

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

THOMAS C. LASSLEY)	
Claimant)	
VS.)	
)	Docket No. 214,621
STATE CHEMICAL MANUFACTURING CO.)	
Respondent)	
AND)	
)	
FIREMAN'S FUND INSURANCE CO.)	
Insurance Carrier)	

ORDER

Claimant appeals from the preliminary hearing Order of Administrative Law Judge Jon L. Frobish dated July 16, 1998, wherein the Administrative Law Judge denied claimant benefits finding claimant not entitled to additional medical treatment to his lumbar spine.

ISSUE

Did the Administrative Law Judge exceed his jurisdiction by denying post award medical benefits?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

Claimant originally suffered accidental injury on June 6, 1996, when he was involved in an automobile accident while driving on a street in Wichita, Kansas. The matter was deemed compensable by the parties and an agreed running award was entered into on February 26, 1997, for a 7 percent whole body functional impairment.

It was acknowledged by the parties that claimant originally received medical treatment to his neck, shoulders, upper back and lumbar spine. However, the agreed

running award entered into on February 26, 1997, specifically detailed personal injury by accident to claimant's neck and upper trapezius muscles. There was no mention in the running award of claimant's low back. In addition, the November 25, 1996, medical report of Dr. Lawrence R. Blaty discussed claimant's symptoms along the rhomboids, into his neck and upper trapezius. There was no mention of the lumbar spine in Dr. Blaty's report.

Claimant filed a second E-3 on January 2, 1998, requesting additional medical treatment. When the parties first came to preliminary hearing on March 26, 1998, the request was for medical to claimant's upper back, neck and shoulders. The second preliminary hearing was held on July 16, 1998, at which time claimant requested treatment to his lumbar spine also.

The Administrative Law Judge, in the preliminary order, found that the original running award in 1997 contemplated treatment in the neck and the upper trapezius with no mention of the low back thus constituting a waiver of the low back claim. The Administrative Law Judge went on to deny treatment for claimant's low back, noting that claimant had not argued the low back was a natural and probable consequence of the original injury, but was instead a part of the original injury which was settled in the running award in February 1997.

Appeals from preliminary hearings are limited under both K.S.A. 1996 Supp. 44-551 and K.S.A. 1997 Supp. 44-534a. K.S.A. 1996 Supp. 44-551 provides that the Appeals Board shall not review a pending preliminary hearing order entered unless it is alleged that the Administrative Law Judge exceeded his jurisdiction in granting or denying the requested relief. Claimant has alleged that the Administrative Law Judge has exceeded his jurisdiction by denying medical benefits.

K.S.A. 1997 Supp. 44-534a gives an administrative law judge the specific authority to decide questions dealing with claimant's right to medical treatment. K.S.A. 1997 Supp. 44-534a allows appeals from preliminary hearings only when dealing with certain specific jurisdictional issues including:

- (A) Whether the employee suffered an accidental injury;
- (B) Whether the injury arose out of and in the course of the employee's employment;
- (C) Whether notice is given or claim timely made;
- (D) Whether certain defenses apply.

The claimant's need for medical treatment is not one of the jurisdictional issues listed under K.S.A. 1997 Supp. 44-534a.

As the entitlement to medical care is an issue specifically granted an administrative law judge at the preliminary hearing under K.S.A. 1997 Supp. 44-534a, the Appeals Board finds that the Order of Administrative Law Judge Jon L. Frobish dated July 16, 1998, remains in full force and effect as the Appeals Board does not have jurisdiction to consider the specific issue raised by claimant at this time.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Jon L. Frobish dated July 16, 1998, remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of September 1998.

BOARD MEMBER

c: David H. Farris, Wichita, KS
Richard A. Boeckman, Great Bend, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director