

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

MICHAEL F. ALLWINE)
Claimant)
V.)
MWM OIL COMPANY, INC.)
Respondent) Docket No. 1,076,988
AND)
TRAVELERS INDEMNITY COMPANY)
Insurance Carrier)
AND)
KANSAS WORKERS)
COMPENSATION FUND)

ORDER

Respondent, through Kim R. Martens, requests review of Administrative Law Judge Ali Marchant's May 10, 2016 preliminary hearing Order. Randy S. Stalcup appeared for claimant. William L. Townsley, III, appeared for Travelers Indemnity Company (Travelers). Timothy A. Emerson appeared for the Kansas Workers Compensation Fund (Fund).

The record on appeal is the same as that considered by the judge and consists of the May 3, 2016 preliminary hearing transcript and exhibits thereto, in addition to all pleadings contained in the administrative file.

ISSUES

On March 17, 2016, claimant fractured his right ankle when he jumped off the side of a rig (the truck tractor and platform bed of the truck) and caught his pant leg on a vertical bar attached to the rig. The judge found claimant did not recklessly violate respondent's safety rule and awarded benefits. Respondent requests reversal, arguing K.S.A. 2015 Supp. 44-501(a)(1)(D) precludes compensation. Claimant requests the Order be affirmed. Travelers denied insuring respondent on the date of accident. Insofar as the parties agreed respondent was not insolvent, neither Travelers nor the Fund filed briefs.

The issues concern whether claimant recklessly violated respondent's safety rule and if respondent generally disregarded or did not rigidly enforce safety rules.

DECISION

This Board Member adopts the judge's well-written summation of the facts, her recitation of the applicable law and her legal conclusions.

WHEREFORE, this Board Member affirms the May 10, 2016 Order.¹

IT IS SO ORDERED.

Dated this _____ day of June, 2016.

HONORABLE JOHN F. CARPINELLI
BOARD MEMBER

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Honorable Ali Marchant

¹ 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. Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2015 Supp. 44-551(I)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.