

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

**ARTHUR L. WYSS**

Claimant

VS.

**LEARJET AIRCRAFT CORPORATION**

Respondent

Self-Insured

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Docket No. 256,888

**ORDER**

Claimant appeals Administrative Law Judge John D. Clark's January 5, 2001, preliminary hearing Order.

**ISSUES**

Claimant is seeking medical treatment and temporary total disability benefits for a work-related back injury. On July 12, 2000, claimant injured his back while lifting at work. The respondent admits compensability of claimant's back injury. The Administrative Law Judge denied claimant's request for preliminary benefits. The Administrative Law Judge found, "The Claimant's present problems preexisted any work related injury he suffered on July 12, 2000."

On appeal, the issue raised by claimant in his application to the Appeals Board is stated as follows:

Whether or not claimant's accidental injuries arose out of and in the course of his employment.

In contrast, respondent contends first that the Appeals Board does not have jurisdiction to review this preliminary hearing Order. Second, if the Appeals Board does take jurisdiction then the preliminary hearing Order should be affirmed because claimant's current need for medical treatment is the result of his preexisting back problems and not the July 12, 2000, accidental injury.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the preliminary hearing record and considering the respondent's brief, the Appeals Board makes the following findings and conclusions:

Respondent admits claimant, on July 12, 2000, suffered a back injury while employed by the respondent. Although not specifically stipulated by the respondent at the preliminary hearing, medical records were admitted into evidence that indicate respondent voluntarily provided extensive medical treatment for claimant's back injury after the July 12, 2000, accident. On the evening of claimant's accident, respondent took claimant for examination and treatment to a local hospital emergency room. Claimant was then seen by the company physician, Larry K. Wilkinson, M.D. Dr. Wilkinson diagnosed claimant with possible muscle sprain of the back. He took claimant off work, prescribed medication, and placed claimant in a physical therapy program. Because claimant did not improve, he referred claimant to orthopedic surgeon Robert L. Eyster, M.D.

Dr. Eyster saw claimant on July 24, 2000. He diagnosed claimant with a muscle strain of the back. He had no additional treatment recommendations and felt a return to work with restrictions would be helpful.

Dr. Wilkinson also authorized claimant to see Ron Manasco, M.D., who diagnosed claimant with myofascial pain syndrome. Dr. Manasco saw claimant on two occasions—August 4, 2000 and September 15, 2000. Each time Dr. Manasco treated claimant with trigger point injections.

Claimant has a long history of back problems dating back some 16 years when he was ten years old. Before the July 12, 2000, accident, he had recently seen his family physician, Ronald J. Reichenberger, M.D., for back complaints without any known injury. Dr. Reichenberger's medical records were admitted into evidence and indicated that claimant saw him on October 1, 1999; March 27, 2000; May 25, 2000; and June 12, 2000, all for back problems. Because of claimant's continuing back problems, Dr. Reichenberger referred claimant to orthopedic surgeon Kris Lewonowski, M.D.

Dr. Lewonowski saw claimant on May 23, 2000, before his July 12, 2000, accident. Dr. Lewonowski's diagnostic impression was questionable rheumatological process and possible ankylosing spondylosis. He sent claimant for an MRI examination of the thoracic and lumbar spine. Also, he had claimant have his blood tested for HLAV-27 which is a blood test for the purpose of diagnosing ankylosing spondylitis.

After the July 12, 2000, accident, claimant was seen not only by Dr. Wilkinson, Dr. Eyster, and Dr. Manasco, but also was seen by rheumatologist Vivian A. Illera, M.D., orthopedic surgeon Kris Lewonowski, M.D., and physiatrist Scott Jahnke, D.O. These physicians diagnosed claimant with various conditions such as back strain, back pain, possible ankylosing spondylosis, sacroiliitis, and scoliosis. These physicians all kept claimant off work except for Dr. Eyster and continued claimant on a regimen of medication along with placing claimant in a number of weeks of physical therapy.

On November 16, 2000, at the request of respondent's insurance carrier, claimant was examined and evaluated by physiatrist Philip R. Mills, M.D. Dr. Mills was provided with

claimant's previous medical treatment records. After reviewing the medical treatment records, taking a history from the claimant, and completing a physical examination of the claimant, Dr. Mills diagnosed claimant with chronic back pain and possible ankylosing spondylitis. Dr. Mills concluded that any possible injury sustained from the July 12, 2000, work-related accident was temporary and claimant was at maximum medical improvement from that injury. Dr. Mills also concluded that claimant had no permanent functional impairment as the result of the July 12, 2000, accident. Dr. Mills went on to opine that claimant's present back problems appeared to be the natural progression of claimant's underlying ankylosing spondylitis.

The Appeals Board finds that claimant attempts to obtain jurisdiction for Appeals Board review of the subject preliminary hearing Order by raising the issue of whether claimant suffered an accidental injury arising out of and in the course of his employment. This issue, if disputed, is one of the issues set forth in K.S.A. 44-534a(a)(2) as issues that are considered jurisdictional and subject to review by the Appeals Board on appeal from a preliminary hearing order.

But respondent argues, and the Appeals Board agrees, that respondent stipulated at the preliminary hearing that claimant injured his back at work on July 12, 2000. The Appeals Board finds that the actual issues on appeal are whether the July 12, 2000, injury caused claimant to suffer a permanent or a temporary injury or whether claimant's current back complaints are related only to claimant's preexisting back condition. Therefore, the Appeals Board concludes the dispute between the parties centers not on the issue of whether claimant suffered an accidental injury on July 12, 2000, but rather on the nature and extent of the particular work-related injury.

Nature and extent of claimant's injury is not one of the jurisdictional issues listed in K.S.A. 44-534a(a)(2). Also, an administrative law judge has the authority under K.S.A. 44-534a(a)(2) to grant or deny a request for medical treatment or temporary total disability benefits. Therefore, the Administrative Law Judge did not otherwise exceed his jurisdiction.<sup>1</sup> Accordingly, at this juncture of the proceedings, the Appeals Board does not have jurisdiction to review the issues raised by the claimant on appeal from this preliminary hearing Order.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that claimant's appeal should be dismissed, and Administrative Law Judge John D. Clark's preliminary hearing Order dated January 5, 2001, remains in full force and effect.

**IT IS SO ORDERED.**

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<sup>1</sup> See K.S.A. 44-551(b)(2)(A).

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

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BOARD MEMBER

c: Arthur L. Wyss, Pro Se  
Vincent A. Burnett, Wichita, KS  
James B. Zongker, Wichita, KS  
John D. Clark, Administrative Law Judge  
Philip S. Harness, Director