

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

DIANA M. COOL)	
Claimant)	
VS.)	
)	Docket No. 230,610
THE BOEING COMPANY)	
Respondent)	
AND)	
)	
INSURANCE CO. STATE OF PENNSYLVANIA)	
Insurance Carrier)	

ORDER

Respondent appeals from a preliminary hearing Order entered by Administrative Law Judge John D. Clark on February 19, 1998.

ISSUES

The two issues on appeal are as follows: (1) whether claimant suffered accidental injury arising out of and in the course of her employment; and (2) whether claimant gave timely notice as required by K.S.A. 44-520.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Administrative Law Judge ordered an independent medical examination of claimant by Dr. Robert A. Rawcliffe.

The jurisdiction of the Board is limited in considering an appeal from a preliminary hearing order. The Board may review only allegations that the administrative law judge exceeded his jurisdiction. K.S.A. 1997 Supp. 44-551. Examples of jurisdictional issues are identified in K.S.A. 1997 Supp. 44-534a. The two issues described by respondent are listed as jurisdictional issues and are subject to review.

In this case, claimant has provided evidence of a back injury aggravated each day through the last day worked of October 29, 1997, and notice before that date. The evidence includes confirmation in the medical records of Dr. J. Stanley Jones who states, "She has been placed on a job that has been irritating her back."

Respondent, on the other hand, has produced evidence of prior back injuries as well as evidence of aggravations of the back away from work after the date of the alleged accident in this case. Respondent also points to inconsistencies in the way the claimant reported the injury and/or failed to report the work connection.

The Administrative Law Judge did not, in his Order, grant claimant's request for temporary total disability benefits and medical treatment. Instead, he ordered an independent medical examination. K.S.A. 44-516 authorizes the appointment of an independent medical examiner in case of a dispute as to the injury. The Board finds that the Administrative Law Judge did not exceed his jurisdiction in doing so under the circumstances presented in this case.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the February 19, 1998 Order by Administrative Law Judge John D. Clark should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of May 1998.

BOARD MEMBER

c: Dale V. Slape, Wichita, KS
Frederick L. Haag, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director