

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

**MARSHALL FRAZIER**  
Claimant

VS.

**STEEL & PIPE SUPPLY COMPANY, INC.**  
Respondent

AND

**COMMERCIAL UNION INSURANCE COMPANY**  
Insurance Carrier



Docket No. 201,049

**ORDER**

The respondent and insurance carrier request review of the Preliminary Hearing Order entered in this proceeding by Administrative Law Judge James R. Ward on July 17, 1995.

**ISSUES**

The Administrative Law Judge granted claimant's request for temporary total disability and medical benefits. During the preliminary hearing, the Administrative Law Judge excluded laboratory documents containing the results of a drug screen. The respondent and insurance carrier request the Appeals Board to review that finding and contend the Administrative Law Judge has abused his discretion by disallowing those documents.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record and the briefs of the parties, the Appeals Board finds:

The Appeals Board has limited authority and jurisdiction when reviewing findings from preliminary hearings. Either the disputed issue must be one of those specifically enumerated in K.S.A. 44-534a or the Administrative Law Judge must have exceeded his jurisdiction as required by K.S.A. 44-551, as amended by S.B. 59 (1995). The enumerated issues in the preliminary hearing statute, K.S.A. 44-534a, are: (1) whether the employee suffered an accidental injury; (2) whether the injury arose out of and in the course of the employee's employment; (3) whether notice is given or claim timely made; or (4) whether certain defenses apply.

Because the issue now before the Appeals Board is not one enumerated in the preliminary hearing statute, the question then becomes whether the Administrative Law Judge has exceeded his jurisdiction.

The Workers Compensation Act requires a definite foundation be laid before the results of a chemical test are admissible into evidence. See K.S.A. 44-501(d)(2). Therefore, there exists a question of fact whether that foundation has been laid. The Appeals Board lacks the jurisdiction and authority to review a preliminary hearing finding of an Administrative Law Judge regarding whether a party has proven a proper foundation for purposes of that hearing. As with other evidentiary questions at preliminary hearing, the Judge is charged with the responsibility of determining whether the evidence proffered has sufficient reliability, relevance and foundation to be considered, knowing that the hearing is summary in nature.

The Appeals Board finds the Administrative Law Judge did not act arbitrarily or capriciously in his exclusion of the proffered laboratory documents and, therefore, neither abused his discretion nor acted outside the scope of his jurisdiction. Based upon this finding, the Appeals Board does not have the jurisdiction and authority to review this Preliminary Hearing Order.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that this review should be, and hereby is, dismissed and that the Preliminary Hearing Order of Administrative Law Judge James R. Ward, entered in this proceeding on July 17, 1995, remains in full force and effect.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of September 1995.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

- c: Roger D. Fincher, Topeka, KS
- Kip A. Kubin, Overland Park, KS
- Administrative Law Judge, Topeka, KS
- Philip S. Harness, Director