

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

ALVIN WHITEKILLER)	
Claimant)	
VS.)	
)	Docket No. 1,018,407
HILLMANN PAINTING, INC.)	
Respondent)	
AND)	
)	
KANSAS BUILDING INDUSTRY WORKERS COMPENSATION FUND)	
Insurance Carrier)	

ORDER

Claimant appeals the February 17, 2005 preliminary hearing Order of Administrative Law Judge Thomas Klein. Claimant was awarded medical treatment, which the Administrative Law Judge (ALJ) described as medical maintenance, with Paul G. Bizzle, D.O., but denied temporary total disability compensation.

ISSUES

Whether or not the ALJ exceeded his authority in denying temporary total disability benefits in violation of K.S.A. 44-510c.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board (Board) finds the Order of the Administrative Law Judge should remain in full force and effect and claimant's appeal in this matter should be dismissed.

Claimant's injury in this matter is not disputed, nor is the fact that his significant leg injury has aggravated his low back. The issue at preliminary hearing was whether claimant was at maximum medical improvement or whether he needed additional medical care and, if so, was temporary total disability compensation appropriate under these circumstances.

Not every alleged error in law or fact is reviewable from a preliminary hearing order. The Board's jurisdiction to review preliminary hearing orders is generally limited to the following issues, which are deemed jurisdictional.

1. Did the worker sustain an accidental injury?
2. Did the injury arise out of and in the course of employment?
3. Did the worker provide both timely notice and timely written claim of the accidental injury?
4. Is there any defense which goes to the compensability of the claim?¹

Additionally, the Board may review those preliminary hearing orders where a judge has exceeded his or her jurisdiction or authority.²

A claimant's entitlement to temporary total disability compensation and medical treatment is well within the ALJ's jurisdiction to determine at a preliminary hearing.

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

The Board concludes that whether claimant is entitled to temporary total disability compensation is an issue which is within the ALJ's jurisdiction and is not an issue over which the Board takes jurisdiction on appeal from a preliminary hearing. Therefore, the appeal of the claimant in this matter is dismissed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge Thomas Klein dated February 17, 2005, remains in full force and effect.

IT IS SO ORDERED.

¹ K.S.A. 44-534a.

² K.S.A. 2003 Supp. 44-551.

³ *Allen v. Craig*, 1 Kan. App. 2d 301, 564 P.2d 552, rev. denied 221 Kan. 757 (1977); *Taber v. Taber*, 213 Kan. 453, 516 P.2d 987 (1973); *Provance v. Shawnee Mission U.S.D. No. 512*, 235 Kan. 927, 683 P.2d 902 (1984).

Dated this ____ day of May 2005.

BOARD MEMBER

c: David H. Farris, Attorney for Claimant
Roy T. Artman, Attorney for Respondent and its Insurance Carrier
Thomas Klein, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director