

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

SCOTT SHAFFER
Claimant

VS.

ALAN'S PAVING
Respondent

AND

UNKNOWN
Insurance Carrier

AND

KANSAS WORKERS COMPENSATION FUND



Docket No. 206,889

ORDER

The Workers Compensation Fund appeals from a preliminary hearing Order of May 1, 1996, wherein Administrative Law Judge Shannon S. Krysl granted claimant temporary total disability compensation and authorized medical treatment with Dr. Jane Drazek. The Administrative Law Judge further ordered the Workers Compensation Fund to pay for this order as the respondent is currently uninsured.

ISSUES

Whether the Administrative Law Judge lacks the jurisdiction to order benefits pursuant to K.S.A. 44-505(a).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

The issue raised by the Workers Compensation Fund is identical to the issue raised at the preliminary hearing before Administrative Law Judge Shannon S. Krysl on February 15, 1996. At that time, the Administrative Law Judge ruled that the employer met the payroll requirements of K.S.A. 44-505(a)(2) and granted claimant benefits in the form of medical treatment and temporary total disability compensation. No appeal was taken from the Order.

The respondent and Fund have again raised the issue of payroll limits set forth in K.S.A. 44-505(a), but provided no additional evidence to support their position. The Fund attorney, in his letter of May 20, 1996 to the Appeals Board, acknowledged the issue currently before the Appeals Board as identical to that earlier decided. The Fund attorney also acknowledged that the earlier Order of the Appeals Board satisfies the issue raised in the later appeal and that the Fund considered it to be already determined. The Appeals

Board acknowledges the Fund attorney's willingness to concede the issue, but questions why this matter was not voluntarily dismissed.

Absent additional evidence regarding respondent's yearly payroll, the Appeals Board finds no reason to question the February 15, 1996 decision rendered by the Administrative Law Judge.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the appeal of the Workers Compensation Fund in this matter should be, and is hereby, dismissed.

IT IS SO ORDERED.

Dated this ____ day of July 1996.

BOARD MEMBER _____

c: Steven L. Foulston, Wichita, KS
Larry Linn, Wichita, KS
John C. Nodgaard, Wichita, KS
(OFFICE OF) Shannon S. Krysl, Administrative Law Judge
Philip S. Harness, Director