

The issues before the Administrative Law Judge were "compensability" and timely written claim. From a review of the record, it appears that the question of compensability relates to the issue of whether the claimant's alleged injury arises out of and in the course of his employment with the respondent.

The issue now before the Appeals Board is whether the Administrative Law Judge has exceeded his jurisdiction and authority by failing to adjudicate the issues before him. Also, the Appeals Board has been requested to remove the Administrative Law Judge from the claims filed by claimant's attorney.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Administrative Law Judge has exceeded his jurisdiction and authority by failing to adjudicate preliminarily the issue of whether claimant is entitled to benefits under the Kansas Workers Compensation Act. Therefore, this case is remanded to the Administrative Law Judge for immediate attention and appropriate findings regarding the issues presented.

K.S.A. 44-534a provides that the parties may make application for a preliminary hearing on the issues of the furnishing of medical treatment and the payment of temporary total disability compensation. The statute also provides the procedure for preliminary hearings and requires the Director to assign the proceeding to an Administrative Law Judge who shall set the matter for preliminary hearing when the issues cannot be resolved by agreement or benefit review conference. The statute requires the preliminary hearing to be summary in nature and the decision to be rendered within five days of the conclusion of the hearing.

The Appeals Board finds that K.S.A. 44-534a requires the Administrative Law Judge to make an initial determination of the issues pertaining to compensability and entitlement to benefits at the preliminary hearing stage of the proceedings. To find otherwise is to thwart the intent and purpose of the Act to provide a means for prompt, initial determination of those issues. The Appeals Board's analysis does not preclude an Administrative Law Judge from taking a matter under advisement when the circumstances warrant, such as: to comply with the statutorily mandated requirement that an employer be given the opportunity to present evidence at the preliminary hearing level, or when the Administrative Law Judge, in good faith, believes that an independent medical examination is warranted or that certain evidence is critical to the determination of the issues and provides direction to the parties regarding the furnishing of same. Those examples are not intended to be an exhaustive list as there may be other situations where justice and due process would require the Judge to take a matter under advisement. However, the record is devoid of any such justification here.

Claimant's attorney has requested the Appeals Board to enter an order that Administrative Law Judge John D. Clark be removed from all cases filed by him. The Appeals Board does not have the jurisdiction, nor the authority, to grant counsel's request.

The statute that created the Appeals Board, K.S.A. 44-555b, states:

"(a) There is hereby established the workers compensation board. The board shall have exclusive jurisdiction to review all decisions, findings, orders and awards of compensation of administrative law judges under the workers compensation act. The review by the board shall be upon questions of law

and fact as presented and shown by a transcript of the evidence and the proceedings as presented, had and introduced before the administrative law judge."

Another statute that pertains to the Appeals Board's jurisdiction and authority to review proceedings is K.S.A. 44-534a regarding preliminary hearings. The statute provides that:

"(a)(2)...A finding with regard to a disputed issue of whether the employee suffered an accidental injury, whether the injury arose out of and in the course of the employee's employment, whether notice is given or claim timely made, or whether certain defenses apply, shall be considered jurisdictional, and subject to review by the board."

Additionally, K.S.A. 44-551 addresses review by the Appeals Board. This statute provides:

"(b)(1)...All acts, findings, awards, decisions, rulings or modifications of findings or awards made by an administrative law judge, shall be subject to review by the board upon written request of any interested party within 10 days...On any such review, the board shall have authority to grant or refuse compensation, or to increase or diminish any award of compensation or to remand any matter to the administrative law judge for further proceedings."

As can be seen by reviewing the above statutory provisions, the Appeals Board has the jurisdiction and authority to review those issues generally dealing with the compensability of a claim, the entitlement to benefits, or jurisdictional questions. The Appeals Board does not have jurisdiction to order an Administrative Law Judge to recuse himself from adjudicating certain claims, nor the authority to order the Director to assign claims in any certain manner. The Appeals Board does not have supervisory authority over Administrative Law Judges as that rests with the Director.

AWARD

WHEREFORE, it is the finding, decision and order of the Appeals Board that this proceeding be remanded for preliminary hearing purposes to the Administrative Law Judge for prompt adjudication and findings regarding the issues before him.

IT IS SO ORDERED.

Dated this ____ day of March, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

cc: Steven R. Wilson, 1861 North Rock Road, Suite 320, Wichita, Kansas 67206
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John D. Clark, Administrative Law Judge
George Gomez, Director