

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

<b>RONALD W. ROBINSON</b>	)	
Claimant	)	
VS.	)	
	)	
<b>ELKHORN CONSTRUCTION COMPANY</b>	)	
Respondent	)	Docket No. 259,883
	)	
AND	)	
	)	
<b>ARGONAUT INSURANCE COMPANY</b>	)	
Insurance Carrier	)	

**ORDER**

Claimant requested review of the preliminary hearing Order entered by Administrative Law Judge (ALJ) Jon L. Frobish on June 12, 2003.

**ISSUES**

This is a claim for a June 18, 1999 accident. On that date claimant fell approximately 12 to 13 feet from a crane injuring his left foot and ankle. Surgery was performed on October 15, 2002. Claimant has not reached maximum medical improvement nor has he been released to substantial gainful employment. Respondent has paid temporary total disability compensation totaling \$55,107.00. In his June 12, 2003 Order, the Judge denied claimant an award of additional temporary total disability benefits after finding that the \$50,000 cap in K.S.A. 44-510f(a)(4) applied to this factual scenario.

Claimant contends Judge Frobish exceeded his authority and jurisdiction by refusing to order additional temporary total disability compensation.

Conversely, respondent and its insurance carrier request the Board to affirm the Order.

The only issues before the Board on this review are:

1. Does the Board have jurisdiction to review the preliminary hearing Order?
2. If so, does K.S.A. 44-510f(a)(4) limit claimant's entitlement to additional temporary total disability benefits?

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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

The issue raised by claimant in this appeal is not subject to review from a preliminary hearing order. Accordingly, this appeal should be dismissed.

This is an appeal from a preliminary hearing order. Consequently, the Board's jurisdiction is limited. At this stage of the claim, not every alleged error is subject to review. Generally, the Board can review preliminary hearing orders in which an administrative law judge has exceeded his or her jurisdiction.<sup>1</sup> Moreover, the Board has specific authority to review the preliminary hearing issues listed in K.S.A. 44-534a, which are:

- (1) whether the worker sustained an accidental injury,
- (2) whether the injury arose out of and in the course of employment,
- (3) whether the worker provided the employer with timely notice and with timely written claim, and
- (4) whether certain other defenses apply.

The term "certain defenses" refers to defenses that dispute the compensability of the injury under the Workers Compensation Act.<sup>2</sup>

Claimant points out that he has not stipulated that his is a "scheduled injury" and, as such, that his claim is limited to his functional impairment. However, the ALJ found that claimant's disability is limited to a scheduled member, based on the record compiled to

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

<sup>2</sup> *Carpenter v. National Filter Service*, 26 Kan. App. 2d 672, 994 P.2d 641 (1999).

date and for purposes of preliminary hearing. The issues concerning the nature and extent of claimant's disability and whether K.S.A. 44-510f(a)(4) applies to temporary total disability are not jurisdictional issues listed in K.S.A. 44-534a that are subject to review from a preliminary hearing order. An administrative law judge has the jurisdiction to determine such questions of law and fact at a preliminary hearing.<sup>3</sup>

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.<sup>4</sup>

As provided by the Act, preliminary hearing findings are not final but are subject to modification upon a full hearing of the claim.<sup>5</sup>

**WHEREFORE**, the Board dismisses claimant's appeal.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of September 2003.

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BOARD MEMBER

c: M. Doug Bell, Attorney for Claimant  
Steven J. Quinn, Attorney for Respondent and Argonaut Insurance Company  
Jon L. Frobish, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director

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<sup>3</sup> *But cf. Hedrick v. U.S.D. No. 259*, 23 Kan. App. 2d 783, 935 P.2d 1083 (1997).

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

<sup>5</sup> K.S.A. 44-534a.