

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

HENRY DAVIS)	
Claimant)	
VS.)	
)	Docket No. 217,376
MODERN MAINTENANCE)	
Respondent)	
AND)	
)	
CNA INSURANCE COMPANIES)	
Insurance Carrier)	

ORDER

Respondent appeals from a preliminary hearing Order entered by Administrative Law Judge Floyd V. Palmer. The Order, entered July 16, 1997, granted claimant's request for temporary total disability benefits.

ISSUES

Respondent raises and asserts the Appeals Board has jurisdiction of the following two issues:

- (1) Whether the Administrative Law Judge erred in granting benefits when the evidence establishes claimant had a subsequent intervening accidental injury which necessitated an increase in his restrictions.
- (2) Whether claimant is entitled to temporary total disability benefits when he has refused a position offered by respondent which would have accommodated claimant's work restrictions.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes the Order by the Administrative Law Judge should be affirmed.

The Appeals Board first finds that it has jurisdiction to review the findings and conclusions relating to whether claimant suffered a subsequent intervening accident. This argument is, at least in part, an argument that the injury for which claimant seeks benefits did not arise out of and in the course of his employment. The issue, therefore, is one of the jurisdictional issues listed in K.S.A. 44-534a, as amended.

The Board concludes the injuries for which claimant now seeks benefits did arise out of and in the course of his employment. There is no dispute that claimant suffered an injury at work for respondent on October 10, 1996. That injury was an acute exacerbation of a right inguinal hernia. Respondent contends, however, that claimant suffered a subsequent intervening accident in the course of work for another employer after he left his employment for respondent.

The evidence indicates claimant worked for Hollywood Theatre in Lawrence, Kansas, for seven or eight days after the October 10, 1996, injury and after he had been released with restrictions by his treating physician, Chris D. Fevurly, M.D. The evidence also establishes that while working at Hollywood Theatre he experienced symptoms which Dr. Fevurly described in his records as a recurrence of symptoms. Dr. Fevurly then decreased the amount of weight he felt claimant should be lifting. However, the evidence does not, in our view, establish that claimant suffered any new or additional permanent injury in the course of his employment at Hollywood Theatre. The evidence only established that his injury caused him problems in his work at Hollywood Theatre.

The Appeals Board concludes that it does not have jurisdiction, at this stage of the proceedings, to review the findings of the second issue, namely whether claimant should be receiving temporary total disability benefits after having been made an offer of accommodated employment. Claimant testified that he did not accept the offer because he did not have gasoline money to pay for travel to and from the job. He also testified that he could not have done the job because of the pain he was experiencing. Finally, the record indicates that respondent could not have accommodated the most recent restrictions against lifting more than 10 pounds. The Administrative Law Judge found credible the claimant's testimony that travel would have caused too much pain. On that basis he concluded claimant was entitled to additional temporary total disability benefits. This finding is not a finding on jurisdictional issue. The Appeals Board, therefore, concludes that the appeal, as to this issue, should be dismissed.

WHEREFORE, the Appeals Board finds that the Order by Administrative Law Judge Floyd V. Palmer, dated July 16, 1997, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of September 1997.

BOARD MEMBER

c: Donald G. Strole, Lawrence, KS
Timothy G. Lutz, Overland Park, KS
Floyd V. Palmer, Administrative Law Judge
Philip S. Harness, Director