BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

CARLA TURKIN	)	
Claimant	)	
VS.	)	
	)	Docket No. 216,200
EZ SHOP	)	
Respondent	)	
AND	)	
	)	
NATIONAL UNION FIRE INSURANCE COMPANY	)	
OF NEW YORK	)	
Insurance Carrier	)	

ORDER

Respondent appeals from a January 27, 1997 preliminary hearing Order For Additional Medical Treatment entered by Administrative Law Judge Floyd V. Palmer.

ISSUES

By his Order For Additional Medical Treatment, Judge Palmer authorized Dr. William Lentz to provide medical treatment to claimant, including treatment for anxiety and depression. Respondent appealed, alleging the Administrative Law Judge exceeded his jurisdiction in:

(1) Granting medical treatment for claimant with Dr. William Lentz despite the fact that ongoing authorized treatment was being provided by respondent with Dr. Dick A. Geis.

(2) Granting medical treatment for a psychological condition for which claimant has not met her burden of proving a causal relationship to the alleged work-related injury.

(3) Admitting into evidence medical records which were not provided to the respondent prior to the preliminary hearing.

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:

A preliminary hearing was held October 23, 1996 on claimant's request for medical treatment and a change of physician. On November 8, 1996, the Administrative Law Judge ordered medical treatment be provided by a new authorized physician. Respondent was given ten days to submit a list of three orthopedists from which claimant could choose. In addition, claimant was referred to Dr. Harold M. Voth for a psychiatric evaluation and recommendation concerning the need for further psychiatric treatment pursuant to K.S.A. 44-516. Thereafter, on December 19, 1996, the Administrative Law Judge issued a Nunc Pro Tunc Order For Medical Treatment clarifying that respondent was only being ordered to pay for claimant's prior treatment with Dr. Lentz and that those expenses were to be treated as authorized medical only through the date of the Judge's Order. Respondent did not appeal from either of those Orders.

The January 27, 1997 Order For Additional Medical Treatment from which respondent appeals was entered by the Administrative Law Judge following his receipt of the independent medical examination report by Dr. Voth. In his report dated December 11, 1996, Dr. Voth recommended claimant continue with her current medication. That medication was prescribed by Dr. Lentz. Judge Palmer's January 27, 1997 Order authorized Dr. Lentz to continue treating claimant for "anxiety depression," including appropriate medication as recommended by Dr. Voth.

K.S.A. 44-551(b)(2)(A) provides that the Appeals Board shall not review a preliminary hearing order entered by an administrative law judge unless it is alleged that the administrative law judge exceeded his or her jurisdiction in granting or denying the relief requested.

K.S.A. 44-534a allows appeals from a preliminary hearing for the specific jurisdictional issues enumerated therein.

The Appeals Board has ruled on numerous occasions that the providing of medical treatment and the ordering of same falls within the power of an administrative law judge at a preliminary hearing. In the instant case, the Administrative Law Judge determined, through his Order, the course of ongoing medical treatment for claimant. The Administrative Law Judge did not exceed his jurisdiction in making such order. Further, this appeal does not give rise to an issue listed in K.S.A. 44-534a.

Respondent also contends that claimant failed to establish that claimant's psychological or psychiatric injury arose out of and in the course of her employment. The Appeals Board has previously held that this is not an issue which the Appeals Board has jurisdiction to review on an appeal from a preliminary hearing order. This is so because the

question presented does not give rise to the issue of whether the injury arose out of and in the course of employment but, instead, whether the psychological injury is traceable to an injury which arose out of and in the course of employment, which is a question concerning the nature and extent of the injury. *See* Cunningham v. Michael E. Michael, D.D.S., Docket No. 177,523 (April 20,1994). Respondent did not appeal the issue of whether the original back injury arose out of and in the course of employment. Therefore, the decision to grant psychological or psychiatric treatment as part of this back injury claim is an issue concerning the nature and extent of injury and which also concerns medical treatment. Those are issues not subject to review on an appeal from a preliminary hearing order.

The Appeals Board has also held that an issue concerning whether the administrative law judge must, in any given set of circumstances, authorize treatment only from a list of three physicians designated by respondent is not a question which goes to the jurisdiction of the administrative law judge. The administrative law judge may decide this question and has the jurisdiction to decide it wrongly. *See* Briceno v. Wichita Inn West, Docket No. 211,226 (February 27, 1997).

Respondent's objection to the admission of certain medical records at the November 8, 1996 preliminary hearing is not properly before the Appeals Board. Respondent did not appeal the Administrative Law Judge's Order or Nunc Pro Tunc Order from that hearing. The January 27, 1997 Order For Additional Medical Treatment from which this appeal was taken is based upon the independent medical examination report of Dr. Voth. It is not an order from the November 8, 1996 preliminary hearing at which the offending medical records were admitted. Hence, the issue as to the admissibility of those records is determined not to be a part of this appeal.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that this appeal should be, and is hereby, dismissed, and the January 27, 1997, Order For Additional Medical Treatment entered by Administrative Law Judge Floyd V. Palmer remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of April 1997.

_____
BOARD MEMBER

c: Frederick J. Patton II, Topeka, KS
Matthew S. Crowley, Topeka, KS
Floyd V. Palmer, Administrative Law Judge
Philip S. Harness, Director