

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

FRANK DAVIS)	
Claimant)	
VS.)	
)	Docket No. 265,715
CORE CARRIER CORPORATION)	
Respondent)	
AND)	
)	
VIRGINIA SURETY COMPANY)	
Insurance Carrier)	

ORDER

Respondent requested review of Administrative Law Judge Steven J. Howard's November 20, 2002, preliminary hearing Order.

ISSUES

At the November 19, 2002, preliminary hearing,¹ claimant requested temporary total disability compensation from September 4, 2002, and continuing. The Administrative Law Judge (ALJ) ordered respondent to pay temporary total disability compensation from September 4, 2002, until November 18, 2002. He also stated, "Dr. Gartsman is the authorized physician for medical treatment."

Respondent appeals and contends the ALJ exceeded his jurisdiction in ordering respondent to pay claimant temporary total disability compensation. Moreover, respondent contends that the ALJ exceeded his jurisdiction in the preliminary hearing Order by naming claimant's authorized treating physician.

In contrast, claimant requests the Appeals Board (Board) to dismiss the appeal because the Board does not have jurisdiction to review the preliminary hearing issues raised by the respondent. In the alternative, claimant argues the preliminary hearing records proves the work restrictions imposed by Dr. Gartsman on claimant's work activities clearly relate to his work-related right shoulder injuries and those restrictions prohibit claimant from performing substantial gainful employment. Additionally, claimant argues

¹ The claimant did not testify at the November 19, 2002, preliminary hearing. But the preliminary hearing record also includes the deposition of the claimant taken on November 8, 2002.

the ALJ did not exceed his jurisdiction when he named Dr. Gartsman as claimant's authorized treating physician because respondent's attorney had agreed Dr. Gartsman was authorized to have claimant undergo a recommended functional capacity evaluation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

At the November 19, 2002, preliminary hearing, the ALJ clarified that the compensability of claimant's right shoulder injury was not an issue. Further, the ALJ announced that the only issue for decision was whether or not claimant was temporarily and totally disabled entitling claimant to temporary and total weekly disability benefits. In addition, the ALJ asked the parties' attorneys if there was an authorized medical treatment issue. Claimant's attorney then indicated that Dr. Gartsman, as claimant's authorized treating physician, had requested a functional capacity evaluation. Respondent's attorney replied that the functional capacity evaluation was authorized.²

Respondent first questions the sufficiency of the evidence to prove that claimant was temporarily and totally disabled. Respondent second questions the time period that the ALJ found claimant was temporarily and totally disabled. Both of these questions are relating to the ALJ's authority to grant claimant's request for temporary total disability benefits at a preliminary hearing.

The ALJ has the authority, at a preliminary hearing, to determine whether claimant is temporarily and totally disabled and, therefore, entitled to temporary total disability benefits. This is not one of the compensable issues listed in K.S.A. 44-534a(a)(2) that grants the Board jurisdiction to review preliminary hearing findings. Thus, the Board, as it has found on numerous occasions, does not have jurisdiction, at this juncture of the proceedings, to review the ALJ's preliminary findings in regard to awarding claimant temporary total disability benefits.

The Board also finds it does not have jurisdiction to review, at this juncture of the proceedings, the issue that the ALJ erred when he stated in the preliminary hearing Order that Dr. Gartsman was claimant's authorized treating physician. That issue is simply an issue in regard to furnishing medical treatment which the ALJ has authority to grant or deny following a preliminary hearing. The issue is not a compensable issue listed in K.S.A. 44-534a(a)(2) that grants the Board jurisdiction to review preliminary hearing findings. Moreover, the Board concludes the ALJ only included that statement in the preliminary hearing Order to clarify respondent's attorney's agreement that Dr. Gartsman was authorized to have claimant undergo a functional capacity evaluation.

² P.H. Trans. at 3.

WHEREFORE, the Board finds it does not have jurisdiction to review the preliminary hearing issues raised by the respondent and respondent's appeal is dismissed.

IT IS SO ORDERED.

Dated this ____ day of January 2003.

BOARD MEMBER

c: Mark E. Kolich, Attorney for Claimant
Jeff S. Bloskey, Attorney for Respondent
Steven J. Howard, Administrative Law Judge
Director, Division of Workers Compensation