



**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

A preliminary hearing was held in this matter on October 8, 1996. Respondent did not appear. An Order was entered by the Administrative Law Judge for temporary total disability benefits to be paid at the rate of \$210 per week beginning July 24, 1996, and continuing until claimant is released to substantial and gainful employment. J. Stanley Jones, M.D., was authorized to treat claimant. Respondent appealed that Order but did not file a brief with the Appeals Board. The Appeals Board has no indication as to which findings and conclusions by the Administrative Law Judge respondent seeks reviewed. The only indication the Appeals Board has as to the issues respondent raises as its issues on appeal is from the respondent's application for review. The issues as stated by respondent are quoted above. The Appeals Board has no other information concerning what defenses pursuant to K.S.A. 44-534a respondent raises, nor do we know in what way it is alleged the Administrative Law Judge exceeded his jurisdiction.

Respondent did not appear at the preliminary hearing nor were they represented by counsel. The Administrative Law Judge found that notice of hearing was given to respondent. There is no indication that respondent is challenging that notice. The record from the October 8, 1996, preliminary hearing contains the testimony of claimant together with several exhibits admitted at that hearing. Claimant testified that he suffered a work-related injury, that he gave notice of said injury to his employer and that he is in need of medical treatment for said injury. Claimant presented a report from Dr. Jones stating that claimant is incapable of working at this time. In addition, claimant testified that his employer advised him that they were not capable of providing him with accommodated work. The order for temporary total disability compensation and medical treatment appears appropriate on its face.

"The burden is upon the appellant to designate a record sufficient to present its points to the appellate court and to establish claimed error." Plummer Development, Inc. v. Prairie State Bank, 248 Kan. 664, Syl. ¶ 4, 809 P.2d 1216 (1991). Furthermore, issues not raised before the Administrative Law Judge cannot be raised for the first time on appeal. To hold otherwise would place the Appeals Board in the position of attempting to decide an issue based upon an incomplete record and would deny claimant the benefit of evidence that may have been presented if he had been aware that there was a dispute as to such issue at preliminary hearing. See Scammahorn v. Gibraltar Savings & Loan Assn., 197 Kan. 410, 416 P.2d 771 (1966).

We find no evidence of an issue involving a certain defense having been raised before the Administrative Law Judge. Likewise, there is no evidence that the Administrative Law Judge exceeded his jurisdiction in granting claimant the relief requested at the preliminary hearing. This appeal appears to be totally without merit.

**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 October 8, 1996, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of December 1996.

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BOARD MEMBER

c: Robert E. Burchfiel, Wichita, KS  
P. Kelly Donley, Wichita, KS  
Jon L. Frobish, Administrative Law Judge  
Philip S. Harness, Director