

Claimant filed an Application for Preliminary Hearing on July 11, 1996, requesting temporary total disability and medical benefits for a work-related injury of August 17, 1995. Claimant injured her low back while lifting a table with other employees at work.

Claimant was placed under the treatment of Dr. Neonilo A. Tejano, M.D., an orthopedic surgeon at the Hertzler Clinic, P.A., in Halstead, Kansas. Dr. Tejano performed a decompression laminectomy L4-5, L5-S1 secondary to a bulging disc at both levels. Dr. Tejano opined that claimant also required a fusion at L4-S1. However, a fusion was not possible because claimant, at that time, was too obese.

A preliminary hearing was scheduled in this matter for September 19, 1996. The Administrative Law Judge held a pre-hearing conference where no testimony was taken and no record of the proceedings was transcribed. As a result of that pre-hearing conference, the Administrative Law Judge ordered the claimant to submit to an independent medical examination appointing Dr. David A. Peterson, an orthopedic surgeon in Salina, Kansas, to conduct such examination. The Administrative Law Judge afforded the parties 10 days after receipt of the IME report to submit written comments in support of their positions on claimant's preliminary hearing requests.

Dr. Peterson examined the claimant and set forth his findings in a report dated October 18, 1996. It was Dr. Peterson's opinion that claimant had sustained an 11 percent permanent functional impairment as a result of a work-related low back injury and subsequent surgery. Dr. Peterson did not recommend further surgery. His treatment recommendation was for the claimant to continue to lose weight, continue strengthening exercises, and pool therapy.

Claimant responded to Dr. Peterson's independent medical report with a request for the Administrative Law Judge to appoint a treating physician, preferably Dr. Tejano, to supervise the weight loss program combined with exercise therapy. The respondent's attorney also responded to Dr. Peterson's independent medical examination report and notified the Administrative Law Judge in a letter dated November 5, 1996, that the respondent agreed with the determination by Dr. Peterson.

The Administrative Law Judge in the preliminary hearing Order dated November 5, 1996, which is the subject of this appeal, denied claimant's request for surgical treatment and temporary total disability benefits. He further ordered the respondent to designate the treating physician to administer and monitor a weight loss program for a period not to exceed 60 days. The respondent has appealed that Order and argues that claimant was obese prior to her work-related back injury and continues to be obese. The respondent further contends claimant's need for weight loss has nothing to do with a personal injury by accident arising out of or in the course of claimant's employment with the respondent.

The Appeals Board finds the structured weight loss program supervised by a treating physician is authorized medical treatment reasonably necessary to cure and relieve claimant from the effects of her work-related injury. The treatment program was a recommendation by a physician appointed to perform an unbiased independent medical examination of the claimant. The preliminary hearing statute, K.S.A. 44-534a, as amended, grants the Administrative Law Judge authority to award medical compensation pending a full hearing on the claim. Accordingly, the Appeals Board finds that the Administrative Law Judge did not exceed his authority when he ordered the respondent to provide medical treatment in the form of a weight loss program supervised by a treating physician. The Appeals Board concludes that the respondent's Request for Board Review should be dismissed because the Administrative Law Judge did not exceed his jurisdiction.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that this appeal should be, and is hereby, dismissed and the preliminary hearing Order of Administrative Law Judge Bruce E. Moore dated November 5, 1996, remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of December 1996.

BOARD MEMBER

c: James G. Chappas, Jr., Topeka, KS
Anton C. Andersen, Kansas City, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director