

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

BRENDA L. NAFF)	
Claimant)	
VS.)	
)	Docket No. 204,405
DAVOL, INC.)	
Respondent)	
AND)	
)	
LUMBERMENS MUTUAL CASUALTY CO.)	
Insurance Carrier)	

ORDER

Respondent appeals from the preliminary hearing Order of Administrative Law Judge Floyd V. Palmer dated March 6, 1997, wherein the Administrative Law Judge granted the claimant ongoing medical treatment under the care of Dr. Lynn D. Ketchum, and his referrals, including surgery to her right arm.

ISSUES

Did the Administrative Law Judge exceed his jurisdiction and authority, subsequent to issuance of the original Award, in designating Dr. Lynn Ketchum as the authorized treating physician without allowing respondent the opportunity to provide a list of three physicians as required by K.S.A. 44-510(c)(1)?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes on before the Appeals Board subsequent to claimant's filing of a Form E-3 with the Director of Workers Compensation, requesting additional medical treatment following the Award of November 27, 1996. Claimant and respondent disagree regarding claimant's entitlement to and need for surgery to her right upper extremity. Respondent submitted the medical reports of Dr. Robert L. Coleman, a cosmetic and reconstructive hand surgeon and Dr. Chris D. Fevurly, an occupational medicine specialist, neither of whom recommend that claimant undergo surgery to her right upper extremity.

Claimant provided the medical report of Dr. Lynn D. Ketchum, who recommended that claimant undergo a release of the superficial branch of the radial nerve, an exploration of the right lateral humeral epicondyle and a release or repair of the tendon of the extensor carpi radialis brevis, depending upon the findings at the time of surgery. The issue before the Appeals Board is the interpretation of K.S.A. 44-510(c)(1) which states in pertinent part:

"If the director finds, upon application of an injured employee, that the services of the health care provider furnished as provided in sub-section (a) and rendered on behalf of the injured employee are not satisfactory, the director may authorize the appointment of some other health care provider. In any such case, the employer shall submit the names of three health care providers that are not associated in practice together. The injured employee may select one from the list who shall be the authorized treating health care provider."

The Appeals Board has addressed this issue on numerous occasions in the past. A split of opinion exists on the Appeals Board with the majority concluding that the appeal in this matter does not raise a jurisdictional issue subject to review. Based upon the Appeals Board logic set forth in Briceno v. Wichita Inn West, Docket No. 211,226 (February 27, 1997), and further in Rayman v. Spears Manufacturing, Docket No. 213,649 (May 12, 1997), the Appeals Board finds that the Administrative Law Judge has not exceeded his jurisdiction in appointing Dr. Lynn Ketchum as the authorized treating physician in this matter.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the appeal by the respondent should be dismissed as the Appeals Board is without jurisdiction to consider the issues raised and the Order of the Administrative Law Judge Floyd V. Palmer dated March 6, 1997, remains in effect as originally entered.

IT IS SO ORDERED.

Dated this ____ day of May 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

DISSENT

The undersigned Board Member dissents from the majority opinion, in this matter, based upon the logic contained in Chilargi v. W.H. Braums, Inc., Docket No. 198,309 (June 1996). This Board Member therein stated and continues to submit that an administrative law judge does not have the jurisdiction and authority to violate clear statutory requirements. In this case the respondent was providing ongoing conservative medical care to claimant through the services of Dr. Robert L. Coleman and Dr. Chris D. Fevurly. This was not a situation where claimant was being deprived of medical care, but merely one where there was dissatisfaction with the care being provided. This appears to sit squarely within the parameters of K.S.A. 44-510(c)(1) and the Administrative Law Judge, while he does have the authority to appoint doctors in certain circumstances, does not have the authority to circumvent the specific language of a legislative mandate.

BOARD MEMBER

c: Chris Miller, Lawrence, KS
Mark E. Kolich, Kansas City, KS
Floyd V. Palmer, Administrative Law Judge
Philip S. Harness, Director