

- (5) Finding as a matter of law that under the circumstances claimant's request for continued treatment by his authorized treating physicians be considered a request by claimant for a change of physician instead.
- (6) Finding as a matter of law that K.S.A. 44-510 allows respondent to pick and choose and alter at will and at their whim any authorized physician they so choose at any time during the ongoing progression of claimant's case.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

K.S.A. 44-551(b)(2)(A) provides that the Appeals Board shall not review a preliminary hearing order entered by an Administrative Law Judge unless it is alleged that the Administrative Law Judge exceeded his jurisdiction in granting or denying the relief requested.

K.S.A. 44-534a allows appeals from a preliminary hearing for the specific jurisdictional issues regarding whether the claimant suffered an accidental injury, whether the injury arose out of and in the course of the employee's employment, whether notice is given or timely claim made, or whether certain defenses apply.

The Appeals Board has ruled on numerous occasions that the providing of medical treatment and the ordering of same falls within the power of the Administrative Law Judge at preliminary hearings. In the instant case, the Administrative Law Judge determined, through his Order, the ongoing course of medical treatment to the claimant. As this is not an issue listed in K.S.A. 44-534a, the Appeals Board finds the Administrative Law Judge did not exceed his jurisdiction in making such order and accordingly this Appeals Board does not have jurisdiction to review that decision.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Floyd V. Palmer, dated October 10, 1994, remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of November, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: C. Albert Herdoiza, Kansas City, Ks
Matthew W. Tills, Kansas City, MO
Floyd V. Palmer, Administrative Law Judge
George Gomez, Director