

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

MAGGIE DAVIS)	
Claimant)	
)	
VS.)	
)	
FIBER GLASS SYSTEMS, LP)	
Respondent)	Docket No. 1,020,300
)	
AND)	
)	
ACE-AMERICAN INSURANCE CO.)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier (respondent) request review of the February 20, 2006 preliminary hearing Order entered by Administrative Law Judge (ALJ) Nelsonna Potts Barnes.

ISSUES

Following a pre-hearing settlement conference during which the nature and extent of claimant's impairment was placed at issue, the ALJ ordered Dr. Stein to perform an independent medical examination for purposes of determining the nature and extent of claimant's impairment. Of primary importance was the question of whether claimant had suffered accidental injury to just her right shoulder alone or both shoulders as a result of her work-related accident. Dr. Stein's report reflects minimal complaints with respect to the left shoulder and he ultimately concluded that she sustained no permanency to her left shoulder.

After the IME was conducted, claimant sought a preliminary hearing and requested additional medical treatment for her left shoulder. At the preliminary hearing respondent agreed to allow Dr. Pat Do (the authorized treating physician) to treat claimant's right shoulder complaints, but refused to authorize treatment for the left shoulder.

The ALJ granted claimant's request and directed respondent to provide treatment through Dr. Do to claimant's left shoulder as well as the right. Respondent contends the ALJ exceeded her jurisdiction in awarding claimant treatment when the IME physician concluded the left shoulder was neither in need of treatment or that claimant had suffered any permanent impairment as a result of her work activities. Accordingly, respondent contends the Board should set aside the ALJ's preliminary hearing Order.

Claimant argues that respondent is merely displeased with the ALJ's findings and that displeasure with the ALJ's decision does not justify a finding that she exceeded her jurisdiction. Thus, the preliminary hearing Order should be affirmed.

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:

This is an appeal from a preliminary hearing order. The Board's jurisdiction to review preliminary hearing issues and findings is generally limited to the following:

- (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 timely notice and timely written claim?
- (4) Is there any defense to the compensability of the claim?¹

Additionally, the Board may review any preliminary hearing order where a judge exceeds his or her jurisdiction.² Jurisdiction is generally defined as authority to make inquiry and decision regarding a particular matter. The jurisdiction and authority of a court to enter upon inquiry and make a decision is not limited to deciding a case rightly, but includes the power to decide it wrongly. The test of jurisdiction is not a correct decision, but the right to enter upon inquiry and make a decision.³

Respondent acknowledges the Board's limited review of preliminary hearing Orders. Its brief states "[r]espondent concedes that the issue involved with the current appeal does not fall within 1-4 as enumerated above, but respondent asserts that the issue falls

¹ K.S.A. 44-534a(a)(2).

² K.S.A. 2004 Supp. 44-551(2)(A).

³ See *Taber v. Taber*, 213 Kan. 453, 516 P.2d 987 (1973); *Provance v. Shawnee Mission Unified School District No. 512*, 235 Kan. 927, 683 P.2d 902 (1984).

squarely within the category of whether the judge exceeded her jurisdiction.”⁴ Respondent goes on to explain that the ALJ has authority to order an IME, but she then has the corresponding duty to consider the IME report in making a decision. Respondent argues:

After reading Dr. Stein’s opinion, it is inconceivable how ALJ Barnes could have considered his opinion and then ordered additional medical treatment with Dr. Do for both the right and left shoulders. ALJ Barnes gave no rhyme or reason for completely disregarding the opinion of Dr. Stein but merely ordered more treatment. If she would have considered Dr. Stein’s opinion, it is hard to imagine how she could have awarded additional medical treatment for any body part other than the claimant’s right shoulder...**Respondent asserts that when ALJ Barnes ordered the IME she exercised proper jurisdiction. However, in completely ignoring the results of the IME, she exceeded her jurisdiction as outlined by K.S.A. § 44-516 (and K.S.A. § 44-510e).**⁵

The Board has considered respondent’s contention and concludes, as suggested by claimant, that it has no jurisdiction to hear this appeal. The ALJ did not exceed her jurisdiction in ordering treatment for claimant’s left shoulder. The decision to authorize medical treatment is within the ALJ’s authority. Although the ALJ apparently did not accept Dr. Stein’s opinions, that fact alone does not substantiate a claim that she exceeded her jurisdiction. Accordingly, respondent’s appeal is dismissed.

WHEREFORE, it is the finding, decision and order of the Board that the respondent’s appeal of the Order of Administrative Law Judge Nelsonna Potts Barnes dated February 20, 2006, is dismissed.

IT IS SO ORDERED.

Dated this _____ day of April 2006.

BOARD MEMBER

c: Dennis L. Phelps, Attorney for Claimant
Vincent A. Burnett, Attorney for Respondent and its Insurance Carrier
Nelsonna Potts Barnes, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

⁴ Respondent’s Brief at 4 (filed Mar.14, 2006).

⁵ *Id.* at 7-8.