

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

ALETA MITCHELL)
Claimant)
V.)
) AP-00-0475-798
SPRINT CORP.) CS-00-0273-847
Respondent)
AND)
)
AMERICAN CASUALTY CO. OF READING PA)
Insurance Carrier)

ORDER

Respondent appeals the May 26, 2023, Motion Hearing Order entered by Administrative Law Judge (ALJ) Julie A.N. Sample.

APPEARANCES

Denise Fields appeared for Claimant. Lloyd Raber appeared for Respondent and its insurance carrier. Due to a conflict, Board Member William G. Belden recused himself from this appeal. Accordingly, Mark E. Kolich has been appointed as a Board Member Pro Tem in this case.

RECORD AND STIPULATIONS

The Board adopted the same stipulations and considered the same record as the ALJ, consisting of the transcript of Preliminary Hearing from March 27, 2008, with exhibits attached; Motion Hearing transcript from May 24, 2023, the documents of record filed with the Division and the parties' briefs.

ISSUE

Does the Board have jurisdiction to review the ALJ's Order denying Respondent's Motion to Dismiss?

FINDINGS OF FACT

Claimant filed an Application for Hearing (E-1) on January 30, 2006, with an injury date of December 14, 2004. Claimant claimed a slip and fall accident on a newly waxed floor at an onsite cafeteria where she suffered injury to her right hand/elbow, lower back, right shoulder, and right side.

An Application for Dismissal (E-6) was filed on March 17, 2023, by Respondent for lack of prosecution.

The ALJ found the law changed after Claimant filed her application for hearing on January 30, 2006, and therefore neither version of K.S.A. 44-534(f), applies to retroactively bar her claim. Respondent and its insurance carrier's Motion to Dismiss was denied. The ALJ ordered this claim to be set for a final hearing as soon as practical.

PRINCIPLES OF LAW AND ANALYSIS

Respondent argues this case should be dismissed for lack of prosecution and because it has been over 17 years since the application for hearing was filed and the case has not proceeded to regular hearing, settlement hearing, or agreed award. Respondent argues the ALJ erred in finding K.S.A. 44-523(f) does not apply to this case. Respondent argues more than 17 years have passed since K.S.A. 44-523(f) became effective, and more than 12 years since the 2011 amendment became effective, and more than 9 years since the latest possible deadline to proceed to a regular hearing, a settlement hearing, or an agreed award, and Claimant has failed to do so, or to even take the simple action of filing a motion for an extension.

Claimant argues the Respondent's request should be denied and the ALJ's Order should be affirmed. Claimant contends her application for hearing was filed in 2006, long before any amendment to K.S.A. 44-523(f) took effect limiting the time for which a claim must proceed to final hearing and before there was a time limit to proceed to final hearing, therefore neither amendment to the statute applies to Claimant's claim. Claimant argues the only statute of limitations applicable to the claim is K.S.A. 44-534(b) (in effect on the date of her Application for Hearing), which requires only she file an application for hearing in the office of the director within three years of the date of the accident or within two years of the date of the last payment of compensation, whichever is later. Claimant argues the statutory requirement was satisfied, therefore, the Respondent's Application for Dismissal must be denied.

Not every decision by an ALJ is subject to review by the Board. The Board has authority to review preliminary hearing orders under the criteria set out in K.S.A. 44-534(a). However, the order under appeal in this case is not a preliminary hearing order.

K.S.A. 44-551(l)(1) states: "All **final** orders, awards, modifications of awards, or preliminary awards under K.S.A. 44-534a, and amendments thereto, made by an administrative law judge shall be subject to review by the workers compensation appeals board upon written request of any interested party within 10 days." (emphasis added)

Denials of motions to dismiss are interlocutory and are not subject to review by the Board.¹ The Order denying Respondent’s motion to dismiss was not final, but interlocutory in nature. Had the ALJ dismissed the claim for lack of prosecution, then a final order would have resulted and the Board would have jurisdiction to review the order.²

When a record reveals a lack of jurisdiction, the Board’s authority extends no further than to dismiss the action.³

DECISION

WHEREFORE, it is the finding, decision and order of the Board, Respondent’s application for Board review of the Motion Hearing Order of ALJ Julie A.N. Sample, dated May 26, 2023, is dismissed for lack of jurisdiction.

IT IS SO ORDERED.

Dated this _____ day of August, 2023.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Via OSCAR

Denise Fields, Attorney for Claimant
Lloyd Raber, Attorney for Respondent and its Insurance Carrier
Hon. Julie A.N. Sample, Administrative Law Judge

¹ *Walker v. State of Kansas*, No.1,048,030, 2013 WL 485696 (Kan. WCAB Jan. 25, 2013); *Stupasky v. Hallmark Marketing Corp.*, No. 1,031,988, 2012 WL 1142954 (Kan. WCAB Mar. 14, 2012); *Pham v. Dold Foods, Inc.*, Nos. 1,013,951 & 1,013,952, 2011 WL 6122903 (Kan. WCAB Nov. 22, 2011).

² *Carrillo v. Sabor Latin Bar & Grille*, No. 1,045,179, 2014 WL 5798458 (Kan. WCAB Oct. 24, 2014).

³ *Bermanv. U.S.D. 233*, No. 1,067,401, 2014 WL 6863036 (Kan. WCAB Nov. 4, 2014).