

Claimant argues that respondent was ordered to pay temporary total disability benefits in the ALJ's order dated February 5, 2007, and that order was not appealed to the Board. Nor did respondent file a motion or request a hearing seeking to terminate or modify the February 5, 2007, Order.

The issue for the Board's review is: Does the Board have jurisdiction over the sole issue on appeal? If so, did the ALJ exceed his jurisdiction in finding that claimant is entitled to temporary total disability benefits?

FINDINGS OF FACT

(1) The ALJ entered a preliminary hearing Order on February 5, 2007, whereby:

TTD is Ordered paid, if the Claimant is taken off work by the authorized treating physician, at the rate of \$106.53 per week for the period from the date of the off-work order until Claimant is released to return to work, and has been offered accommodated work within temporary work restrictions, or has attained maximum medical improvement.¹

(2) On March 8, 2007, claimant was given work restrictions by Dr. Pat Do, the authorized treating physician.

(3) On July 5, 2007, claimant filed an Application for Penalties:

. . . for failure to make temporary total disability benefit payments at the rate of \$106.53 beginning March 8, 2007 until offered accommodated employment by the respondent or until she reached MMI and ordered in Administrative Law Judge Moore's Order dated February 5, 2007.²

(4) The September 6, 2007, hearing was a hearing on claimant's Application for Penalties. It was not a preliminary hearing on claimant's entitlement to temporary total disability compensation.

¹ ALJ Order (Feb. 5, 2007).

² Claimant's Application for Penalties filed July 5, 2007, at 1.

(5) The ALJ's November 9, 2007, Order was an order for penalties against respondent for its failure to pay the temporary total disability ordered by the ALJ on February 5, 2007. It was not a preliminary hearing order. The ALJ included a sentence in that order, however, that reads: "TTD is Ordered paid at the rate of \$106.53 per week for the period from March 8, 2007 until June 28, 2007."³

CONCLUSIONS OF LAW

In this appeal, respondent only raises an issue concerning claimant's entitlement to temporary total disability benefits. Respondent does not challenge the ALJ's assessment of penalties.

The temporary total disability was ordered paid in the ALJ's Order of February 5, 2007. That Order was not appealed. Penalties were imposed pursuant to that February 5, 2007, preliminary hearing order. Although the ALJ reiterated his prior order for temporary total disability in his November 9, 2007, Order and clarified the dates for which temporary total disability was due, the November 9, 2007, Order was an order for penalties. It was not a preliminary hearing order for temporary total disability compensation. As stated, the temporary total disability was ordered on February 5, 2007, and that order is not before the Board. As respondent is not appealing the award of penalties, there is no justiciable controversy. The Board cannot afford respondent the relief it seeks in this appeal.

"[I]t is the duty of the courts to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles which cannot affect the matters in issue before the court." *In re Appeal of Colorado Interstate Gas Co.*, 270 Kan. 303, 305, 14 P.3d 1099 (2000) (quoting *Miller v. Sloan, Listrom, Eisenbarth & Glassman*, 267 Kan. 245, 262, 978 P.2d 922 [1999]); accord *Burnett v. Doyen*, 220 Kan. 400, 403, 552 P.2d 928 (1976).⁴

ORDER

WHEREFORE, it is the finding, decision and order of this Board Member that the respondent's appeal is dismissed and the Order of Administrative Law Judge Bruce E. Moore dated November 9, 2007, remains in full force and effect.

IT IS SO ORDERED.

³ ALJ Order (Nov. 9, 2007).

⁴ *In re Tax Appeal of City of Wichita*, 277 Kan. 487, 515, 86 P.3d 513 (2004).

Dated this _____ day of December, 2007.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Scott J. Mann, Attorney for Claimant
Matthew M. Hogan, Attorney for Self-Insured Respondent
Bruce E. Moore, Administrative Law Judge