

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

MIKE P. MOORE)	
Claimant)	
VS.)	
)	Docket No. 201,986
C.E.D. ELECTRIC)	
Respondent)	
AND)	
)	
AETNA CASUALTY & SURETY)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier appeal from an Order entered by Administrative Law Judge Nelsonna Potts Barnes dated March 18, 1996.

ISSUES

Respondent asserts that the Administrative Law Judge exceeded her jurisdiction in entering an Order following a pre-hearing settlement conference held in accordance with K.S.A. 44-523(d).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After a complete review of the file and the arguments of the parties, the Appeals Board finds as follows:

Counsel for claimant filed a Certification for PreHearing Settlement Conference with the Division certifying his readiness for regular hearing. The Administrative Law Judge, thereupon, scheduled a pretrial settlement conference for March 18, 1996 pursuant to K.S.A. 44-523(d). On March 18, 1996 counsel appeared before the Administrative Law Judge. An informal conference was conducted upon which no record was taken. Accordingly, the Appeals Board is without a transcript of the proceedings of the pretrial

settlement conference. The pretrial settlement conference was unsuccessful and failed to resolve the claim. Thereafter, the Administrative Law Judge issued the following Order:

“NOW, on this 18th day of March, 1996, this matter comes on for Prehearing Settlement Conference. Claimant appears by and through his attorney, Steven R. Wilson. Respondent/Insurance carrier appears by and through its attorney, Anton Andersen appearing for Gregory D. Worth.

“WHEREUPON, the Court, after hearing the statements of counsel, being duly advised in the premises, and examining the exhibits, finds:

- “1. The Claimant met with personal injury by accident on June 17, 1994.
- “2. The Claimant's accidental injury arose out of and in the course of employment.
- “3. Timely notice was given to Respondent.
- “4. Timely written claim was made.
- “5. The relationship of employer/employee existed on the date of the accident.
- “6. The parties are covered by the Kansas Workers Compensation Act.
- “7. The insurance carrier on the date of the accident was Aetna Casualty and Surety Company.
- “8. The parties agreed upon an average weekly wage of \$274.32.
- “9. The parties have stipulated that the Claimant has a 4% permanent impairment of function to the body as a whole.
- “10. The remaining issues in the claim are nature and extent of disability.

“The above findings are hereby made the orders, decrees, and ruling of the Court.”

From the above Order, respondent appeals. It is the contention of the respondent that the Administrative Law Judge lacks any jurisdiction to enter an order based upon the discussions and statements of counsel at a pre-hearing settlement conference.

Before the Appeals Board can address the merits of this appeal, it must first determine whether it has jurisdiction over the subject matter at this juncture of the proceeding. After careful review of the arguments of the respondent, the Appeals Board finds and concludes that it does not have jurisdiction to review the subject Order at this time.

The Order of the Administrative Law Judge is interlocutory in nature. It is not a final order that can be reviewed pursuant to K.S.A. 44-551, as amended by S.B. 649 (1996). Neither is it an order from a hearing that came before the Administrative Law Judge pursuant to the preliminary hearing statute, K.S.A. 44-534a, as amended by S.B. 649 (1996), as preliminary hearing orders are limited to the issues of furnishing medical treatment and payment of temporary total disability compensation. The Order now before the Appeals Board is unique. It pertains to the stipulations typically taken at regular hearing pursuant to K.A.R. 51-3-8. However, the findings by the Administrative Law Judge are not characterized as pretrial stipulations. Instead, they are set forth as the findings and order by the court. Nevertheless, the Appeals Board considers said findings and order to be preliminary and not in the nature of a final award. It remains available to the respondent to seek withdrawal of any such stipulation during the pendency of the litigation on this claim before the Administrative Law Judge. As such, the Order now before the Appeals Board pertains to an interlocutory matter, a preliminary finding, over which the Administrative Law Judge retains the authority to adjudicate during the workers compensation proceeding up to the time of her final award in this matter.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Application for an Appeals Board Review filed by respondent and its insurance carrier, should be, and is hereby, dismissed.

IT IS SO ORDERED.

Dated this ____ day of May 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Steven R. Wilson, Wichita, KS
Gregory D. Worth, Lenexa, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director