

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

**KENNETH DICKINSON**  
Claimant

VS.

**AMERICAN INGREDIENTS**

Respondent

AND

**AMERICAN MOTORIST INSURANCE COMPANY**  
Insurance Carrier

AND

**KANSAS WORKERS COMPENSATION FUND**

Docket Nos. 163,348 &  
170,439

**ORDER**

Respondent appeals from a Preliminary Order of December 6, 1994, wherein Administrative Law Judge Steven J. Howard appointed Dr. Lowry Jones, Jr. as neutral physician to perform an independent evaluation on claimant pursuant to K.S.A. 44-516.

**ISSUES**

Whether the Administrative Law Judge exceeded his jurisdiction in ordering a second independent medical examination under K.S.A. 44-516 subsequent to a second pre-hearing settlement conference.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

On September 20, 1993, Administrative Law Judge Steven J. Howard appointed Dr. Lowry Jones, Jr. as a neutral physician to perform an independent medical examination upon claimant pursuant to K.S.A. 44-516.

An appointment was made for the claimant to be examined by Dr. Jones on November 24, 1993, but claimant was unable to attend that examination. A rescheduled appointment in March 1994 was cancelled by Dr. Jones' office. The parties then agreed that Dr. David Tillema would be appointed as the independent physician and an order to that effect was entered by Judge Howard on April 7, 1994. The examination occurred, and a report was prepared and submitted to the Administrative Law Judge and all parties. A second pre-hearing settlement conference was held December 5, 1994. Subsequent to that conference, Administrative Law Judge Howard again appointed Dr. Lowry Jones, Jr. as the neutral physician to perform an independent medical examination pursuant to K.S.A. 44-516.

The respondent objects, alleging the Administrative Law Judge is entitled under K.S.A. 44-510e(a) to appoint only one independent health care provider to examine claimant if the parties are unable to agree upon the claimant's functional impairment. The respondent further alleges that the independent medical examination provisions of K.S.A. 44-516 apply only in case of a dispute as to the injury. Respondent contends there is no dispute as to the injury in this circumstance and one independent examination under K.S.A. 44-510e is all the Administrative Law Judge has the power to schedule.

K.S.A. 44-516 states:

"In case of a dispute as to the injury, the director, in the director's discretion, or upon request of either party, may employ one or more neutral health care providers, not exceeding three in number, who shall be of good standing and ability. The health care providers shall make such examinations of the injured employee as the director may direct."

K.S.A.44-510e(a) states in part:

"If the employer and the employee are unable to agree upon the employee's functional impairment, such matter shall be referred by the administrative law judge to an independent health care provider who shall be selected by the administrative law judge from a list of health care providers maintained by the director. The health care provider selected by the director pursuant to this section shall issue an opinion regarding the employee's functional impairment which shall be considered by the administrative law judge in making the final determination."

It is clear that under either K.S.A. 44-516 or K.S.A. 44-510e the Administrative Law Judge, in certain circumstances, is entitled to appoint independent physicians to evaluate claimants for various reasons. The Orders of the Administrative Law Judge, from both the September 1993 pre-hearing settlement conference and the December 1994 pre-hearing settlement conference, specify the independent medical examinations were being ordered pursuant to K.S.A. 44-516. As no transcript exists from these pre-hearing settlement conferences, it is impossible for the Appeals Board to ascertain, outside the boundaries of the Judge's Order, the intent and purpose of these examinations.

The decisions rendered by the Administrative Law Judge granting the independent medical examination under K.S.A. 44-516 are interlocutory in nature. After examining both K.S.A. 44-551 and K.S.A. 44-534a, the Appeals Board finds that the subject Order of December 6, 1994, is not a final order which can be reviewed by the Appeals Board pursuant to either statute. While the decision of the Administrative Law Judge might be considered a preliminary order, it is not one wherein the Administrative Law Judge has exceeded his jurisdiction and it is further not one wherein the Appeals Board is granted the right of review at this time.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Steven J. Howard dated December 6, 1994, remains in full force and effect.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February, 1995.

\_\_\_\_\_  
BOARD MEMBER

\_\_\_\_\_  
BOARD MEMBER

\_\_\_\_\_  
BOARD MEMBER

cc: John G. O'Connor, Kansas City, KS  
Denise E. Tomasic, Kansas City, KS  
Jeffrey S. Austin, Overland Park, KS  
Steven J. Howard, Administrative Law Judge  
George Gomez, Director