

RECORD

The record in this case consists of the documents on file with the Division of Workers Compensation including the transcript of the Preliminary Hearing held on November 10, 1993, before Administrative Law Judge Floyd V. Palmer and the exhibits attached thereto.

ISSUES

This is an application for review filed by the claimant from a Preliminary Hearing Order denying claimant's request for payment of temporary total disability compensation after August 24, 1993.

(1) Did the Administrative Law Judge exceed his jurisdiction in denying the claimant temporary total disability benefits after August 24, 1993?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for purposes of Preliminary Hearing, the Appeals Board finds as follows:

(1) Pursuant to K.S.A. 44-534a(a)(2) the Administrative Law Judge has the authority to make or deny temporary total disability compensation in a Preliminary Order pending a full hearing on the claim.

(2) K.S.A. 44-551(b)(2)(A) provides that the Appeals Board shall not review a pending Preliminary Hearing Order entered by the Administrative Law Judge unless it is alleged that the Administrative Law Judge exceeded his jurisdiction in granting or denying the relief requested.

(3) Additionally, Preliminary Hearing findings with regard to the following disputed issues shall be considered jurisdictional and subject to review by the Appeals Board:

- a. Whether the employee suffered an accidental injury;
- b. Whether the injury arose out of and in the course of employee's employment;
- c. Whether notice is given or claim timely made;
- d. Whether certain defenses apply, shall be considered jurisdictional and subject to review by the Appeals Board.

(4) In the instant case, the Administrative Law Judge denied the claimant's request for temporary total disability benefits. Such denial is within the Administrative Law Judge's authority and further such denial of temporary total disability benefits does not fall within one of the disputed issues set forth in K.S.A. 44-534a(a)(2) which grants the Appeals Board jurisdiction to review a Preliminary Hearing Order.

(5) The Appeals Board further finds that the Administrative Law Judge did not exceed his jurisdiction in making his order denying benefits and accordingly this Appeals Board does not have jurisdiction to review that decision.

AWARD

WHEREFORE, it is the finding, decision and order of the Appeals Board that the Order of Administrative Law Judge Floyd V. Palmer dated November 17, 1993, remains in full force and effect.

IT IS SO ORDERED.

Dated and mailed this _____ day of January, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

cc: Steven M. Tilton, 1324 SW Topeka Ave., Topeka, Kansas 66612
Kenneth J. Hursh, P.O. Box 2928, Overland Park, Kansas 66201
Floyd V. Palmer, Administrative Law Judge
George Gomez, Director