

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

ROY PETERSON)	
Claimant)	
)	
VS.)	
)	
TAYLOR PRODUCTS COMPANY, INC.)	
Respondent)	Docket No. 255,892
)	
AND)	
)	
COLONIAL CASUALTY INSURANCE CO.)	
Insurance Carrier)	

ORDER

Claimant requests review of the January 3, 2007 preliminary hearing Order entered by Administrative Law Judge Thomas Klein.

ISSUES

The Administrative Law Judge (ALJ) found he was "satisfied with the treatment provided at Centennial Rehabilitation Associates in Denver" and designated that group to be the authorized treating physicians for the claimant.¹

The claimant requests review of this decision alleging that the ALJ erred in denying the claimant's entitlement to continued medical treatment with Texas Tech Medical Center by designating Centennial Rehabilitation Associates in Denver to be the claimant's authorized treating physicians. Claimant argues that this change of designated treatment provider is contrary to the facts and K.S.A. 44-510h. Claimant argues that "there is no statutory authority to allow a [r]espondent to change an authorized treating physician if the [c]laimant is satisfied with the care and treatment".²

Respondent argues that the ALJ should be affirmed in all respects. Respondent contends the ALJ was "wholly within his statutory authority in authorizing such medical care

¹ ALJ Order (Jan. 3, 2007).

² Claimant's Brief at 3 (filed Feb. 9, 2007).

and treatment on a Preliminary Hearing basis” and “[i]n entering such an Order, in no way did Judge Klein exceed his authority.”³

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

There is presently no dispute that claimant is in need of treatment to address his compensable injury. Rather, the parties’ are at odds as to where the treatment should take place and who should oversee that treatment.

Claimant desires to continue his treatment with the Texas Tech Pain Clinic, a facility that has, up to this point, been the designated treatment provider. However, claimant has not been to the Texas Tech Pain Clinic since May 20, 2005 when it was determined that claimant needed to be psychologically stable before additional treatment could proceed.⁴ Since that time the claimant was treated locally and according to his attorney, is emotionally stable and ready to proceed with the treatment outlined by the physicians at Texas Tech.

There were apparently some scheduling problems (a fact that claimant stridently believes was manufactured by an insurance adjuster) and no appointments were forthcoming. In the meantime, respondent had claimant evaluated by the Centennial Rehabilitation Associates in Denver, Colorado. Following receipt of that report, this preliminary hearing followed and respondent requested the ALJ to designate Centennial Rehabilitation Associates as the authorized treating facility rather than Texas Tech.

Following the preliminary hearing the ALJ issued an order that indicates as follows:

Respondent requests treatment per Centennial Rehabilitation Associates in Denver[,] Colorado. Claimant has been to a number of physicians since the inception of this case. Among the places that Claimant has treated is a pain management center in Texas, with whom there was been some difficulty scheduling from the Respondent’s perspective. January 5, 2007 Claimant, through counsel[,] was able to get his own appointment has an appointment in Texas. The Court is satisfied with the treatment provided at Centennial Rehabilitation Associates in Denver and designates the group as Authorized Treating Physicians for Claimant.⁵

Before claimant’s argument’s can be considered, this Board Member must consider whether there is jurisdiction to hear this matter. This is an appeal from a preliminary hearing.

³ Respondent’s Brief at 2 (filed Feb. 21, 2007).

⁴ Claimant’s Brief at 1.

⁵ ALJ Order (Jan. 3, 2007).

K.S.A. 44-534a(a)(2) limits the jurisdiction of the Board to the specific jurisdictional issues identified, all of which deal with the underlying compensability of an injured employee's claim. None of those jurisdictional issues are involved in this appeal as respondent does not, at least at this juncture, dispute the compensability of claimant's claim and his present ongoing need for treatment. Thus, absent an alternative basis for jurisdiction, this appeal must be dismissed.

Similarly, a contention that the ALJ has erred in his finding that the evidence showed a need for medical treatment is not an argument the Board has jurisdiction to consider. K.S.A. 44-534a grants authority to an ALJ to decide issues concerning the furnishing of medical treatment, the payment of medical compensation and the payment of temporary total disability compensation. So were this claimant's only argument, the appeal must be dismissed.

The Board does, however, have jurisdiction to review decisions from a preliminary hearing in those cases where one of the parties has alleged the ALJ exceeded his or her jurisdiction.⁶ And claimant alleges that "the ALJ's decision exceeds his jurisdiction, as it is contrary to the plain language of K.S.A. 44-510h and K.S.A. 44-534a.

Succinctly put, claimant contends that Texas Tech was the authorized provider and that respondent has no right under the Kansas Workers Compensation Act to ask the ALJ to change authorized providers. And that because respondent concedes it is required to provide treatment, the preliminary hearing statute is an inappropriate procedural vehicle in which "to change physicians if they [sic] don't like the treatment."⁷

This member of the Board has considered claimant's arguments and disagrees and specifically finds the ALJ did not exceed his jurisdiction in ordering claimant's treatment to continue through the facility in Denver, Colorado. While it is true that K.S.A. 44-510h(b)(1) provides for a change of physician under certain circumstances, that statute provides such a mechanism to a claimant and not to respondent's or their carriers. Nonetheless, that does not mean that there is no mechanism for a respondent to bring forth the issue of medical necessity or appropriateness of care before the ALJ.

Here, Texas Tech had been designated as the treating facility pursuant to a ruling issued on December 2, 2002. But that treatment could not proceed until claimant was psychologically stable, something that did not occur until February 2006. It is unclear why claimant did not proceed directly to Texas Tech to pursue his treatment at that time. In any event, respondent had claimant examined by the physicians at Centennial Rehabilitation Associates and an alternative treatment program was offered. Based upon his review of the

⁶ K.S.A. 44-551(b)(2)(A).

⁷ Claimant's Brief at 2.

file the ALJ concluded that the program outlined by Centennial Rehabilitation Associates was more appropriate and he authorized that facility to serve as the treating physician.

After a thorough review of the file this Board Member finds nothing to suggest that the ALJ exceeded his jurisdiction in making this factual finding. ALJ's must routinely determine the most appropriate method of treatment in order to satisfy the Act's goal of curing and relieving the effects of the injury.⁸ Selecting one treatment provider over another does not equate to a decision that exceeds one's authority. Rather, as is contemplated under K.S.A. 44-534a, the ALJ determined an issue regarding the furnishing of medical treatment. Claimant's contention that K.S.A. 44-534a only addresses those instances when a respondent is refusing to provide care is unfounded and illogical. It ignores the fact that oftentimes the parties' dispute is over the appropriate course of care and not just the threshold issue of whether the care should be furnished.

Having determined the ALJ did not exceed his jurisdiction, this Board Member finds that there is no jurisdiction to consider this matter. Accordingly, claimant's appeal is hereby dismissed for lack of jurisdiction.

By statute, the above preliminary hearing findings and conclusions are neither final, nor binding as they may be modified upon full hearing of the claim.⁹ Moreover, this review on a preliminary hearing Order may be determined by only one Board Member, as permitted by K.S.A. 2005 Supp. 44-551(b)(2)(A), as opposed to the entire Board in appeals of final orders.

WHEREFORE, it is the finding, decision and order of the undersigned Board Member that the claimant's appeal of the Order of Administrative Law Judge Thomas Klein dated January 3, 2007, is dismissed for lack of jurisdiction.

IT IS SO ORDERED.

Dated this _____ day of March, 2007.

BOARD MEMBER

c: William L. Phalen, Attorney for Claimant
Jeffery R. Brewer, Attorney for Respondent and its Insurance Carrier
Thomas Klein, Administrative Law Judge

⁸ K.S.A. 44-510(a).

⁹ K.S.A. 44-534a.