

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

<b>JAMES R. WINTERS</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 198,938
<b>GNB BATTERY TECHNOLOGIES</b>	)	
Respondent	)	
AND	)	
	)	
<b>HOME INSURANCE COMPANY</b>	)	
Insurance Carrier	)	

**ORDER**

This matter comes before the Appeals Board on remand from the Court of Appeals of the State of Kansas in the case of Winters v. GNB Battery Technologies, 23 Kan.App.2d 92, 927 P.2d 512 (1996).

**ISSUES**

The Administrative Law Judge in an Order dated June 27, 1995, appointed a neutral physician pursuant to K.S.A. 44-516 to perform an evaluation of the claimant for functional impairment and restrictions. The Administrative Law Judge also ordered the respondent to pay the cost of the medical examination and the report. The respondent timely appealed the Order to the Appeals Board asserting that the Administrative Law Judge exceeded his authority when he assessed the cost of the examination report against the respondent.

The Appeals Board dismissed the respondent's appeal finding that it did not have jurisdiction to review the Order because it was not a final order that could be reviewed pursuant to K.S.A. 1995 Supp. 44-551.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The respondent and its insurance carrier appealed the Appeals Board Order dated September 15, 1995, to the Court of Appeals of the State of Kansas. The Court of Appeals reversed and remanded the case to the Appeals Board finding the Appeals Board under K.S.A. 1995 Supp. 44-551(b)(1) had the authority to review the Order of the Administrative Law Judge. See Winters v. GNB Battery Technologies, 23 Kan.App.2d 92, Syl. ¶¶1&2, 927 P.2d 512 (1996).

Although the issue was not decided by the Appeals Board, the Court of Appeals went on to hold that under K.S.A. 44-510e(a), K.S.A. 44-516, and K.A.R. 51-9-6, an Administrative Law Judge in the exercise of sound discretion, has the authority to assess the cost of a neutral physician’s examination to a party. 23 Kan. App. 2d 92, Syl. ¶ 3.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Steven J. Howard dated June 27, 1995, that appointed a physician to perform an independent medical examination and assess the costs of the same to the respondent is affirmed as ordered by the Kansas Court of Appeals in the case of Winters v. GNB Battery Technologies, 23 Kan.App.2d 92, 927 P.2d 512 (1996).

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of April 1997.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

- c: James E. Martin, Overland Park
- John David Jurcyk, Lenexa
- Steven J. Howard, Administrative Law Judge
- Philip S. Harness, Director