BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

JUAN J. GARCIA	)	
Claimant	)	
VS.	)	
	)	Docket Nos. 244,980 & 258,859
OTTAWA TRUCK CORPORATION	)	
Respondent	)	
AND	)	
	)	
ZURICH U S	)	
ROYAL & SUN ALLIANCE INSURANCE CO.	)	
Insurance Carrier	)	

ORDER

Respondent and one of its insurance carriers, Royal & Sun Alliance Insurance Company (Royal), appeal from a preliminary hearing Order entered by Administrative Law Judge Julie A. N. Sample on April 3, 2001, finding a new accidental injury on December 15, 1999 and ordering medical treatment be provided by respondent and Royal. The parties agreed that if treatment were authorized, then Bernard Abrams, M.D., would be the authorized treating physician.

ISSUES

Claimant suffered a compensable low back injury with respondent on June 20, 1998. That accident is the subject of Docket No. 244,980. Claimant was treated and released. He returned to work on December 13, 1999 and alleges he suffered a new accident and injury at work on December 15, 1999. This is the subject of Docket No. 258,859. Both accidents occurred during claimant's employment with respondent. The issue on appeal is whether claimant suffered one accident or two. Stated another way, the issue is whether claimant's current need for medical treatment is due to the natural and probable consequence of the accidental injury claimant suffered while working for respondent during Zurich U S's period of coverage or whether, instead, claimant suffered a new accident and injury on December 15, 1999 and, therefore during the period that respondent's insurance coverage was with the subsequent insurance carrier, Royal. Both of the alleged dates of accident occurred while claimant was working for respondent. For purposes of this appeal the compensability of claimant's present injury is not disputed. What is disputed is which insurance carrier or carriers should be responsible for paying the cost of claimant's ongoing medical treatment.

Claimant argues, *inter alia*, that he "should not have his medical treatment delayed by the mere fact that two insurance carriers are pointing the finger at one another over who is responsible for payment."[1] The threshold question is whether this appeal raises an issue which the Board has jurisdiction to review on an appeal from a preliminary hearing order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Board concludes that the issues raised on appeal are not jurisdictional issues. As a consequence, the Board does not have jurisdiction to review those issues at this stage of the proceedings.

On an appeal from a preliminary hearing order, the Board is limited to review of allegations that the ALJ exceeded his/her jurisdiction. K.S.A. 44-551. This includes review of issues identified in K.S.A. 44-534a as jurisdictional issues. On the current appeal, there is no dispute that claimant's current need for medical treatment is the result of an accidental injury or injuries that arose out of and in the course of his employment with respondent. The only question is whether there was one accident or two and, as a result, which insurance carrier is liable for benefits. Royal contends the ALJ erred by not finding a single date of accident. This contention does not raise one of the issues identified in K.S.A. 44-534a and does not otherwise constitute an allegation that the ALJ exceeded her jurisdiction. *See* Carpenter v. National Filter Service, 26 Kan. App. 2d 672, 994 P.2d 641 (1999); American States Insurance Company v. Hanover Insurance Company, 14 Kan. App. 2d 492, 794 P.2d 662 (1990).

Royal also alleges that the ALJ exceeded her jurisdiction by holding one of respondent's insurance carriers liable for claimant's preliminary benefits. The Board disagrees. The ALJ has jurisdiction over the respondent and, therefore, over its insurance carriers. *See* K.S.A. 40-2212; Landes v. Smith, 189 Kan. 229, 368 P.2d 302 (1962). Furthermore, K.S.A. 44-534a grants an ALJ the authority to award medical and temporary total disability compensation at a preliminary hearing after "a preliminary finding that the injury to the employee is compensable."

The Board was presented with a similar issue in the case of Ireland v. Ireland Court Reporting, WCAB Docket Nos. 176,444 & 234,974 (Feb. 1999), where, in holding that the Board was without jurisdiction to consider the issue of which insurance carrier should pay for the preliminary hearing benefits, we said:

> Furthermore, it is inconsistent with the intent of the Workers Compensation Act for a respondent to delay preliminary hearing benefits to an injured employee while its insurance carriers litigate their respective liability. The

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[1] Claimant's Brief to Workers Compensation Appeals Board Regarding Preliminary Hearing Order of April 3, 2001, at 7.

employee is not concerned with questions concerning this responsibility for payment once the respondent's general liability under the Act has been acknowledged or established. Kuhn v. Grant County, 201 Kan. 163, 439 P.2d 155 (1968); Hobelman v. Krebs Construction Co., 188 Kan. 825, 366 P.2d 270 (1961).

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the appeal of the preliminary hearing Order entered by Administrative Law Judge Julia A. N. Sample on April 3, 2001, should be, and the same is hereby, dismissed.

IT IS SO ORDERED.

Dated this ____ day of October 2001.

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BOARD MEMBER

c: Derek R. Chappell, Attorney for Claimant
Mark O. Sanderson, Attorney for Respondent
Ronald J. Laskowski, Attorney for Respondent
Julie A. N. Sample, Administrative Law Judge
Philip S. Harness, Workers Compensation Director