

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

|                              |   |                    |
|------------------------------|---|--------------------|
| <b>MARK A. TURNER</b>        | ) |                    |
| Claimant                     | ) |                    |
| VS.                          | ) |                    |
|                              | ) | Docket No. 248,602 |
| <b>SEALY, INC.</b>           | ) |                    |
| Respondent                   | ) |                    |
| AND                          | ) |                    |
|                              | ) |                    |
| <b>CNA INSURANCE COMPANY</b> | ) |                    |
| Insurance Carrier            | ) |                    |

**ORDER**

Respondent and its insurance carrier appealed the July 31, 2000 Preliminary Decision entered by Administrative Law Judge Robert H. Foerschler.

**ISSUES**

This is a claim for injuries to the right upper extremity, upper back, and neck that allegedly occurred from August 3 through September 14, 1999, as the result of repetitive mini-traumas. In the July 31, 2000 Preliminary Decision, which is the subject of this appeal, Judge Foerschler granted claimant's request for temporary total disability benefits.

Respondent and its insurance carrier contend Judge Foerschler erred. They argue that claimant refused to perform an accommodated job and, therefore, claimant should not receive temporary total disability benefits. That is the only issue that the respondent and its insurance carrier ask the Appeals Board to review on this appeal.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record compiled to date, the Appeals Board finds and concludes:

1. This appeal should be dismissed.

2. This is an appeal from a preliminary hearing order. The Appeals 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 Appeals Board may review any preliminary hearing order where a judge exceeds his or her jurisdiction.<sup>2</sup>

3. An administrative law judge has the jurisdiction and authority to grant temporary total disability benefits at a preliminary hearing. Therefore, Judge Foerschler did not exceed his jurisdiction.

4. The issue of whether claimant's medical condition and employment situation entitle 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.

5. 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>3</sup>

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

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of October 2000.

---

BOARD MEMBER

---

<sup>1</sup> K.S.A. 1999 Supp. 44-534a.

<sup>2</sup> K.S.A. 1999 Supp. 44-551.

<sup>3</sup> K.S.A. 1999 Supp. 44-534a(a)(2).

**MARK A. TURNER**

**3**

**DOCKET NO. 248,602**

c: James E. Martin, Overland Park, KS  
John R. Emerson, Kansas City, KS  
Robert H. Foerschler, Administrative Law Judge  
Philip S. Harness, Director