

The Appeals Board considered the record submitted by the parties for determination of the final award and the parties' stipulations as announced at hearing and as indicated in their submission letters.

ISSUES

Although the proceeding was submitted for final award, after reviewing the evidence the Assistant Director found that the case was not ripe for final award because claimant had not reached maximum medical improvement. In addition, the Assistant Director ordered the respondent to provide claimant the names of three mental health care providers pursuant to K.S.A. 44-510(c) for the purpose of providing treatment for chronic pain syndrome. The respondent requested review of that Order and asked the Appeals Board to review the following issues:

- (1) Whether the Assistant Director had the authority to enter the Interlocutory Order.
- (2) Whether the Assistant Director exceeded his authority in ordering additional treatment.
- (3) Whether claimant suffers from traumatic neurosis.
- (4) Whether claimant's traumatic neurosis is directly traceable to her physical injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds as follows:

The Order entered by the Assistant Director should be modified.

As indicated above, the Assistant Director found claimant needed mental health treatment and, thus, ordered respondent to provide it. The parties had submitted the case for final award. Claimant had not requested mental health treatment although there was a general request for future medical treatment. Also, the parties had stipulated to a whole body permanent functional impairment rating of 7.5 percent.

The Appeals Board finds that the Assistant Director had the authority to determine that the proceeding was not ripe for final award. However, that determination had the practical effect of setting aside the parties' stipulation of permanent functional impairment and the representation that claimant had reached medical stability. Therefore, the Assistant Director entered an order requiring the respondent to provide additional medical

treatment without providing the parties an opportunity to address that issue. As a result, the parties have been denied due process to address a significant issue.

Because the Assistant Director’s Order is interlocutory in nature, the Appeals Board does not have the jurisdiction at this juncture of the proceeding to review the issue whether claimant has traumatic neurosis directly traceable to the accident or physical injury. On numerous occasions the Appeals Board has held that issue is more a question of nature and extent of disability, which is not an issue subject to review before final order or award, rather than the question whether claimant has sustained personal injury by accident arising out of and in the course of his employment, which is an issue that may be reviewed before final award as one of the jurisdictional issues listed in K.S.A. 44-534a, as amended.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Interlocutory Order entered by Assistant Director Brad E. Avery dated June 24, 1996, should be, and hereby is, modified to the extent that the order requiring respondent to furnish claimant the names of three mental health care providers is set aside.

IT IS SO ORDERED.

Dated this ____ day of October 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Mark W. Works, Topeka, KS
- Anton C. Andersen, Kansas City, KS
- Brad E. Avery, Assistant Director
- Philip S. Harness, Director