

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

KEITH E. JAKUB)	
Claimant)	
)	
VS.)	
)	
BOEING AIRCRAFT COMPANY)	
Respondent)	
AND)	Docket No. 186,847
)	
AETNA CASUALTY & SURETY CO.)	
Insurance Carrier)	
AND)	
)	
KANSAS WORKERS COMPENSATION FUND)	

ORDER

Claimant requests review of the May 24, 2004 post-award Order entered by Special Administrative Law Judge (SALJ) Vincent L. Bogart. The Appeals Board (Board) placed this matter on its summary calendar for determination without oral argument.

APPEARANCES

Gary A. Winfrey of Wichita, Kansas, appeared for claimant. Frederick L. Haag of Wichita, Kansas, appeared for respondent and its insurance carrier (respondent). Crystal Nesheim of Wichita, Kansas, appeared for the Kansas Workers Compensation Fund (Fund).

RECORD AND STIPULATIONS

In addition to the recitation of the record and stipulations contained in the August 22, 1995 Award entered by Administrative Law Judge Shannon S. Krysl, and in the

February 6, 2004 Post-Award Medical Award entered by Administrative Law Judge Jon L. Frobish, the record includes the transcript of the May 20, 2004 preliminary hearing, together with the pleadings and other documents contained within the administrative file.

There is a stipulation "with respect to apportionment of any costs, expenses and Award entered in this docket. . ." between the respondent and the Fund filed October 6, 1995.¹

ISSUES

At the "preliminary hearing" held on May 20, 2004, claimant requested temporary total disability compensation for the period beginning March 25, 2004, following claimant's surgery by Dr. Chan, until May 10, 2004, when claimant was released by Dr. Chan and returned to work. The SALJ determined that claimant was precluded from receiving temporary total disability compensation because of the 415 week limitation contained in K.S.A. 1992 Supp. 44-510e. On appeal, claimant alleges the SALJ erred because the 415 week limitation in K.S.A. 1992 Supp. 44-510e pertains to temporary partial and permanent partial disability compensation. It does not pertain to temporary total disability compensation (TTD). Instead, TTD is controlled by K.S.A. 1992 Supp. 44-510c and K.S.A. 1992 Supp. 44-510f which limit TTD and permanent total disability compensation to only a total dollar amount as opposed to both a maximum dollar amount and a maximum number of weeks.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The SALJ denied claimant's request for additional TTD compensation citing the Board's decision in *Stinchcomb v. Raytheon Aircraft Company*². However, that decision is inapplicable to this case. *Stinchcomb* dealt with a request for permanent partial disability compensation under K.S.A. 1992 Supp. 44-510e. The case at bar is for TTD compensation under K.S.A. 1992 Supp. 44-510c. The Board has previously held, and continues to hold that TTD compensation, like permanent total disability compensation, is not limited by weeks.³ Instead, TTD and permanent total disability benefits are capped by a maximum dollar amount. The evidence in this case reflects that claimant has not reached the \$100,000 limitation in the applicable version of K.S.A.44-510f.⁴ Accordingly, the SALJ's Order is reversed and remanded for a determination of whether claimant was

¹Stipulation (filed Oct. 6, 1995).

²*Stinchcomb v. Raytheon Aircraft Company*, Docket Nos. 182,154 and 227,684, 2004 WL 1058373 (Kan. WCAB April 2, 2004).

³ *Cole v. City of Salina*, Docket No. 150,511, 1995 WL 781180 (Kan. WCAB Dec. 15, 1995).

⁴ K.S.A. 1992 Supp. 510f(a)(2).

temporarily and totally disabled during the period alleged. No determination was made by the SALJ on that issue nor have the parties entered into a stipulation on that issue.

AWARD

WHEREFORE, it is the finding of the Board that the Order of Special Administrative Law Judge Vincent L. Bogart dated May 24, 2004, should be and is hereby reversed and remanded for a determination of the remaining issues, including claimant's entitlement to temporary total disability compensation, consistent with the Board's findings and conclusions herein.

IT IS SO ORDERED.

Dated this _____ day of October 2004.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Gary A. Winfrey, Attorney for Claimant
- Frederick L. Haag, Attorney for Respondent and Aetna Casualty & Surety Co.
- Crystal Nesheim, Attorney for the Kansas Workers' Compensation Fund
- Vincent L. Bogart, Special Administrative Law Judge
- Paula S. Greathouse, Workers Compensation Director