BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

JAMES HEINEKEN	)	
Claimant	)	
VS.	)	
	)	Docket Nos. 181,276 & 181,277
DAVIES NURSERY GARDEN CENTER	)	
Respondent	)	
AND	)	
	)	
NORTHWESTERN NATIONAL CASUALTY	)	
Insurance Carrier	)	
AND	)	
	)	
KANSAS WORKERS COMPENSATION FUND	)	

ORDER

ON November 18, 1994, the Appeals Board considered respondent's request to review the Preliminary Hearing Order and Nunc Pro Tunc Order entered by Administrative Law Judge Floyd V. Palmer on September 28, 1994, and October 3, 1994, respectively.

ISSUES

The Administrative Law Judge granted claimant's request for benefits. The respondent and insurance carrier contend claimant's alleged psychiatric condition did not arise out of and in the course of his employment, and, therefore, the Administrative Law Judge erred in awarding benefits for that condition.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, for purposes of preliminary hearing, the Appeals Board finds, as follows:

(1) At this juncture of the proceeding, the Appeals Board lacks jurisdiction to review the issue whether the Administrative Law Judge erred in granting claimant temporary total disability and medical benefits for the alleged psychiatric condition.

For purposes of preliminary hearing, the parties agree claimant has suffered an accidental injury arising out of and in the course of his employment with the respondent. The question whether claimant's psychiatric difficulties are related to the work-related accident, or some other source of distress, deals with the issue of nature and extent of disability rather than one of the jurisdictional issues enumerated in K.S.A. 44-534a, as amended.

The Legislature empowered the Appeals Board under K.S.A. 44-534a to review preliminary findings pertaining to the following: (1) whether the employee suffered an accidental injury; (2) whether the injury arose out of and in the course of the employee's employment; (3) whether notice was given or claim timely made; and, (4) whether certain defenses apply. Nature and extent of injury is not a preliminary finding that the Appeals Board may review. Further, the Administrative Law Judge has not exceeded his jurisdiction and authority; therefore, the Appeals Board does not have jurisdiction to review this Preliminary Hearing Order under K.S.A. 44-551. This ruling comports with many of our earlier decisions.

(2) The above finding disposes of the remaining arguments of respondent regarding claimant's entitlement to benefits.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order and Nunc Pro Tunc Order of Administrative Law Judge Floyd V. Palmer, dated September 28, 1994, and October 3, 1994, respectively, remain in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of December, 1994.

_____
BOARD MEMBER

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BOARD MEMBER

_____
BOARD MEMBER

c: Michael C. Helbert, Emporia, KS
Ronald J. Laskowski, Topeka, KS
Michael G. Patton, Emporia, KS
Floyd V. Palmer, Administrative Law Judge
George Gomez, Director