

Order denying compensation entered by the Administrative Law Judge does not contain such a finding nor does it appear that compensability was an issue at the April 19, 1994 Hearing from which this appeal arises. The issue of causation had been previously decided in claimant's favor at an earlier preliminary hearing as evidenced by the Order of the Administrative Law Judge dated November 18, 1993. At the oral argument presented on this appeal, counsel for both claimant and respondent agreed that there was no dispute at the most recent preliminary hearing as to whether claimant's injuries arose out of and in the course of her employment with the respondent. Accordingly, that issue is not before the Appeals Board. The only issue left for determination then is whether the Administrative Law Judge erred in finding that claimant had not met her burden of proof that she is entitled to temporary total disability compensation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

We must first address the issue of whether the Appeals Board has jurisdiction to review this appeal from a preliminary order. As discussed above, although not characterized as such in the Request for Appeals Board Review, this appeal raises only an issue as to the factual determination that claimant is not temporarily totally disabled as a result of her work-related injury.

Preliminary awards are not subject to review by the Appeals Board unless it is alleged that the Administrative Law Judge has exceeded his or her jurisdiction in granting or denying the relief requested at the preliminary hearing. K.S.A. 44-534a lists certain kinds of findings which are to be considered jurisdictional when in dispute and made a part of the preliminary order. Those findings include whether the claimant suffered an accidental injury, whether the injury arose out of and in the course of employment, whether notice was given, and whether written claim was timely made or whether certain defenses apply. The decision made in this case does not fall within the issues specifically listed in K.S.A. 44-534a nor is it otherwise argued that the Administrative Law Judge exceeded his jurisdiction in denying claimant temporary total disability compensation.

The Appeals Board finds that it does not have jurisdiction to consider this appeal. Accordingly, the decision by the Administrative Law Judge stands and this appeal is dismissed.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that this appeal be dismissed. The decision of Administrative Law Judge Thomas F. Richardson, in his Order Denying Compensation dated May 16, 1994, remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of October, 1994.

BOARD MEMBER PRO TEM

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