BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

SONDRA L. WOOLDRIDGE Claimant VS. **SAMS'S WHOLESALE CLUB** Respondent AND **NATIONAL UNION FIRE INSURANCE COMPANY OF NEW YORK** Insurance Carrier	)))))))))))	Docket No. 181,934

ORDER

Claimant appeals from a Preliminary Order of February 21, 1995, and a second Order of March 17, 1995, wherein Administrative Law Judge John D. Clark ordered Dr. Ernest Schlachter to provide an independent medical examination of the claimant and further denied claimant's request for specific conditions to be attached to this independent medical examination.

ISSUES

(1) Whether the Administrative Law Judge exceeded his jurisdiction in requiring the independent medical examination of the claimant with Dr. Ernest Schlachter;
(2) Whether the Administrative Law Judge exceeded his jurisdiction in denying the requested conditions be attached to this independent medical examination; and
(3) Whether claimant is entitled to temporary total disability benefits after February 1, 1995.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence and for the purpose of preliminary hearing, the Appeals Board finds as follows:

Claimant and respondent entered into an Agreed Award on January 3, 1995, with the only issue remaining being claimant's entitlement to ongoing psychiatric treatment with

Dr. Kaye Zwiacher and whether the psychiatric bill of $1,133.60 should be paid as part of the authorized medical care of claimant.

In considering these requests, the Administrative Law Judge ordered claimant to undergo an independent medical examination with Dr. Ernest Schlachter. Claimant vehemently objected to this examination protesting that Dr. Schlachter was not qualified to do an independent medical examination regarding psychological problems and their relationship to claimant's physical injuries. Claimant's counsel further advised Dr. Schlachter would not be good for claimant as his examination manner tends to be crude at times and could cause additional psychological trauma to claimant. Claimant's attorney obtained a letter from Dr. Kaye Zwiacher, the psychiatrist in charge of claimant's treatment, recommending certain guidelines be observed by Dr. Schlachter. The Administrative Law Judge denied claimant's request that these restrictions be imposed.

K.S.A. 44-516 states:

> "In case of a dispute as to the injury, the director, in the director's discretion, or upon request of either party, may employ one or more neutral health care providers, not exceeding three in number, who shall be of good standing and ability. The health care providers shall make such examinations of the injured employee as the director may direct."

Under K.S.A. 44-516 the Administrative Law Judge, in certain circumstances, is entitled to appoint independent physicians to evaluate claimants for various reasons. The Administrative Law Judge's Order of February 21, 1995, and the subsequent Order of March 17, 1995, are within the entitled jurisdictional powers of an Administrative Law Judge in handling his or her docket. Decisions rendered by the Administrative Law Judge under K.S.A. 44-516 are interlocutory in nature and not final.

K.S.A. 44-534a allows appeals of preliminary hearings with regard to only certain jurisdictional issues set out in the statute as follows:

(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 is given or claim timely made;
(4) Whether certain defenses apply.

K.S.A. 44-551 precludes the Appeals Board from reviewing a pending order entered by the Administrative Law Judge unless it is alleged and shown that the Administrative Law Judge exceeded his or her jurisdiction in granting or denying the relief requested.

The Administrative Law Judge in ordering an independent medical examination under K.S.A. 44-516 is proceeding within his jurisdictional boundaries in handling his docketed cases. Neither K.S.A. 44-551 nor K.S.A. 44-534a grants the Appeals Board the right to review the Administrative Law Judge's decision to refer claimant for an independent medical examination, with or without specific conditions being applied. As such, the Administrative Law Judge has not exceeded his jurisdiction in ordering the above examination and further, the Appeals Board is not granted the right of review in this matter.

The claimant further contends claimant would be entitled to temporary total disability benefits after February 1, 1995, during the pendency of this independent medical examination. K.S.A. 44-534a specifically allows the Administrative Law Judge to make

decisions regarding medical treatment and temporary total disability benefits. As the Administrative Law Judge is well within his authority and jurisdiction to make this decision, the Appeals Board, again, would be precluded from reviewing the Judge's decision at this time.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Orders of Administrative Law Judge John D. Clark, dated February 21, 1995 and March 17, 1995 remain in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of May, 1995.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Steven L. Foulston, Wichita, Kansas
Douglas C. Hobbs, Wichita, Kansas
John D. Clark, Administrative Law Judge
George Gomez, Director