

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

PATTY MOORE)	
Claimant)	
VS.)	
)	Docket No. 261,195
LOGAN MANOR COMMUNITY HEALTH CENTER)	
Respondent)	
AND)	
)	
EMC INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Respondent appeals the January 18, 2001, Order of Administrative Law Judge Bruce E. Moore. Claimant was granted benefits in the form of medical treatment and temporary total disability compensation for the injuries to her right shoulder, hip, lower extremity and low back complaints. Respondent contends claimant failed to prove that she suffered injury to her right shoulder on the date of accident and should be limited in her medical treatment to the low back, hip and lower extremity. That is the only issue before the Board on this appeal.

ISSUES

Respondent contends claimant failed to prove accidental injury arising out of and in the course of her employment on the date alleged. Respondent acknowledges claimant suffered an accidental injury but disputes the involvement of the shoulder.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board finds respondent's appeal in this matter should be dismissed.

Respondent acknowledges claimant suffered accidental injury on July 9, 2000, when, during two separate work-related incidents, claimant suffered injury. Claimant first was lifting a resident with the assistance of coworker when claimant lost her balance and started to fall. In attempting to keep from falling, claimant twisted her upper and lower body. Approximately 15 minutes later, while assisting a resident in the bathroom, claimant

again was forced to twist, striking her body on the bathroom door while trying to catch the resident. Claimant alleges she injured her entire right side, including the right shoulder, back, right hip and right lower extremity. Respondent contends that claimant provided information verifying only the back and leg injuries, with no indication of a shoulder problem for at least one month from the date of accident.

The Board will first decide whether it has jurisdiction to consider this matter. Respondent does not dispute the fact that an accident occurred. Respondent acknowledges that claimant was injured and provides no evidence contrary to claimant's description of the incident. Respondent's argument is that claimant did not initially allege nor did she initially report to the doctors the involvement of the shoulder. Respondent argues that the issue here deals with whether claimant suffered accidental injury arising out of and in the course of her employment. The Board disagrees. This issue deals not with whether claimant suffered an accident as has been stipulated, but rather with the nature and extent of claimant's injury. Under K.S.A. 44-534a and K.S.A. 44-551, issues dealing with the nature and extent of an injury are not jurisdictional issues which will be considered on appeal from preliminary hearing orders. The limits placed upon a party's right to appeal from a preliminary hearing order under K.S.A. 44-534a and K.S.A. 44-551 preclude consideration of a dispute regarding the nature and extent of the injury suffered. See Porter v. Clarence M. Kelly Detention and U.S.D. No. 501, WCAB Docket Nos. 234,065 and 241,160 (July 1999).

The Appeals Board, therefore, finds that the appeal in this matter is not properly before the Board and, therefore, is dismissed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Bruce E. Moore dated January 18, 2001, remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of March 2001.

BOARD MEMBER

c: Charles W. Hess, Wichita, KS
James M. McVay, Great Bend, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director