

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

CAROLYN W. ELMORE
Claimant

VS.

DILLARD DEPARTMENT STORES
Respondent
Self-Insured

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Docket No. 201,345

ORDER

Claimant requested review of the Award entered at the March 4, 1999 Settlement Hearing by Special Administrative Law Judge Stacy Parkinson. The Appeals Board heard oral argument in Kansas City, Kansas, on August 17, 1999.

APPEARANCES

At oral argument before the Appeals Board, claimant appeared without counsel. John R. Emerson of Kansas City, Kansas, appeared for the respondent. Although James R. Shetler of Overland Park, Kansas, represented claimant at the March 4, 1999 Settlement Hearing, he wrote the Director of the Division of Workers Compensation on March 10, 1999, advising that he no longer represented claimant in this proceeding. But there is no order of withdrawal on file, however.

RECORD

The record consists of the March 4, 1999 Settlement Hearing and claimant's request for Appeals Board review filed with the Division of Workers Compensation on March 23, 1999.

ISSUES

This is a claim for a May 18, 1994 accident. The parties appeared before Special Administrative Law Judge Stacy Parkinson on March 4, 1999, to request approval of a lump sum settlement. The parties agreed to settle this claim with respondent paying claimant a lump sum of \$12,500, which represented an approximate 15 percent whole body functional impairment. After reviewing with claimant both the terms of settlement and her rights under the Workers Compensation Act, the Judge approved the settlement and entered an award reflecting the parties' agreement. Claimant now requests review of that award.

Neither party filed a brief explaining their contentions. At oral argument before the Appeals Board, claimant explained that she wanted to set aside the Award as she was stressed

when she attended the settlement hearing and felt that her only choice was to settle her claim. She also states that she has learned new information about her injury, and she now questions the services rendered by her attorney.

Conversely, the respondent contends that the request for Appeals Board review was not timely and, therefore, this appeal should be dismissed. In the alternative, it contends the settlement was fair and, therefore, it should be affirmed.

The only issues before the Board on this appeal are:

1. Did the claimant file a timely request for Appeals Board review?
2. If so, should the award be set aside?

FINDINGS OF FACT

After reviewing the entire record, the Appeals Board finds and concludes:

1. Judge Parkinson entered an award for a lump sum payment on March 4, 1999. Before entering that award, the Judge reviewed with Ms. Elmore the various rights that she was giving up in order to receive the lump sum settlement award, including the right to trial, the right to appeal, the right to review and modification, and the right to request additional medical treatment. Nonetheless, while under oath Ms. Elmore told the Judge that she desired to settle her claim based on the terms recited. The Judge determined the settlement was in the best interests of the claimant and entered an award based upon the terms of that settlement agreement.
2. Ms. Elmore filed a request for Appeals Board review on March 23, 1999.

CONCLUSIONS OF LAW

1. This appeal should be dismissed.
2. The review and modification statute provides that all awards, except those lump sum settlements approved by the Director or an administrative law judge, may be reviewed upon good cause shown.¹ The award may be modified if (1) it was obtained by fraud or undue influence, (2) it was made without authority or as the result of serious misconduct, (3) it was excessive or inadequate, or (4) the worker's functional impairment or work disability has changed.
3. The Workers Compensation Act requires that appeals of an administrative law judge's decision must be filed within 10 days of the effective date of the decision, excluding Saturdays, Sundays and legal holidays.

¹ K.S.A. 44-528(a).

. . . All final orders, awards, modifications of awards, or preliminary awards under K.S.A. 44-534a and amendments thereto made by an administrative law judge shall be subject to review by the board upon written request of any interested party within 10 days. Intermediate Saturdays, Sundays and legal holidays shall be excluded in the time computation.²

4. The request to review the March 4, 1999 award must be denied. It is a lump sum settlement and, therefore, not reviewable under the review and modification statute, K.S.A. 44-528. Therefore, this is an appeal and it is not timely under K.S.A. 1998 Supp. 44-551. Because the lump sum award was entered on March 4, 1999, its effective date was March 5, 1999.³ In counting the 10 days for filing an appeal, the first day is excluded.⁴ Because the request for review was not filed until March 23, 1999, the appeal was not timely as the last day to file was March 19, 1999. Therefore, this appeal should be dismissed.

AWARD

WHEREFORE, the Appeals Board dismisses claimant's appeal.

IT IS SO ORDERED.

Dated this ____ day of September 1999.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Carolyn W. Elmore, 22299 W. 303rd St., Paola, KS
- James R. Shetlar, Overland Park, KS
- John R. Emerson, Kansas City, KS
- Stacy Parkinson, Special Administrative Law Judge
- Philip S. Harness, Director

² K.S.A. 1998 Supp. 44-551(b)(1).

³ K.S.A. 44-525(a).

⁴ K.A.R. 51-17-1.