BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

SERGIO MANUEL GONZALEZ Claimant	)	
VS.	)	
VOS WINDOW AND DOOR INC. Respondent	)	Docket Nos. 1,017,556 & 1,023,557
AND	)	
LUMBERMAN'S UNDERWRITING **KS. BLDG. INDUSTRY WC FUND** Insurance Carriers	)	

ORDER

Respondent and its insurance carrier, Lumberman's Underwriting Alliance, request review of the August 31, 2005 preliminary hearing Order entered by Administrative Law Judge Steven J. Howard.

ISSUES

In Docket No. 1,017,556, the claimant alleged a series of repetitive traumas beginning January 2002 though April 22, 2004, at which time Lumberman's Underwriting Alliance (Lumberman's) had coverage for the respondent. On April 22, 2004 claimant suffered injury to his low back while lifting at work. Respondent and its insurance carrier Lumberman's, admitted claimant suffered a work-related accidental injury.

Lumberman's coverage period ended on December 31, 2004, and Kansas Building Industry Workers Compensation Fund (Building Fund) provided respondent's workers compensation insurance coverage effective January 1, 2005.

In Docket No. 1,023,557, the claimant alleged a series of repetitive traumas beginning April 22, 2004, continuing to the present time. Building Fund denied claimant suffered accidental injury during its coverage period.

The two claims were consolidated for hearing. The Administrative Law Judge (ALJ) found the claimant's current condition is a direct and natural consequence of the original

injury. As previously noted, Lumberman's provided respondent's workers compensation insurance coverage at the time of the April 22, 2004 injury, and the ALJ assessed liability for claimant's medical treatment against that carrier.

The respondent and Lumberman's request review of whether the claimant's current need for medical treatment is the result of continuing repetitive injuries suffered in the course of his employment during Building Fund coverage. Lumberman's argues the claimant aggravated his condition during his continuing work activities and accordingly, claimant suffered a new intervening injury during Building Fund coverage period. Consequently, that carrier should be liable to treat the claimant's condition.

Respondent and Building Fund argue that after claimant's initial injury he remained symptomatic, never suffered additional injury and his continued need for medical treatment is related to his original injury. Accordingly, Building Fund requests the Board affirm the ALJ's Order.

Claimant argues the ALJ's Order should be affirmed.

The issue on appeal is whether claimant suffered one or two accidents. Stated another way, the issue is whether claimant's current need for medical treatment is due to the natural and probable consequence of the accidental injury claimant suffered while working for respondent during Lumberman's period of coverage or whether, instead, claimant suffered a new series of accidents and injuries continuing through the present and therefore during the period that respondent's insurance coverage was with the subsequent insurance carrier, Building Fund. Both of the alleged dates of accident occurred while claimant was working for respondent.[1]

Thus, although respondent and Lumberman's attempt to describe the issue as one of compensability, it is clear from the briefs that the issue is really the date(s) of accident for the sole purpose of determining which of respondent's insurance carriers should pay for the preliminary hearing benefits ordered.

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:

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[1] The parties briefs indicate that claimant was a co-employee of Vos Window and Door and Axcet HR Solutions until January 1, 2005, and after that date he was solely employed by Vos Window and Door. But the evidentiary record does not contain such information and only states that Vos Window and Door was the respondent.

On an appeal from a preliminary hearing order, the Board is limited to review of allegations that the ALJ exceeded his/her jurisdiction.[2] This includes review of issues identified in K.S.A. 44-534a as jurisdictional issues. On the current appeal, there is no dispute that claimant's current need for medical treatment is the result of an accidental injury or injuries that arose out of and in the course of his employment with respondent. The only question is whether there was one accident or two and, as a result, which insurance carrier is liable for benefits. Lumberman's contends the ALJ erred by not finding a subsequent series of accidents. This contention does not give rise to one of the issues identified in K.S.A. 44-534a and does not otherwise constitute an allegation that the ALJ exceeded his jurisdiction.[3]

Lumberman's alleges that the ALJ exceeded his jurisdiction. The Board disagrees. The ALJ has jurisdiction over the respondent and, therefore, over its insurance carriers.[4] Furthermore, K.S.A. 44-534a grants an ALJ the authority to award medical and temporary total disability compensation at a preliminary hearing after "a preliminary finding that the injury to the employee is compensable."

The Board was presented with a similar issue in the case of *Ireland*,[5] where, in holding that the Board was without jurisdiction to consider the issue of which insurance carrier should pay for the preliminary hearing benefits, we said:

> Furthermore, it is inconsistent with the intent of the Workers Compensation Act for a respondent to delay preliminary hearing benefits to an injured employee while its insurance carriers litigate their respective liability. The employee is not concerned with questions concerning this responsibility for payment once the respondent's general liability under the Act has been acknowledged or established. *Kuhn v. Grant County*, 201 Kan. 163, 439 P.2d 155 (1968); *Hobelman v. Krebs Construction Co.*, 188 Kan. 825, 366 P.2d 270 (1961).

WHEREFORE, it is the finding of the Board that the appeal of the preliminary hearing Order entered by Administrative Law Judge Steven J. Howard on August, 31, 2005, should be, and the same is hereby, dismissed.

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[2] K.S.A. 2003 Supp. 44-551.

[3] *See Carpenter v. National Filter Service*, 26 Kan. App. 2d 672, 994 P.2d 641 (1999); *American States Ins. Co. v. Hanover Ins. Co.*, 14 Kan. App. 2d 492, 794 P.2d 662 (1990).

[4] *See* K.S.A. 40-2212; *Landes v. Smith*, 189 Kan. 229, 368 P.2d 302 (1962).

[5] *Ireland v. Ireland Court Reporting*, Nos. 176,441 & 234,974 1999 WL 123220 (Kan. WCAB Feb. 22, 1999).

IT IS SO ORDERED.

Dated this _____ day of November 2005.

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BOARD MEMBER

c: Conn Felix Sanchez, Attorney for Claimant
Roy T. Artman, Attorney for Vos Window & Door and Building Fund
J. Scott Gordon, Attorney for Lumberman's
Steven J. Howard, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director