



The Administrative Law Judge denied claimant's preliminary hearing request for authorized medical treatment. The Administrative Law Judge found claimant was not a covered employee under the policy. Claimant appealed and in his application for review frames the issue as "Compensability". Respondent, however, in its brief, argues the Appeals Board does not have jurisdiction to review this preliminary hearing Order. Respondent argues the issue is not "Compensability" but is whether claimant is a covered employee under respondent's workers compensation policy.

#### **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:

For the Appeals Board to have jurisdiction to review issues raised at a preliminary hearing, the parties have to allege the Administrative Law Judge exceeded his or her jurisdiction<sup>1</sup> or one of the following issues that are listed in the preliminary hearing statute has to be disputed: (1) whether employee suffered an accidental injury (2) whether the accidental injury arose out of and in the course of his employment; (3) whether notice or claim was timely made or (4) whether certain defenses apply.<sup>2</sup>

Although the claimant listed "Compensability" in his application for review as the disputed issue, in his brief, the only issue he argues is whether claimant is covered under respondent's workers compensation insurance policy. This is not one of the disputed issues listed in the preliminary hearing statute that is subject to Appeals Board review.<sup>3</sup> Additionally, the issue presented is not whether the Administrative Law Judge exceeded her authority but rather whether the Administrative Law Judge erred in denying insurance coverage.<sup>4</sup> At this juncture of the proceeding, the Appeals Board finds, the issue of whether or not claimant is covered under the respondent's workers compensation insurance policy, is not an issue subject to Appeals Board review.<sup>5</sup>

**WHEREFORE**, the Appeals Board finds that the application for Appeals Board review filed by the claimant should be dismissed as the Appeals Board is without

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<sup>1</sup>K.S.A. 1998 Supp. 44-551 (b) (2) (A) .

<sup>2</sup>K.S.A. 1998 Supp. 44-534a (a) (2) .

<sup>3</sup>K.S.A. 1998 Supp. 44-534a (a) (2) .

<sup>4</sup>K.S.A. 1998 Supp. 44-551 (b) (2) (A) .

<sup>5</sup>See also, O'Hara v. O'Hara Painting Co., Inc., Docket No. 214,169 (December 1996) .

jurisdiction to consider the issue raised and the preliminary hearing Order entered by the Administrative Law Judge dated April 2, 1999, should be, and does remain in effect as originally entered.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of May 1999.

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BOARD MEMBER

c: Robert R. Lee, Wichita, KS  
William L. Townsley, Wichita, KS  
Nelsonna Potts Barnes, Administrative Law Judge  
Philip S. Harness, Director