

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

**MATTHEW A. IRWIN** )  
Claimant )  
VS. )  
**WEBCO MANUFACTURING, INC.** )  
Respondent )  
AND )  
**ACCIDENT FUND INS. CO. OF AMERICA** )  
Insurance Carrier )

Docket No. 1,032,303

**ORDER**

Claimant requests review of the March 30, 2007 Preliminary Decision entered by Administrative Law Judge Robert H. Foerschler.

**ISSUES**

The Administrative Law Judge (ALJ) found the claimant was not in need of any specific medical treatment and therefore denied claimant's request for treatment.

The claimant requests review of whether the claimant is entitled to authorized medical treatment.

Respondent argues the Board does not have jurisdiction to review this decision pursuant to K.S.A. 44-534a and therefore the application for review should be dismissed.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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

This is claimant's appeal from a preliminary hearing. Claimant requested treatment for an alleged work-related injury. Respondent denied claimant suffered a work-related accident and further denied claimant provided timely notice. The ALJ's Preliminary Decision does not directly address the two compensability issues but does contain a

finding that the “need for immediate relief is not indicated.” Claimant appealed raising the issue whether he is entitled to authorized medical treatment. Respondent argues the Board does not have jurisdiction to review this issue. This Board Member agrees.

Assuming it was implicit in the Preliminary Decision that the ALJ determined claimant suffered a compensable injury and provided timely notice, the denial of medical treatment does not raise a jurisdictional issue for Board review from a preliminary hearing.

The Board has jurisdiction to review decisions from a preliminary hearing in those cases where one of the parties has alleged the ALJ exceeded his or her jurisdiction. K.S.A. 44-551(b)(2)(A). In addition K.S.A. 44-534a (a)(2) limits the jurisdiction of the Board to the specific jurisdictional issues identified. The issue whether a worker has met his burden of proof to establish a need for medical treatment is not a jurisdictional issue listed in K.S.A. 44-534a(a)(2). K.S.A. 44-534a grants authority to an ALJ to decide issues concerning the furnishing of medical treatment, the payment of medical compensation and the payment of temporary total disability compensation. An ALJ has the jurisdiction and authority to grant or deny medical treatment at a preliminary hearing.

Additionally, the issue whether a worker requires medical treatment is a question of law and fact over which an ALJ has the 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.<sup>1</sup>

Consequently, the contention that the ALJ has erred in his finding that the evidence showed a need for medical treatment is not an argument the Board has jurisdiction to consider. Claimant’s request for review is dismissed.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.<sup>2</sup> Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2006 Supp. 44-551(i)(2)(A), as opposed to being determined by the entire Board when the appeal is from a final order.<sup>3</sup>

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<sup>1</sup> *Allen v. Craig*, 1 Kan. App. 2d 301, 303-304, 564 P.2d 552, *rev. denied* 221 Kan. 757 (1977).

<sup>2</sup> K.S.A. 44-534a.

<sup>3</sup> K.S.A. 2006 Supp. 44-555c(k).

**WHEREFORE**, it is the finding of this Board Member that the appeal of the Preliminary Decision entered by Administrative Law Judge Robert H. Foerschler on March 30, 2007, should be, and the same is hereby, dismissed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of June 2007.

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BOARD MEMBER

c: Derek R. Chappell, Attorney for Claimant  
Timothy G. Lutz, Attorney for Respondent and its Insurance Carrier  
Robert H. Foerschler, Administrative Law Judge