

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

|                                           |   |                    |
|-------------------------------------------|---|--------------------|
| <b>CLYDELL BUTTS</b>                      | ) |                    |
| Claimant                                  | ) |                    |
| VS.                                       | ) |                    |
|                                           | ) | Docket No. 230,574 |
| <b>AIR PRODUCTS &amp; CHEMICALS, INC.</b> | ) |                    |
| Respondent                                | ) |                    |
| AND                                       | ) |                    |
|                                           | ) |                    |
| <b>INSURANCE CO. STATE OF PENN.</b>       | ) |                    |
| Insurance Carrier                         | ) |                    |

**ORDER**

Claimant appealed the August 20, 1998, Order entered by Administrative Law Judge John D. Clark.

**APPEARANCES**

The claimant appeared by and through his attorney, W. Walter Craig of Wichita, Kansas. The respondent and its insurance carrier appeared by their attorney, D. Steven Marsh of Wichita, Kansas. There were no other appearances.

**RECORD AND STIPULATIONS**

The record consisted of the transcript of the proceedings held before Administrative Law Judge John D. Clark on August 20, 1998, and the documents contained in the Division of Workers Compensation administrative file.

**ISSUES**

Claimant's Motion for Discovery came on for hearing before the Administrative Law Judge on August 20, 1998. In an Order dated August 20, 1998, that it is the subject of this appeal, the Administrative Law Judge denied claimant's motion.

Claimant seeks Appeals Board review of that Order contending the Administrative Law Judge should have reviewed the unedited insurance adjustor's file "in camera" to determine whether the deleted information was or was not subject to the attorney/client privilege as argued by the respondent's insurance carrier.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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

The Appeals Board concludes it does not have jurisdiction to review the Administrative Law Judge's August 20, 1998, Order. This is not an appeal from an order entered pursuant to the preliminary hearing statute found at K.S.A. 1997 Supp. 44-534a. An appeal from a preliminary hearing either must allege that the Administrative Law Judge exceeded his or her jurisdiction or one of the jurisdictional issues listed in K.S.A. 1997 Supp. 44-534a must be raised. This appeal is a result of a hearing held, prior to the final award, on a motion filed by claimant requesting the Administrative Law Judge to conduct an "in camera" review of the unedited insurance adjustor's file. For the Appeals Board to have jurisdiction to review this Order at this juncture of the proceeding, the appeal would have to be brought pursuant to K.S.A. 1997 Supp. 44-551(b)(1).

The 1997 Kansas legislature amended K.S.A. 1996 Supp. 44-551(b)(1). Effective July 1, 1997, the amendment changed the jurisdiction of the Appeals Board from reviewing "[a]ll acts, findings, awards, decisions, rulings or modifications of findings or awards made by an administrative law judge . . ." to review of "[a]ll final orders, awards, modifications of awards, or preliminary awards under K.S.A. 44-534a and amendments thereto made by an administrative law judge . . ."

The Appeals Board finds the Order, which is the subject of this appeal, is not a final order, award, modification of award, or a preliminary hearing award as contemplated by K.S.A. 1997 Supp. 44-551(b)(1). The Appeals Board concludes the Order is an interlocutory order made by the Administrative Law Judge during the litigation of a workers compensation case. It is an order that the Administrative Law Judge has the authority to make during the trial process, and the Appeals Board lacks jurisdiction to review the order until it is contained in a final order or award.

#### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the claimant's appeal from the August 20, 1998, Order entered by Administrative Law Judge John D. Clark, should be, and is hereby, dismissed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of October 1998.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: W. Walter Craig, Wichita, KS  
D. Steven Marsh, Wichita, KS  
John D. Clark, Administrative Law Judge  
Philip S. Harness, Director