

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, for preliminary hearing purposes the Appeals Board finds as follows:

This is an appeal from a preliminary hearing. K.S.A. 44-534a, as amended, grants jurisdiction to the Appeals Board to review the following issues on appeals from preliminary hearings: (1) whether the employee suffered an accidental injury; (2) whether the injury arose out of and in the course of employment; (3) whether notice and claim were timely made; and (4) whether certain defenses apply. Respondent and the Fund allege that the issues raised by claimant's appeal do not fall within one of those four listed categories. Therefore, K.S.A. 44-534a, as amended, does not empower the Appeals Board with jurisdiction to hear an appeal concerning total temporary disability and medical treatment at this stage of the proceeding.

K.S.A. 44-551(b), as amended, confers jurisdiction upon the Appeals Board to review an appeal from a preliminary hearing order entered pursuant to K.S.A. 44-534a, as amended, where it is alleged the administrative law judge exceeded his or her jurisdiction in making such order. An administrative law judge has the authority at preliminary hearing to grant or deny an award of medical and temporary total disability benefits. Therefore, absent a jurisdictional issue, K.S.A. 44-551(b), as amended, does not grant the Appeals Board jurisdiction at this juncture of the proceeding to review and reweigh the evidence concerning claimant's entitlement to medical treatment and temporary total disability benefits.

The claimant may preserve those issues for final award as provided by K.S.A. 44-534a(a)(2), as amended. That statute provides in pertinent part:

"Except as provided in this section, no such preliminary findings or preliminary awards shall be appealable by any party to the proceedings, and the same shall not be binding in a full hearing on the claim, but shall be subject to a full presentation of the facts."

The Administrative Law Judge found that claimant failed to sustain his burden of proof that the need for the medical treatment being sought is due to the alleged work-related accident as opposed to subsequent intervening activities. This finding gives rise to a jurisdictional issue of whether claimant's present injury arose out of and in the course of his employment with respondent. Previously, at an earlier preliminary hearing, the Administrative Law Judge also found that claimant had not proven a present need for the additional medical treatment. In so finding, the Administrative Law Judge rendered the jurisdictional issue moot for preliminary hearing purposes. Contrary to the assertions of counsel for respondent and the Fund, the Administrative Law Judge did not renew that finding at the May 14, 1997, preliminary hearing. The Administrative Law Judge's Order before the Appeals Board denied the requested preliminary hearing benefits due to a lack of proof of causation. The Appeals Board agrees with the Administrative Law Judge that claimant's subsequent activities were of a nature which would tend to aggravate claimant's carpal tunnel syndrome condition. Accordingly, there has not been a showing that claimant's present need for additional medical treatment is due to the work he did for respondent which ended in February 1995.

WHEREFORE, it is the finding, decision and order of the Appeals Board that the Order dated May 14, 1997, entered by Administrative Law Judge Bruce E. Moore, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of July 1997.

BOARD MEMBER

c: John J. Bryan, Topeka, KS
Gary R. Terrill, Overland Park, KS
Norman R. Kelly, Salina, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director