

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

<b>ISIDRO ALDANA</b>	)	
Claimant	)	
	)	
VS.	)	
	)	
<b>MONFORT INC.</b>	)	
Respondent	)	Docket No. <b>248,583</b>
	)	
AND	)	
	)	
<b>CON AGRA INC.</b>	)	
Insurance Carrier	)	

**ORDER**

Claimant requests review of a preliminary Order entered by Administrative Law Judge Pamela J. Fuller on March 13, 2001.

**ISSUE**

Whether the claimant's medical condition and employment situation satisfied the definition of temporary total disability.

**FINDINGS OF FACT & CONCLUSIONS OF LAW**

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

The claimant, as a result of his work-related injury, had received work restrictions for his right upper extremity from Dr. Brown and had continued working for respondent. The claimant testified that his job duties exceeded the restrictions. The claimant was working at the Monfort plant in Garden City at the time it burned down. After the plant burned down, the claimant was offered a job at the same rate of pay at respondent's plants in Dumas, Texas, Grand Island, Nebraska and Colorado. The claimant declined the offer to relocate and instead applied for and received unemployment benefits.

The claimant requested temporary total disability benefits under the theory that because the respondent is no longer accommodating him, he should not have to utilize his unemployment benefits while under medical care and treatment.

The Administrative Law Judge denied the claimant's request for temporary total disability benefits due to the "claimant's lack of effort to seek employment within the restrictions placed on the claimant by the treating physician."

This appeal must be dismissed. This is an appeal from a preliminary hearing order. The Board's jurisdiction to review preliminary hearing issues and findings is generally limited to the following:<sup>1</sup>

- (1) Did the worker sustain an accidental injury?
- (2) Did the injury arise out of and in the course of employment?
- (3) Did the worker provide timely notice and timely written claim?
- (4) Is there any defense to the compensability of the claim?

Additionally, the Board may review any preliminary hearing order where a judge exceeds his or her jurisdiction.<sup>2</sup> Jurisdiction is generally defined as authority to make inquiry and decision regarding a particular matter. The jurisdiction and authority of a court to enter upon inquiry and make a decision is not limited to deciding a case rightly but includes the power to decide it wrongly. The test of jurisdiction is not a correct decision but the right to enter upon inquiry and make a decision.<sup>3</sup>

An Administrative Law Judge has the jurisdiction and authority to grant temporary total disability benefits at a preliminary hearing. Therefore, Judge Fuller did not exceed her jurisdiction. The issue of whether claimant's medical condition and employment situation entitles claimant to receive temporary total disability benefits is not an issue that is reviewable from a preliminary hearing order. At this juncture of the proceeding, the Board does not have the authority to reweigh the evidence and redetermine if claimant is temporarily and totally disabled.

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<sup>1</sup> K.S.A. 44-534a.

<sup>2</sup> K.S.A. 44-551.

<sup>3</sup> See *Taber v. Taber*, 213 Kan. 453, 516 P.2d 987 (1973); *Provance v. Shawnee Mission U.S.D. No. 512*, 235 Kan. 927, 683, P.2d 902 (1984).

As provided by the Workers Compensation Act, preliminary hearing findings are not final but subject to modification upon a full hearing on the claim.<sup>4</sup>

**WHEREFORE**, the Board dismisses the appeal.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of April 2001.

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BOARD MEMBER

**Copies to:**

Chris A. Clements, Attorney, Wichita, KS  
Thomas W. Young, Attorney, Dodge City, KS  
Pamela J. Fuller, Administrative Law Judge  
Philip S. Harness, Workers Compensation Director

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<sup>4</sup> K.S.A. 44-534a(a)(2).