

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

LARRY M. FLOWERS)	
Claimant)	
VS.)	
)	Docket No. 250,591
DM & M FARMS, INC.)	
Respondent)	
AND)	
)	
TRAVELERS INSURANCE COMPANY,)	
INTERSTATE INSURANCE SERVICES GROUP,)	
and AMERICAN INTERSTATE INSURANCE,)	
Insurance Carriers)	

ORDER

Respondent and its insurance carrier, Travelers Insurance Company, appeal Administrative Law Judge Pamela J. Fuller's August 7, 2000, preliminary hearing Order.

ISSUES

The claimant's Application for Hearing filed on December 10, 1999, alleges a claim for a "hand eczema" condition caused by the exposure to certain chemicals while working for respondent beginning May 6, 1994, and continuing each and every day thereafter. Claimant's preliminary hearing benefit requests are payment of past medical expenses as authorized and payment of future medical expenses needed to treat claimant's continuing contact dermatitis condition.

The Administrative Law Judge ordered the respondent and Travelers Insurance Company (Travelers) to pay past and future medical expenses for treatment of claimant's dermatitis condition finding that claimant has suffered an accidental injury occurring on March 6, 1994.¹

¹ As noted above, claimant's Application for Hearing alleged chemical exposure commencing May 6, 1994, instead of the March 6, 1994, date as found by the Administrative Law Judge. At the preliminary hearing, claimant did not request to amend the accident date, therefore, the Appeals Board finds May 6, 1994, for preliminary hearing purposes, as the initial chemical exposure date.

The respondent and its insurance carrier Travelers appealed and in their application for review before the Appeals Board stated the issues as follows:

- "A. Accidental Injury or occupational disease.
- "B. Liability for medical."

During the alleged period of accident from May 6, 1994 through the present, the respondent had workers compensation insurance coverage with three separate insurance companies. All three of the insurance carriers were represented at the preliminary hearing and presented arguments and briefs before the Appeals Board. Travelers had coverage from 1994 through January 31, 1998. Interstate Insurance Services Group (Interstate) had coverage from February 1, 1998 through January 31, 1999. American Interstate Insurance (American) commenced coverage on February 1, 1999 and, on the date of the preliminary hearing, July 25, 2000, American continued to provide workers compensation coverage for respondent.

Claimant contends he has proven that his skin problem on his hands started in 1994 and continues to flare up at various intervals as he continues to work for the respondent. Furthermore, claimant contends he has proven those skin problems are directly related to the chemical exposure he had while working for the respondent. In order to control this skin condition, claimant is required to treat the condition by daily taking certain prescription medication and when the skin condition flares up, using a prescribed cortisone ointment directly on his hands. The cost of the oral medication and ointment is \$125.78 per month.

Until approximately November of 1998, Travelers paid for the cost of the medications and the cortisone ointment. But, after November of 1998, Travelers denied the claim and refused to provide claimant with any further treatment for his continuing hand condition. Claimant requested reimbursement in the amount of \$2,247.23 for the cost he had paid for the required medication and cortisone ointment since November 1998. Also, claimant requested the ALJ to order respondent to provide claimant with the future costs of medication and ointment.

Interstate contends that claimant's skin condition is either caused by claimant's initial chemical exposure at work in 1994 or is a condition caused by continuing every day chemical exposure through the present. Interstate argues under either theory Interstate has no liability in this case because its coverage period was not during the initial exposure and also was not during the present exposure period.

American argues that the Appeals Board does not have jurisdiction to review the issues raised by the respondent and Travelers from the Administrative Law Judge's preliminary hearing Order. The first issue that respondent and Travelers raises is whether this is an accidental injury or an occupational disease case. The Appeals Board finds after

a review of the preliminary hearing transcript that this issue was discussed by the ALJ and the parties before claimant testified. But the discussion of this issue was not in the context of whether claimant's claim was compensable but was raised in the context as to the appropriate date of accident that would then determine which particular insurance company was liable for payment of the requested medical expenses. American contends, since compensability was not an issue, the Administrative Law Judge did not exceed her authority in ordering the respondent and Travelers to pay past and future medical expenses.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the arguments contained in the parties' briefs, the Appeals Board concludes that it does not have jurisdiction to review the preliminary hearing Order and the appeal should be dismissed.

The Appeals Board will first address whether it has jurisdiction to review the issues raised in this appeal from the Administrative Law Judge's preliminary hearing Order. The Appeals Board's review of preliminary hearing findings is limited.² Under K.S.A. 44-534(a), the Appeals Board may review preliminary hearing findings regarding the following jurisdictional issues: (1) whether the worker suffered an accidental injury; (2) whether accidental injury arose out of and in the course of the employment; (3) whether notice was given or timely claim was made; and (4) whether certain defenses apply. Under K.S.A. 44-551(b)(2)(A), a preliminary Order can be reviewed when the Administrative Law Judge has exceeded his or her jurisdiction in granting or denying the relief requested.

The Appeals Board finds the date of accident and apportionment of liability issues raised by the respondent and Travelers are not issues subject to Appeals Board review because the issues are not any of the specific jurisdictional issues listed in the preliminary hearing statute found at K.S.A. 44-534(a) and the Administrative Law Judge did not otherwise exceed her jurisdiction in granting claimant's request for payment of medical expenses under K.S.A. 44-551(b)(2)(A).

WHEREFORE, it is the finding, decision, and order of the Appeals Board that it does not have jurisdiction to review Administrative Law Judge Pamela J. Fuller's August 7, 2000, preliminary hearing Order and this appeal should be, and the same is hereby, dismissed.

IT IS SO ORDERED.

² See K.S.A. 44-534(a) and K.S.A. 44-551(b)(2)(A).

Dated this ____ day of February 2001.

BOARD MEMBER

c: Michael A. Doll, Dodge City, KS
Jeffery E. King, Salina, KS
Michael D. Streit, Wichita, KS
David F. Menghini, Kansas City, KS
Pamela J. Fuller, Administrative Law Judge
Philip S. Harness, Director