

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

RANDY WARMAN)	
Claimant)	
VS.)	
)	Docket No. 234,857
DEFFENBAUGH INDUSTRIES, INC.)	
Respondent)	
AND)	
)	
HARTFORD ACCIDENT AND INDEMNITY)	
Insurance Carrier)	

ORDER

Respondent appealed the March 15, 1999, Preliminary Decision entered by Administrative Law Judge Robert H. Foerschler.

ISSUES

In a demand letter dated December 21, 1998, claimant requested that orthopedic surgeon Daniel M. Downs, M.D., be designated as claimant's authorized treating physician. Respondent was notified that, if such request was not granted within 7 days, claimant intended to file for a preliminary hearing requesting the Administrative Law Judge to appoint Dr. Downs as claimant's authorized treating physician.

The preliminary hearing was held on March 11, 1999, and the only issue before the Administrative Law Judge was claimant's request for the appointment of Dr. Downs as claimant's authorized physician. In fact, claimant was not present and did not testify. The parties agreed that the Administrative Law Judge could make his decision based on the medical records and reports admitted by the parties into evidence at the preliminary hearing.

The Administrative Law Judge entered his Preliminary Decision, that is the subject of this appeal, on March 15, 1999. He ordered the respondent to either have claimant examined by a cervical spine surgeon at the KU Medical Center as suggested by authorized treating physician E. Bruce Toby, M.D., or provide an examination of claimant with another competent spine specialist of respondent's choice.

Respondent appeals that decision and contends the Administrative Law Judge exceeded his jurisdiction because claimant failed to prove he sustained an accidental injury arising out of and in the course of his employment with the respondent.

In contrast, claimant contends that the Appeals Board does not have jurisdiction to review the Administrative Law Judge's Preliminary Decision on claimant's request for a change in the authorized treating 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:

The Appeals Board agrees with the claimant and concludes, at this juncture of the proceeding, it does not have jurisdiction to review this preliminary hearing order.

The only issue raised before the Administrative Law Judge was claimant's request to change the authorized treating physician. The Appeals Board has on other occasions determined that a request to change the authorized treating physician is the furnishing of medical treatment. The preliminary hearing statute found at K.S.A. 1998 Supp. 44-534a gives the Administrative Law Judge authority to grant or deny the request for medical compensation pending a full hearing on the claim. Thus, the Administrative Law Judge did not exceed his jurisdiction and the Appeals Board does not have jurisdiction to review the Preliminary Decision.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Decision dated March 15, 1999, entered by Administrative Law Judge Robert H. Foerschler should be, and is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of April 1999.

BOARD MEMBER

c: Donald T. Taylor, Kansas City, KS
Brenden W. Webb, Overland Park, KS
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director