

Based on the evidence presented and for purposes of preliminary hearing;

The Appeals Board finds that as no application pursuant to K.S.A. 44-528 has been filed by the claimant, the Administrative Law Judge lacked the jurisdiction and authority to reopen this matter and accordingly lacked the jurisdiction to grant additional vocational rehabilitation and temporary total disability benefits therefrom.

The parties entered into a compromised settlement in this matter by running award on July 12, 1993 with said running award being ratified by the Director on July 21, 1993.

On December 12, 1993 claimant filed a Form E-1 with the Director's office requesting vocational rehabilitation, temporary total disability and medical treatment. No appeal of the Director's order of July 21, 1993 was filed by the claimant and the running award remains in full force and effect.

K.S.A. 1992 Supp. 44-551 states in part:

"All acts, findings, awards, decisions, rulings or modifications of findings or awards made by an administrative law judge, shall be subject to review and approval by the director upon written request of any interested party within 10 days and if no such request is made, then the director shall approve such actions, findings, awards, decisions, rulings or modifications of findings or awards of the administrative law judge."

K.S.A. 77-613, applicable at the time of this action, requires a petition for judicial review to the District Court be filed within 30 days after the service of the order. No such appeal was filed by any of the parties in this action.

"Once the director has entered his order approving an award, he lacks jurisdiction and authority to reopen the matter except under K.S.A. 44-528 relating to the review and modification of an award on the grounds of changed condition." Shinkle v. Kansas State Highway Commission, 200 Kan. 191, 196, 434 P.2d 389 (1968).

No application pursuant to K.S.A. 44-528 has been filed in this matter. The action by the claimant in requesting a preliminary hearing under K.S.A. 44-534a is not sufficient to confer jurisdiction to the Administrative Law Judge to decide this matter.

AWARD

WHEREFORE, it is the finding, decision and order of the Appeals Board that Administrative Law Judge John D. Clark did not have jurisdiction to order vocational rehabilitation benefits and temporary total disability benefits in this matter absent the filing of an application under K.S.A. 44-528 for review and modification, and as such the Order of December 7, 1993, is reversed and the running award of July 12, 1993, approved by the Director on July 21, 1993, remains in full force and effect.

IT IS SO ORDERED.

Dated this _____ day of February, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- cc: Brian D. Pistotnik, 2831 East Central, Wichita, Kansas 67214
- Eric K. Kuhn, 700 Fourth Financial Center, Wichita, Kansas 67202
- Matthew L. Bretz, P.O. Box 2977, Hutchinson, Kansas 67504-2977
- John D. Clark, Administrative Law Judge
- George Gomez, Director