BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

RITA HERNANDEZ	)	
Claimant	)	
VS.	)	
	)	Docket No. 183,761
DENTAL SERVICES GROUP/HEUMANN & ASSOC.	)	
Respondent	)	
AND	)	
	)	
TRAVELERS INDEMNITY COMPANY	)	
CHUBB INSURANCE GROUP	)	
USF&G	)	
HARTFORD ACCIDENT & INDEMNITY	)	
Insurance Carriers	)	
	)	
AND	)	
	)	
KANSAS WORKERS COMPENSATION FUND	)	

ORDER

Respondent and its insurance carrier, Travelers Indemnity Company, appeal from a preliminary hearing Order entered by Special Administrative Law Judge William F. Morrissey on November 16, 1995, that awarded claimant preliminary benefits.

ISSUES

Respondent and its insurance carrier, Travelers Indemnity Company (Travelers), raised the following issues in their Application for review:

> "1. Whether the Special Administrative Law Judge exceeded his jurisdiction by ordering benefits on an alleged series of accidents for which no Application For Hearing or Application For Preliminary Hearing have been filed, and for which no Benefit Review Conference has been held.

"2. Whether the Special Administrative Law Judge's exceeded his jurisdiction by ordering specific medical treatment with a specific provider."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing transcript and considering the briefs of the parties, the Appeals Board finds as follows:

As the Appeals Board has held on numerous occasions, in order for the Appeals Board to have jurisdiction to review a preliminary hearing order, either one of the specific jurisdictional issues listed in K.S.A. 44-534a(a)(2) has to be raised or a party has to allege that the administrative law judge exceeded his jurisdiction pursuant to K.S.A. 44-551(b)(2)(A). Neither of the issues raised by the respondent and its insurance carrier, Travelers, are jurisdictional issues which are listed in K.S.A. 44-534a(a)(2). Consequently, if the Appeals Board has the authority to review this preliminary hearing Order, it must be shown that the Special Administrative Law Judge exceeded his jurisdiction in granting the claimant the requested preliminary hearing benefits.

The preliminary hearing statute, K.S.A. 44-534a, specifically gives the administrative law judge authority to grant or deny medical compensation and temporary total disability compensation pending a full hearing on a claim. The preliminary hearing Order, which is the subject of this appeal, granted claimant's request for medical treatment and, if appropriate, i.e., taken off work, temporary total disability benefits.

The respondent and Travelers first argue that no application for hearing or application for preliminary hearing were filed in this matter and, further, no benefit review conference was held. Respondent contends these are prerequisite procedures that must be followed before the administrative law judge has the authority to order preliminary hearing benefits. The Appeals Board has reviewed the record and finds this argument troublesome as the record shows that respondent and Travelers were both sent a copy of the Application for Preliminary Hearing that was filed on August 21, 1995 and were also sent an amended Application for Hearing that was filed on September 5, 1995. Further, counsel for the respondent and Travelers participated in a benefit review conference that was held on September 18, 1995. Respondent and Travelers were also represented by counsel and participated in the preliminary hearing that was held on November 15, 1995. Accordingly, the Appeals Board finds that these procedures were followed. There is no merit in respondent's argument that the Special Administrative Law Judge exceeded his authority in ordering preliminary benefits in this matter.

The second issue raised by respondent and Travelers is also found by the Appeals Board to be without merit. The Special Administrative Law Judge awarded claimant medical treatment to cure and relieve her from the effects of her injury. The employer has the duty to provide such medical treatment pursuant to K.S.A. 44-510(a). The Appeals Board finds that the claimant's testimony and the medical records introduced at the preliminary hearing established this need. Accordingly, since K.S.A. 44-534a specifically gives the administrative law judge authority to grant medical compensation in a preliminary hearing order, the Special Administrative Law Judge did not exceed his jurisdiction when he ordered medical treatment with a specific health care physician.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that this appeal should be, and is hereby, dismissed and the preliminary hearing Order of Special Administrative Law Judge William F. Morrissey dated November 16, 1995 shall remain in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of January 1996.

_____
BOARD MEMBER

_____
BOARD MEMBER

_____
BOARD MEMBER

c: James C. Wright, Topeka, Kansas
Kenneth J. Hursh, Overland Park, Kansas
H. Wayne Powers, Jr., Overland Park, Kansas
Patricia A. Wohlford, Overland Park, Kansas
Mark J. Hoffmeister, Overland Park, Kansas
Larry G. Karns, Topeka, Kansas
William F. Morrissey, Special Administrative Law Judge
Philip S. Harness, Director