, as stemming from the issue of nature and extent of disability rather than one of the jurisdictional issues enumerated in K.S.A. 44-534a.² As stated before, the nature and extent of an injury is not an appealable issue from a preliminary hearing order.

The Board has recently had occasion to revisit this issue and has now concluded that it has jurisdiction to consider appeals involving an alleged entitlement to psychiatric treatment when the underlying issue stems from the question of whether the injury, specifically the psychiatric injury, arose out of and in the course of the employment.³ This view is consistent with the Board's treatment of preliminary hearing appeals involving claims for additional medical treatment when the cause of the underlying condition is disputed.

Having determined that it has jurisdiction to consider this aspect of claimant's appeal, the Board finds the ALJ's denial should be affirmed. The psychiatrists who have seen and treated claimant are not in agreement as to the existence of a psychiatric disorder nor the need for treatment. When presented with a dispute as between the respective parties'

¹ K.S.A. 44-551(b)(2)(A).

² See e.g. *Long v. Goodyear Tire & Rubber Company*, No. 195,420, 1995 WL 447189 (Kan. WCAB June 19, 1995).

³ See *Farra v. Mercy Hospital*, No. 1,005,822 (Kan. WCAB May 27, 2004).

experts, the ALJ appointed Dr. Guillermo Ibarra to conduct an independent medical examination. Dr. Ibarra examined claimant, reviewed the relevant medical records and indicated claimant “does not suffer presently from a psychiatric disorder.”⁴ He went on to conclude that -

. . . claimant experiences an emotional reaction to his physical distress and related limitations that seems appropriate and proportional to the changes in his life. This emotional distress does not itself result in limitations of function even though clearly affects the quality of his life... There is no medical indication for psychotherapy even though, as it is also true for many of us, it is reasonable to believe that venting his problems with someone on a regular basis may have a comforting effect.⁵

Given this evidence, the ALJ concluded that claimant “is not in need of the services of Dr. Parks and that the [c]laimant is not temporarily totally disabled.”⁶ The Board finds no reason to disturb the ALJ’s conclusions as they are well-founded based upon the medical evidence presented to the Court. That portion of the ALJ’s preliminary hearing Order is affirmed.

As provided by the Workers Compensation Act, preliminary hearing findings are not final, but subject to modification upon a full hearing on the claim.⁷

WHEREFORE, it is the finding, decision and order of the Board that claimant's appeal of the Order of Administrative Law Judge Bryce D. Benedict dated January 8, 2004, is affirmed in part and dismissed in part.

IT IS SO ORDERED.

Dated this _____ day of May, 2004.

BOARD MEMBER

c: Steven Tilton, Attorney for Claimant
Jeff Cooper, Attorney for Self-Insured Respondent
Bryce D. Benedict, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

⁴ Ibarra IME (November 25, 2003) at 3.

⁵ *Id.* at 5.

⁶ ALJ Order (Jan. 8, 2004).

⁷ K.S.A. 44-534a(a)(2).