



- (1) Did the Administrative Law Judge exceed his jurisdiction in ordering temporary total disability benefits when claimant was allegedly entitled to permanent partial disability compensation?
- (2) Does the respondent's allegation that the Administrative Law Judge exceeded his jurisdiction in ordering temporary total disability compensation instead of permanent partial disability constitute a certain defense under K.S.A. 44-534a?

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds that the Administrative Law Judge's decision to order temporary total disability benefits rather than permanent partial general disability benefits does not exceed the Administrative Law Judge's jurisdiction. The raising of said issue by the respondent does not constitute a certain defense under K.S.A. 44-534a so as to allow the Appeals Board jurisdiction to consider same.

A dispute arose at the Preliminary Hearing as to whether the claimant was temporarily totally disabled and entitled to ongoing medical and temporary total benefits or whether the claimant had reached maximum medical improvement and the matter was ripe to proceed to Regular Hearing. The respondent's attorney argued that the Administrative Law Judge's decision in this matter in granting temporary total disability benefits versus permanent partial general disability benefits was a violation of the Administrative Law Judge's jurisdiction and the respondent had standing to raise this issue as this constituted a certain defense under K.S.A. 44-534a. The Appeals Board concludes this is not an issue which falls within the definition of a certain defense. The Administrative Law Judge is specifically granted the right to decide issues dealing with temporary total disability compensation under K.S.A. 44-534a and it cannot therefore be said that he exceeded his jurisdiction in deciding this issue.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge Robert H. Foerschler, dated July 11, 1994, remains in full force and effect.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of September, 1994.

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BOARD MEMBER

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BOARD MEMBER

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Robert H. Foerschler, Administrative Law Judge  
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