

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

JONATHAN BRODRICK
Claimant

VS.

SUPERIOR INDUSTRIES INTERNATIONAL
Self-Insured Respondent

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Docket No. 1,043,554

ORDER

Respondent appealed the March 16, 2009, preliminary hearing Order entered by Administrative Law Judge Kenneth J. Hursh.

ISSUES

Claimant contends he injured his right knee on August 21, 2008, when he tripped and fell. In the March 16, 2009, Order, Judge Hursh granted claimant's request for an MRI as directed by Dr. Edward J. Prostic. The Judge also ordered respondent to provide claimant an "authorized orthopedic surgeon to assume treatment for the injury upon completion of the MRI."¹

Although respondent announced at the preliminary hearing there were no issues regarding the compensability of claimant's right knee claim,² respondent's application for Board review indicates it is now raising notice as an issue. What is more, respondent's brief to the Board indicates respondent now challenges the Judge's findings regarding the accident and notice:

On March 16, 2009 ALJ Hursh entered an Order finding an accidental injury occurred on August 21, 2008 and that the claimant provided notice on that day to his supervisor John Gray. Respondent asserts the finding [of] the accident and notice is in error.³

¹ ALJ Order (Mar. 16, 2009) at 2.

² P.H. Trans. at 4.

³ Respondent's Brief at 1 (filed Apr. 6, 2009).

Respondent argues in its brief to the Board that “claimant did not prove his case by the preponderance of the evidence, and if he did, the waiver form [that claimant signed] should bar him from claiming injury at this time.”⁴ In short, respondent requests the Board to reverse the preliminary hearing Order.

Claimant maintains it is unclear from respondent’s brief what issues are being raised on this appeal. Moreover, claimant argues that respondent should not be allowed at this juncture to dispute the accident as respondent stipulated at the preliminary hearing that there were no issues concerning the compensability of claimant’s alleged right knee injury.⁵ Regarding notice, claimant argues his testimony is uncontradicted that he advised his immediate supervisor, John Gray, about his accident on the day it occurred. Consequently, claimant requests the Board to affirm the March 16, 2009, Order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date and considering the parties’ arguments, the undersigned finds this appeal should be dismissed.

At the March 13, 2009, preliminary hearing the Judge asked claimant’s attorney what issues were to be taken up at the hearing and claimant’s attorney responded that he was requesting the medical treatment that had been recommended by Dr. Edward J. Prostic. The Judge then asked if there were any compensability issues and respondent’s attorney responded that there were not.

THE COURT: Thank you. What issues are we taking up today, Mr. Phalen?

MR. PHALEN: Judge, we are requesting the medical treatment recommended by Dr. Prostic through an orthopedic surgeon.

THE COURT: Are there any compensability issues on this one?

MR. UNRUH: No, Judge.

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THE COURT: Okay. Did you want to take some testimony from Mr. Brodrick?

⁴ *Id.* at 2.

⁵ Claimant’s Brief at 1 (filed Apr. 16, 2009).

MR. PHALEN: Yes, sir.⁶

Claimant then proceeded to testify about, among other things, his August 21, 2008, accident and the resulting right knee injury; how he had given notice of the accident to his immediate supervisor, John Gray; his numerous requests of Mr. Gray to prepare an accident report and send him for medical treatment; the treatment he received for the injury; and his September 2008 injury at work.

At the conclusion of claimant's testimony, the hearing was adjourned without either party providing the Judge with argument, or specifying and addressing the issues that the Judge was asked to address. Indeed, the transcript of the March 13, 2009, hearing leaves one to speculate why a hearing was necessary.

The Board's jurisdiction on review is limited to those issues that are raised to the administrative law judges. K.S.A. 2008 Supp. 44-555c provides, in part:

The board shall have exclusive jurisdiction to review all decisions, findings, orders and awards of compensation of administrative law judges under the workers compensation act. The review by the board shall be upon questions of law and fact as presented and shown by a transcript of the evidence and the proceedings as presented, had and introduced before the administrative law judge.

In other words, the Board generally will not address issues raised for the first time on appeal.

Based upon the above, the undersigned finds this appeal should be dismissed.

By statute, preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.⁷ Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2008 Supp. 44-551(i)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

WHEREFORE, the undersigned dismisses the appeal, which leaves the March 16, 2009, Order entered by Judge Hursh in full force and effect.

IT IS SO ORDERED.

⁶ P.H. Trans. at 4.

⁷ K.S.A. 44-534a.

Dated this ____ day of May, 2009.

KENTON D. WIRTH
BOARD MEMBER

c: William L. Phalen, Attorney for Claimant
Troy A. Unruh, Attorney for Respondent
Kenneth J. Hursh, Administrative Law Judge