BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

LLOYD S. BROWN	)	
Claimant	)	
VS.	)	
	)	Docket Nos. 166,069 and 180,989
J & F EXPRESS, INC.	)	
Respondent	)	
AND	)	
	)	
CIGNA	)	
Insurance Carrier	)	

ORDER

ON the 17th day of March, 1994, the application of the claimant for review by the Workers Compensation Appeals Board of an Order entered by Administrative Law Judge Floyd V. Palmer, dated February 4, 1994, came on for oral argument.

APPEARANCES

Claimant appeared by and through his attorney, Michael F. Patton of Emporia, Kansas. Respondent and insurance carrier appeared by and through their attorney, Michael W. Downing of Kansas City, Missouri.

RECORD

The record considered by the Appeals Board included the transcript of the Preliminary Hearing dated January 28, 1994, and the exhibits attached thereto, as well as all pleadings filed of record.

ISSUES

The Administrative Law Judge denied claimant's request for vocational rehabilitation benefits. The denial was based upon his finding that claimant's inability to return to his pre-injury employment was caused by an off-the-job injury and not the injury suffered in the course of his employment. By this appeal claimant challenges that finding.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Appeals Board finds that claimant's appeal does not raise an issue over which the Appeals Board would have jurisdiction and the decision of the Administrative Law Judge therefore remains in effect as originally entered.

Because this is an appeal from a Preliminary Order, the jurisdiction of the Appeals Board is limited to review of appeals which involve a claim that the Administrative Law Judge has exceeded his or her jurisdiction. See K.S.A. 44-551. Included among the appeals considered to raise an issue related to the jurisdiction are those which raise issues listed in K.S.A. 44-534a. The issues there listed include whether claimant suffered accidental injury, whether the injury arose out of and in the course of employment, whether claimant gave proper notice, whether claimant made timely written claim, and certain other defenses. See K.S.A. 44-534a. Claimant's appeal does not relate to any of the issues listed in K.S.A. 44-534a and does not otherwise allege that the Administrative Law Judge has exceeded his jurisdiction in this case.

The evidence shows that claimant suffered injuries to both his right and left shoulders in January and February of 1992. There does not, for purposes of this Order, appear to be any dispute that those injuries arose out of and in the course of claimant's employment. His last day of work was February 20, 1992, and he was thereafter off work until April 1992 when he re-injured his shoulder in a farm accident not related to his work for respondent. The medical records of the treating doctor indicate that on March 27, 1992, the last visit before the farm injury, the doctor expected to release claimant to return to work in two weeks. The record also includes the opinion of Doctor Glazer indicating that an MRI taken before the farm accident did not support a diagnosis of a torn rotator cuff while the MRI taken after the farm accident did indicate the rotator cuff tear. The Administrative Law Judge found that the farm accident, not the on-the-job injury, was the reason claimant was unable to return to work. The Administrative Law Judge, on that basis, denied the request for vocational rehabilitation benefits.

This appeal does not, in substance, allege that the Administrative Law Judge has exceeded his jurisdiction. Claimant did suffer an accidental injury in the course of his

employment. He also suffered a subsequent injury which was not in the course of his employment. The Administrative Law Judge has, by his Preliminary Order, made a decision regarding which of those has acted to prevent claimant from returning to his pre-injury employment. The Administrative Law Judge has not exceeded his jurisdiction in making that decision and the Appeals Board, therefore, does not have jurisdiction to consider an appeal from that decision as a part of a Preliminary Order.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Floyd V. Palmer dated February 4, 1994, remains in effect as originally entered.

IT IS SO ORDERED.

Dated this ____ day of April, 1994.

_____
BOARD MEMBER

_____
BOARD MEMBER

_____
BOARD MEMBER

cc: Michael F. Patton, PO Box Q, Emporia, KS 66801
Michael W. Downing, 120 W 12th, Suite 310, Kansas City, MO 64105
Floyd V. Palmer, Administrative Law Judge
George Gomez, Director