

ordering temporary total disability benefits beginning on the date of the Application for Hearing without expressly finding exceptional circumstances.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On appeal from preliminary hearing orders, the Appeals Board is limited to review of allegations that the Administrative Law Judge has exceeded his or her jurisdiction. After review of the record and consideration of the arguments of the parties, the Appeals Board finds, for the reasons stated below, that the Administrative Law Judge did not exceed his jurisdiction in his Order of May 16, 1994.

Respondent first argues that the opinions of Dr. Das should not have been considered by the Administrative Law Judge. The record reflects that on September 21, 1993, the parties stipulated that Dr. Das be designated as authorized treating physician for the specific purpose of providing medication to the claimant necessary to treat a seizure disorder. It was stated as a part of that stipulated order that Dr. Das was not authorized for any other purpose. Dr. Das has now testified by deposition that as a result of the injury claimant had seizures which made him unable to work during the period for which benefits have been ordered. The Appeals Board notes that while authorization may be necessary to make respondent responsible for payment of the medical bills, no authorization is required to allow a physician to testify or give opinion as to nature and extent of claimant's disability. At least in the absence of express stipulation or order excluding use of the physician's opinion, a competent medical opinion may be considered. Limitations stated in the stipulation of the parties in this case do not preclude the giving of such opinion. An order by an Administrative Law Judge based upon that opinion does not exceed the Administrative Law Judge's jurisdiction.

Respondent next argues that the Administrative Law Judge should have expressly found exceptional circumstances before ordering benefits from the date of the original Application for Hearing. The Appeals Board agrees that a better practice would have been to specifically note the basis for such a finding. However, the failure to make such a notation does not cause the Order to exceed the Administrative Law Judge's jurisdiction.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge Thomas F. Richardson, dated May 16, 1994, should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of September, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Robert Levy, 1111 E. Kansas Plaza, Garden City, KS 67846
Terry J. Malone, PO Box 39, Dodge City, KS 67801
Thomas F. Richardson, Administrative Law Judge
George Gomez, Director