

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

<b>RICKY R. REMBOLD</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 223,206
<b>R. VICKERS TRUCKING, INC.</b>	)	
Respondent	)	
AND	)	
	)	
<b>ULICO CASUALTY COMPANY</b>	)	
Insurance Carrier	)	

**ORDER**

Respondent requested Appeals Board review of a preliminary hearing Order entered by Assistant Director Brad E. Avery on July 30, 1997.

**ISSUES**

In claimant's brief filed before the Appeals Board, he asked the Appeals Board to first answer the following question:

- (1) Does the Appeals Board have jurisdiction to review the subject preliminary hearing Order?

The respondent framed the issues in its brief before the Appeals Board as follows:

- (2) "Whether the light duty position provided to the Claimant by the Respondent was adequate and sufficient to suspend temporary total disability benefits from July 6, 1997 to the present."
- (3) "Whether the Claimant is entitled to a change of physician."

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

At the preliminary hearing, the claimant sought preliminary benefits of temporary total disability compensation and a change in claimant's treating physician. The Assistant Director granted claimant's requests and ordered respondent to pay temporary total disability compensation and to provide claimant with three names of other qualified physicians for claimant to select another treating physician.

The claimant argues that the Appeals Board does not have jurisdiction to review this preliminary hearing Order because neither of the issues raised by the respondent are jurisdictional issues listed in K.S.A. 44-534a, as amended, that allows the Appeals Board to review a preliminary hearing order. The first issue raised by the respondent questioned the administrative law judge's authority to grant claimant temporary total disability compensation benefits. The second issue raised questioned the administrative law judge's authority to order a change in claimant's treating physician. The Appeals Board has had other occasions to address this issue and has found that a request for a change in physician is furnishing of medical compensation as contained in K.S.A. 44-534a, as amended.

The respondent makes the argument that the evidence in the preliminary hearing record proves following claimant's accident that the respondent provided claimant with a light duty position that he could perform within his permanent restrictions. The respondent contends that this is a certain defense to the payment of temporary total disability benefits. Therefore, the Appeals Board has jurisdiction to review this preliminary hearing issue because whether certain defenses apply is a jurisdictional issue listed in the preliminary hearing statute. See K.S.A. 44-534a, as amended. The Appeals Board on other occasions has had the opportunity to determine what a certain defense is as the term is used in K.S.A. 44-534a, as amended. After reviewing the other jurisdictional issues listed, the Appeals Board has concluded that a certain defense as it applies to K.S.A. 44-534a, as amended, is only a defense that goes to the compensability of the claim. For example, defenses raised by the respondent as to intoxication and willful failure to use a guard as provided by K.S.A. 1996 Supp. 44-501(d)(1)(2), are certain defenses that, if disputed, would give the Appeals Board jurisdiction to review a preliminary hearing order. Therefore, the Appeals Board finds that whether or not claimant could perform light duty within his permanent restrictions is not a certain defense as contemplated by K.S.A. 44-534a, as amended.

The Appeals Board concludes that it does not have jurisdiction to review this preliminary hearing Order because the issues raised by the respondent are issues that relate only to temporary total disability compensation and the furnishing of medical compensation. The preliminary hearing statute found at K.S.A. 44-534a, as amended,

gives the administrative law judge authority to grant or deny both those issues pending the conclusion of a full hearing on the claim. Therefore, the Appeals Board finds that the appeal of the respondent should be dismissed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the respondent's appeal is dismissed and the Order of Assistant Director Brad E. Avery dated July 30, 1997, remains in full force and effect.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of September 1997.

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BOARD MEMBER

c: Leah Brown Burkhead, Mission, KS  
Joseph C. McMillan, Kansas City, MO  
Julie A. N. Sample, Administrative Law Judge  
Brad E. Avery, Assistant Director  
Philip S. Harness, Director