

total disability compensation to claimant. Respondent also contends the temporary total disability issue, under the circumstances presented, constitutes a "certain defense" which is a jurisdictional issue listed in K.S.A. 1997 Supp. 44-534a.

The Appeals Board on other occasions has had the opportunity to determine what a "certain defense" is as the term is used in K.S.A. 1997 Supp. 44-534a. The Appeals Board has concluded that a "certain defense" as it applies to K.S.A. 1997 Supp. 44-534a is only a defense that goes to the compensability of the claim. For example, defenses raised by the respondent as to intoxication or willful failure to use a guard as provided by K.S.A. 1997 Supp. 44-501(d)(1)(2) are certain defenses that, if disputed, would give the Appeals Board jurisdiction to review a preliminary hearing order. The Appeals Board finds that whether claimant proved she was completely and temporarily incapable of engaging in any type of substantial and gainful employment is not a "certain defense" as contemplated by K.S.A. 1997 Supp. 44-534a. See Rembold v R. Vickers Trucking, Inc., Docket No. 223,206 (September 1997).

Furthermore, the Appeals Board finds, as it has on numerous occasions, it does not have jurisdiction, at this stage of the proceedings, to review a preliminary hearing finding of the administrative law judge in regard to temporary total disability compensation. The preliminary hearing statute gives the administrative law judge authority to grant or deny a request for either medical or temporary total disability compensation pending a full hearing on the claim. See K.S.A. 1997 Supp. 44-534a. Accordingly, the administrative law judge did not exceed his jurisdiction by granting claimant's request for temporary total disability compensation.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the respondent's appeal is dismissed and Administrative Law Judge John D. Clark's December 1, 1998, preliminary hearing Order remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of January 1999.

BOARD MEMBER

c: Jeff Griffith, Derby, KS
Richard J. Liby, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director