

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

ROBERT RODENBECK)	
Claimant)	
VS.)	
)	Docket No. 259,818
EVCO WHOLESALE FOOD CORPORATION)	
Respondent)	
AND)	
)	
SUPERIOR NATIONAL INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Respondent requested Appeals Board review of Administrative Law Judge Brad E. Avery's September 14, 2001, preliminary hearing Order for Compensation.

ISSUES

The Administrative Law Judge (ALJ) granted claimant's request for temporary total disability compensation, medical treatment, and payment of past medical bills as authorized medical expenses.

Claimant struck his head while working for respondent on April 26, 2000. As a result of that accident, claimant was diagnosed with post-concussive syndrome and neck pain. Claimant has undergone a long and tedious regimen of medical treatment provided by respondent for the injuries he sustained in the April 26, 2000, work-related accident.

On appeal, the only issue respondent raised is in regard to the ALJ's ordering respondent and its insurance carrier to pay claimant temporary total disability compensation commencing on September 7, 2001, the date of the preliminary hearing. The respondent argues that the ALJ exceeded his jurisdiction in entering an order for temporary total disability because the preliminary hearing record contains no evidence that claimant is temporarily and totally disabled from engaging in any substantial and gainful employment.¹

¹ See K.S.A. 44-510c(b)(2).

Claimant, on the other hand, requests that the preliminary hearing Order for Compensation be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the parties' briefs, the Appeals Board (Board) makes the following findings and conclusions:

The Board's jurisdiction to review ALJ's preliminary hearing findings is limited. The Board cannot review an ALJ's preliminary hearing order unless it is alleged the ALJ exceeded his or her jurisdiction in granting or denying the relief requested.² But preliminary findings in regard to disputed issues of whether the claimant suffered an accidental injury, whether the injury arose out of and in the course of the employment, whether notice is given or timely claim made, or whether certain defenses apply, are considered jurisdictional and subject to Board review.

Here, the respondent has requested the Board to review the ALJ's preliminary finding that claimant is temporarily and totally disabled and he is, therefore, entitled to temporary total disability compensation. The preliminary hearing statute specifically gives the ALJ authority to grant or deny a request for medical treatment or payment of temporary total disability compensation to be in effect pending the conclusion of a full hearing on the claim.³ Thus, even if the ALJ was wrong in deciding claimant's right to temporary total disability compensation, he did not exceed his jurisdiction.⁴

The Board concludes, as it has on numerous occasions, that it does not have jurisdiction, at this stage of the proceedings, to review an ALJ's preliminary finding in regard to granting or denying a request for temporary total disability benefits. Accordingly, the respondent's appeal is dismissed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the respondent's appeal should be, and is hereby dismissed and ALJ Brad E. Avery's September 14, 2001, preliminary hearing Order for Compensation remains in full force and effect.

² See K.S.A. 44-551(b)(2)(A).

³ See K.S.A. 44-534a(a)(2).

⁴ See Allen v. Craig, 1 Kan. App. 2d 301, 303-304, 564 P.2d 552, *rev. denied* 221 Kan. 757 (1977).

IT IS SO ORDERED.

Dated this ____ day of November 2001.

BOARD MEMBER

c: Michael C. Helbert, Attorney for Claimant
Gregory D. Worth, Attorney for Respondent
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Workers Compensation Director