

bender blew up. The shoe from that hydraulic bender struck claimant in both knees. His first injury occurred on November 6, 1995. After a period of treatment for those injuries, claimant returned to work with a release which claimant testified was with restrictions. Claimant reinjured his knee on December 5, 1995 while climbing a ladder. He hit his left knee on the ladder and was referred for additional treatment.

On January 2, 1996 claimant complained to Dr. Gerald F. Dugan of problems with his right hip. Dr. Dugan also ordered an MRI for both left and right knees. Dr. Dugan gave claimant a full release to return to work on February 2, 1996. Claimant worked for three weeks and then, according to claimant, could not work because of problems with his knees, hip and back. Claimant testified his back started hurting toward the end of his employment.

Respondent stipulated, at the outset of the preliminary hearing, that claimant suffered accidental injuries arising out of and in the course of his employment on November 6, 1995 and again on December 5, 1995. Respondent has denied that the complaints regarding his hip or his low back arose out of claimant's employment. On this basis respondent argues that the issue on appeal is whether all of claimant's injuries, specifically whether the injuries for which the current preliminary hearing benefits are ordered, are injuries which arose out of and in the course of his employment.

The Appeals Board has limited jurisdiction on appeals from preliminary orders. K.S.A. 44-551, as amended by S.B. 649 (1996). Jurisdiction includes jurisdiction to review findings relating to whether claimant's injury arose out of and in the course of his employment. K.S.A. 44-534a, as amended by S.B. 649 (1996). Although respondent has attempted to characterize the issue in this appeal as whether claimant's injuries arose out of and in the course of his employment, the Appeals Board concludes that the issue in the preliminary hearing was, in substance, whether claimant was temporarily totally disabled and in need of medical benefits. Questions concerning the cause of claimant's low back and hip complaints were not the focus of the testimony or the dispute at the preliminary hearing. In substance, the dispute at that hearing is described by respondent's counsel when he argues that claimant had been released to return to work and respondent was not provided any evidence to the contrary. The issue was the nature and extent of claimant's disabilities and specifically whether the injuries rendered him temporarily totally disabled and in need of medical treatment.

The record includes a report relating to the knee injuries only from Dr. John A. Pazell, who concludes that the claimant has a torn median meniscus and recommends an arthroscopy. He also states that the return to work as an electrician would be a hazard to both claimant and the company for which he works. In addition, the record contains claimant's own testimony expressing his belief that he is unable to continue to work. Whether this evidence is sufficient to support the Order, in light of the previous several releases to return to work, is an issue within the jurisdiction of the Assistant Director and his finding on that issue is not subject to appeal.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the respondent's Application for Review should be dismissed and the preliminary hearing Order entered by Assistant Director Brad Avery on May 16, 1996 remains in effect as originally entered.

IT IS SO ORDERED.

ANDREW M. McGEE, JR.

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DOCKET NOS. 206,931 & 210,663

Dated this ____ day of July 1996.

BOARD MEMBER

c: Mark E. Kolich, Kansas City, KS
Wade A. Dorothy, Lenexa, KS
Brad E. Avery, Assistant Director
Philip S. Harness, Director