

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

STEVEN ALAN BANH)	
Claimant)	
VS.)	
)	Docket No. 210,271
THE BOEING COMPANY)	
Respondent)	
AND)	
)	
KEMPER INSURANCE COMPANIES)	
Insurance Carrier)	

ORDER

Claimant requested Appeals Board review of the April 14, 1997, preliminary hearing Order entered by Administrative Law Judge Jon L. Frobish.

ISSUES

Claimant asserts that the Administrative Law Judge exceeded his jurisdiction when he failed to order the respondent to provide ongoing medical treatment for claimant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

The original preliminary hearing proceeding was held in this case on October 31, 1996. The claimant requested preliminary benefits of payment of outstanding medical expenses, ongoing medical treatment, and temporary total disability payments. Following that hearing, the Administrative Law Judge entered an Order dated October 31, 1996, that denied claimant's request for preliminary benefits, finding that claimant failed to prove that his asthmatic condition was work related. The claimant timely

appealed the preliminary hearing Order to the Appeals Board. In an Order dated December 27, 1996, the Appeals Board reversed the Administrative Law Judge, finding the claimant had proved it is more likely than not that his asthmatic condition was related to his work environment. The Appeals Board remanded the matter to the Administrative Law Judge for further findings in regard to claimant's request for preliminary benefits.

The Administrative Law Judge followed with an Order dated January 6, 1997, that again denied claimant's preliminary benefits request for temporary total disability compensation and the appointment of Daniel C. Doornbos, M.D., as claimant's authorized treating physician. Further, the Administrative Law Judge reserved a decision on the payment of outstanding medical expenses until final award. The Administrative Law Judge also added to this order a statement that the case was ready for pretrial conference and a regular hearing. The claimant, again, timely appealed this preliminary hearing Order to the Appeals Board. In an Order dated March 20, 1997, the Appeals Board found it did not have jurisdiction, at this point in the proceedings, to review the Administrative Law Judge's denial of temporary total disability benefits or his decision not to decide whether the outstanding medical expenses should be paid until final award. However, the Appeals Board found the Administrative Law Judge's decision that denied claimant ongoing medical treatment should be remanded to the Administrative Law Judge for a statement of the reason for the denial.

The Administrative Law Judge responded by entering the Order that is the subject of this appeal. The Order states that ongoing medical treatment was not denied in his previous Order as he simply did not authorize Dr. Doornbos as the treating physician. Claimant has again appealed this Order to the Appeals Board asserting that the Administrative Law Judge exceeded his jurisdiction by not ordering ongoing medical treatment for claimant's work-related asthmatic condition.

The preliminary hearing order entered by an administrative law judge is reviewable by the Appeals Board, if one or more of the jurisdictional issues listed in K.S.A. 44-534a, as amended, are raised. The Appeals Board also has authority to review a preliminary hearing order of an administrative law judge if a party alleges the administrative law judge exceeded his or her jurisdiction in granting or denying the relief requested. See K.S.A. 44-551(b)(2)(A), as amended. K.S.A. 44-534a, as amended, specifically gives the administrative law judge authority to grant or deny claimant's request for medical compensation or temporary total disability compensation pending the conclusion of a full hearing on the matter.

In this case, the respondent argues that the Administrative Law Judge's preliminary hearing Order that denied medical benefits to the claimant should be affirmed by the Appeals Board. The respondent asserts that the Appeals Board should not substitute its judgment for the opinion of the Administrative Law Judge unless he abused his discretion in denying the preliminary hearing benefit request. The respondent further contends that the Administrative Law Judge did not abuse his discretion in this case.

In contrast, the claimant argues that the Appeals Board should reverse the decision of the Administrative Law Judge and grant claimant's request for ongoing medical treatment. Claimant contends that the Administrative Law Judge's denial of claimant's request for ongoing medical treatment is essentially a finding, contrary to the Order of the Appeals Board, that claimant's asthmatic condition is not work related.

Pursuant to K.S.A. 44-551(b)(1), as amended, all acts, findings, and decisions made by the Administrative Law Judge are subject to review by the Appeals Board. This statute also gives the Appeals Board authority during such a review to grant or refuse compensation.

The Appeals Board has again thoroughly reviewed the transcript of the preliminary hearing held on October 31, 1996, and exhibits admitted therein. The Appeals Board concludes that claimant's testimony coupled with the medical records admitted into evidence support the conclusion that claimant's asthmatic condition was either caused, aggravated, or accelerated by his working environment. Furthermore, claimant's testimony and medical records admitted into evidence prove that claimant is in need of ongoing medical treatment for his asthmatic condition. The evidence that has been presented by the claimant in this preliminary hearing is uncontradicted by the respondent. Additionally, the respondent has not shown claimant's evidence to be untrustworthy. Uncontradicted evidence which is not improbable or unreasonable cannot be disregarded unless it is shown to be untrustworthy. See Demars v. Rickel Manufacturing Corporation, 223 Kan. 374, Syl. ¶ 5, 573 P.2d 1036 (1978).

The Appeals Board is cognizant of the fact that the Administrative Law Judge has the authority to grant or deny claimant's request for medical benefits at a preliminary hearing. Nevertheless, the Appeals Board finds under the facts and circumstances of this case that the Administrative Law Judge is simply disregarding the decision of the Appeals Board that reversed the Administrative Law Judge's preliminary hearing Order dated October 31, 1996, and found claimant's claim compensable. Therefore, the Appeals Board concludes that the Administrative Law Judge exceeded his jurisdiction in this particular case when he failed to order ongoing medical treatment for claimant's work-related asthmatic condition. The record of evidence at this point in the proceeding supports a finding that claimant's asthmatic condition is work related and that he is in need of ongoing medical treatment. Accordingly, the Appeals Board orders respondent to provide ongoing medical treatment for claimant's asthmatic condition through his treating physician, Dr. Daniel C. Doornbos, and authorized referrals therefrom.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Jon L. Frobish dated April 14, 1997, is reversed and the respondent is ordered to provide ongoing medical treatment through claimant's treating physician, Dr. Daniel Doornbos, and authorized referrals therefrom.

IT IS SO ORDERED.

Dated this ____ day of July 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Brian D. Pistotnik, Wichita, KS
Frederick L. Haag, Wichita, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director