BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

WAYNE DAVIS	)	
Claimant	)	
VS.	)	
	)	Docket Nos. 261,713 & 261,714
BILL'S TRANSMISSION SERVICE	)	
Respondent	)	
AND	)	
	)	
CONTINENTAL WESTERN INSURANCE COMPANY	)	
and COMMERCIAL UNION INSURANCE COMPANY	)	
Insurance Carriers	)	

ORDER

Commercial Union Insurance Company appealed the July 12, 2001 preliminary hearing Order entered by Administrative Law Judge Steven J. Howard.

ISSUES

Claimant is the owner of respondent, Bill's Transmission Service. Docket #261,713 is a claim for a June 28, 1999 accident and Docket #261,714 is a claim for an October 30, 2000 accident. Both claims are against respondent for alleged back injuries.

At the June 26, 2001 preliminary hearing, the primary issue before the Judge was whether claimant had sustained a new work-related injury on October 30, 2000, or whether it was the natural and probable result of the earlier June 28, 1999 accident. In the July 12, 2001 preliminary hearing Order, Judge Howard awarded claimant benefits and determined that Commercial Union Insurance Company (Commercial Union), who was respondent's insurance carrier at the time of the October 2000 accident, was responsible for their payment.

Commercial Union contends Judge Howard erred. It argues that claimant did not sustain a new work-related accident on October 30, 2000, as the incident was merely a natural and probable consequence of the June 1999 accident. Commercial Union requests the Board to reverse the preliminary hearing Order and assess benefits against Continental Western Insurance Company (Continental Western), who was respondent's insurance carrier at the time of the June 1999 accident.

Conversely, Continental Western contends Commercial Union should be responsible for providing claimant with benefits as it argues claimant sustained a new work-related accident in October 2000.

In his brief to the Board, claimant states no preference as to which insurance carrier should be required to provide his workers compensation benefits. Claimant merely contends that benefits should be assessed against one of the carriers.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

The appeal should be dismissed.

Claimant initially injured his low back at work on June 28, 1999, when he pushed a vehicle off a lift. Claimant experienced a flare-up of symptoms at work on October 30, 2000, when he bent over to pick up a socket wrench. Claimant owns and operates Bill's Transmission Service, which had different workers compensation insurance carriers on the date of each incident. Although claimant now needs medical treatment, both insurance carriers contend the other carrier should be responsible for claimant's workers compensation benefits.

There is no dispute that claimant's present need for medical treatment is the result of an injury that arose out of and in the course of employment with respondent. The dispute is which insurance carrier should be responsible for paying claimant's workers compensation benefits. And that dispute is resolved by determining the appropriate date of accident, which is not an issue listed in K.S.A. 1998 Supp. 44-534a as jurisdictional and does not otherwise raise an issue that the Judge exceeded his jurisdiction.[1] Clearly, the Judge did not exceed his jurisdiction.

> 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.[2]

The Board is unaware of any other provision in the Workers Compensation Act that purports to give the Board jurisdiction to review a preliminary hearing order for redetermining the liability among multiple insurance carriers. The Board was presented

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[1] See Carpenter v. National Filter Service, 26 Kan. App. 2d 672, 994 P.2d 641 (1999).

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

with a similar issue in Ireland,[3] where, in holding that the Board was without jurisdiction to consider the issue of which insurance carrier should pay for preliminary hearing benefits, the Board said:

> Furthermore, it is inconsistent with the intent of the Workers Compensation Act for a respondent to delay preliminary hearing benefits to an injured employee while its insurance carriers litigate their respective liability. The employee is not concerned with questions concerning this responsibility for payment once the respondent's general liability under the Act has been acknowledged or established. Kuhn v. Grant County, 201 Kan. 163, 439 P.2d 155 (1968); Hobelman v. Krebs Construction Co., 188 Kan. 825, 366 P.2d 270 (1961).

WHEREFORE, the Board dismisses the appeal.

IT IS SO ORDERED.

Dated this ____ day of October 2001.

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BOARD MEMBER

c: Lisa R. McWilliams, Attorney for Claimant
Michael R. Kauphusman, Attorney for Respondent and Commercial Union Ins. Co.
James B. Biggs, Attorney for Respondent and Continental Western Ins. Co.
Steven J. Howard, Administrative Law Judge
Philip S. Harness, Workers Compensation Director

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[3] Ireland v. Ireland Court Reporting, WCAB Docket Nos. 176,441 & 234,974 (Feb. 1999).