

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

ANGIE KNIGHT)	
Claimant)	
V.)	
)	
MILLI'S FINE FURNITURE)	AP-00-0468-431
Respondent)	CS-00-0464-244
AND)	
)	
PLAZA INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

The respondent and insurance carrier, through Steven Quinn, requested review of Administrative Law Judge Steven Roth's preliminary hearing Order dated June 15, 2022. William Phalen appeared for the claimant.

RECORD

The Board considered the same record as the ALJ, consisting of the preliminary hearing transcript with exhibits, held June 14, 2022, and documents of record filed with the Division.

ISSUES

1. Should the Board consider affidavits and letters attached to the respondent and insurance carrier's brief to the Board?
2. Was Plaza Insurance Company denied due process due to lack of notice of the preliminary hearing?
3. Did the ALJ exceed his jurisdiction by ordering Plaza Insurance Company to pay medical benefits?

FINDINGS OF FACT

The claimant alleged personal injury by accident on November 30, 2021, while working for the respondent.

On March 13, 2022, the claimant filed an Application for Hearing (E-1). The E-1 was mailed to the respondent at Milli's Fine Furniture, 1707 Main St., Parsons, Kansas 67357, and insurance carrier at Plaza Insurance Co., 3600 American Blvd. West Ste., Bloomington, Minnesota 55431. On April 27, 2022, the claimant filed an Application for Preliminary Hearing (E-3). The E-3 was mailed to the respondent and the insurance carrier at the same addresses. On May 5, 2022, a Notice of Preliminary Hearing was mailed to the respondent and the insurance carrier at the same addresses.

On June 14, 2022, a preliminary hearing was held. While taking appearances, the following discussion occurred:

THE COURT: I would note that there is no appearance by the Respondent either as a self represented party or through an attorney. I would also note that there is nothing in the OSCAR system to suggest an entry of appearance on behalf of the Respondent by an attorney, or their Insurance Carrier.

I would also note in the OSCAR file however that there has been notice sent out, if memory [serves] me correctly May 5, was sent out to both the insurance company and to Milli's Fine Furniture at the addresses recorded in the OSCAR system.

I have not heard of anyone contacting the Court. I have checked with my assistant, neither has she. Mr. Phalen, have you been contacted either formally or informally by anyone on the Respondent's side?

MR. PHALEN: No.

...

THE COURT: Thank you. Given your statements and what we do have contained in OSCAR in regards to notice I would find that there has been appropriate notice given and that the Respondent and their Insurance Carrier are essentially in default on this matter. I take it you would like to proceed, Mr. Phalen, even in their absence?

MR. PHALEN: Yes.¹

On June 15, 2022, the ALJ issued the preliminary Order. The Order was mailed to the respondent at Milli's Fine Furniture, 1707 Main St., Parsons, KS 67357-3338; and insurance carrier at Plaza Insurance Co., 3600 American Blvd. West Ste., Bloomington, Minnesota 55431 and P.O. Box 390327, Minneapolis, Minnesota 55439-0327.

¹ P.H. Trans. at 4-6.

The ALJ stated:

The Court made an inquiry as to notice of this hearing being given to Respondent Milli's Fine Furniture and Plaza Insurance Company and finds that both parties have been provided appropriate notice. Neither party appears or has contacted the Court in advance, nor is there an entry of appearance by any attorney. Respondent and their carrier [are] in default.

The case was then called on the record, exhibits were admitted and testimony of the Claimant received. Claimant sustained her burden of proof that her claim is compensable and that the following medical bills were incurred in the care and treatment of Claimant's work injury:

- Precision Radiology in the amount of \$290.00 (Exh.A2)
- Southeast Kansas Orthopedic Clinic in the amount of \$7,554.75. (Exh. A3)
- Labette Health in the total amount of \$43,853.64. (Exh. A1, A4)

This appeal followed.

PRINCIPLES OF LAW AND ANALYSIS

The insurance carrier argues it was denied due process because it did not receive notice of the preliminary hearing. It contends the suite number was missing from its mailing address on all notices prior to the entry of the Order, thereby denying it the opportunity to present evidence at the preliminary hearing. In support of its position, the insurance carrier obtained and attached to its brief to the Board affidavits from an adjuster with State Auto Insurance Company and an employee with the Coverage and Compliance Section of the Kansas Workers Compensation Division, as well as claim denial letters.

The claimant maintains the Order should be affirmed. The claimant argues the insurance carrier is responsible to provide a proper address to the Division of Workers Compensation. Further, the claimant posits the respondent received proper notice of the demand and the preliminary hearing setting.

1. The Board is not considering affidavits and letters attached to the respondent and insurance carrier's brief to the Board.

The Board has jurisdiction to review "questions of law and fact as presented and shown by a transcript of the evidence and the proceedings as presented, had and introduced before the administrative law judge."² The affidavits and letters were not presented to the ALJ as evidence. In order for the Board to consider the affidavits and letters, the evidence must be presented to the ALJ in the first instance, or stipulated into the record by the parties.

² K.S.A. 44-555c(a).

2. Was Plaza Insurance Company denied due process due to lack of notice of the preliminary hearing?

In *Bergstrom*, the Kansas Supreme Court held:

When a workers compensation statute is plain and unambiguous, this court must give effect to its express language rather than determine what the law should or should not be. The court will not speculate on legislative intent and will not read the statute to add something not readily found in it. If the statutory language is clear, no need exists to resort to statutory construction. *Graham v. Dokter Trucking Group*, 284 Kan. 547, 554, 161 P.3d 695 (2007).³

The Workers Compensation Act requires parties to a claim be afforded a reasonable opportunity to be heard and present evidence. K.S.A. 44-523(a) provides:

The director, administrative law judge or board shall not be bound by technical rules of procedure, but shall give the parties reasonable opportunity to be heard and to present evidence, insure the employee and the employer an expeditious hearing and act reasonably without partiality.

K.S.A. 44-534a states an employee or an employer may apply for a preliminary hearing after giving the adverse party at least seven days written notice of the intent to file for benefits.

Insurance carriers are parties to workers compensation claims.⁴ K.S.A. 44-559 provides that an insurance carrier is a party to all workers compensation proceedings:

Every policy of insurance against liability under this act shall be in accordance with the provisions of this act and shall be in a form approved by the commissioner of insurance. Such policy shall contain an agreement that the insurer accepts all of the provisions of this act, that the same may be enforced by any person entitled to any rights under this act as well as by the employer, that the insurer shall be a party to all agreements or proceedings under this act. and his appearance may be entered therein and jurisdiction over his person may be obtained as in this act provided, and such covenants shall be enforceable notwithstanding any default of the employer.

K.S.A. 40-2212 states, in part:

Every policy issued by any insurance corporation, association or organization to assure the payment of compensation, under the workmen's compensation act,

³ *Bergstrom v. Spears Manufacturing Co.*, 289 Kan. 605, 607-608, 214 P.3d 676 (2009).

⁴ See *Helms v. Tollie Freightways, Inc.*, 20 Kan. App. 2d 548, 889 P.2d 1151 (1995).

shall contain a clause providing that between any employer and the insurer, notice to and knowledge of the occurrence of injury or death on the part of the insured shall be notice and knowledge on the part of the insurer; and jurisdiction of the insured shall be jurisdiction of the insurer and the insurer shall be bound by every agreement, adjudgment, award, or judgment rendered against the insured. . . .

The constitutional requirements of due process are applicable to proceedings held before an administrative body acting in a quasi-judicial capacity.⁵ The essential elements of due process of law in any judicial hearing are notice and an opportunity to be heard and defend in an orderly proceeding adapted to the nature of the case.⁶ To satisfy due process, notice must be reasonably calculated, under all of the circumstances, to apprise the interested parties of the pendency of an action and to afford the parties an opportunity to present any objections.⁷ A lack of notice of a hearing is a denial of due process.⁸

The Board is duty bound to follow binding precedent.⁹ In *Lott-Edwards*,¹⁰ the Kansas Court of Appeals stated, "It is the employer that must be given proper notice and an opportunity to be heard and defend against a claim; the insurance company has no separate right of procedural due process flowing from provisions of the Workers Compensation Act. See *Landes v. Smith*, 189 Kan. 229, 235, 368 P.2d 302 (1962)."¹¹

Lott-Edwards cited *Landes*,¹² which noted an insurance company that writes a policy for Kansas coverage is bound by any judgment against its insured employer and "notice to the employer of the hearing is notice to the insurance carrier."¹³

⁵ See *Neeley v. Board of Trustees, Policemen's & Firemen's Retirement System*, 205 Kan. 780, 784, 473 P.2d 72 (1970).

⁶ See *Collins v. Kansas Milling Co.*, 207 Kan. 617, 485 P.2d 1343 (1971).

⁷ See *Johnson v. Brooks Plumbing, LLC.*, 281 Kan. 1212, 135 P.3d 1203 (2006).

⁸ See *Crease v. Vezers Precision Industrial Constructors International, Inc.*, No. 1,035,775, 2007 WL 4662039 (Kan. WCAB Dec. 7, 2007).

⁹ See *Gadberry v. R. L. Polk & Co.*, 25 Kan. App. 2d 800, 808, 975 P.2d 807 (1998).

¹⁰ *Lott-Edwards v. Americold Corp.*, 27 Kan. App. 2d 689, 6 P.3d 947 (2000).

¹¹ *Id.* at 696-97.

¹² *Landes v. Smith*, 189 Kan. 229, 235-36, 368 P.2d 302 (1962).

¹³ *Id.* at 235.

In *Kimbrough*, the Kansas Supreme Court, citing *Lott-Edwards*, stated, “[T]he insurance carrier has no separate right of procedural due process flowing from provisions of the Workers Compensation Act.”¹⁴

Landes, *Lott-Edwards* and *Kimbrough* say an insurance carrier cannot rightfully assert it was denied due process when the employer was aware of the claim. The Board must follow this appellate precedent. The respondent had notice of the hearing. The precedent does not support the insurance carrier’s argument concerning due process.

3. The ALJ did not exceed his jurisdiction by ordering Plaza Insurance Company to pay medical benefits.

The respondent’s argument, while raised as an issue in an application for review, essentially states the ALJ should not have proceeded with a preliminary hearing if the insurance carrier lacked notice of the hearing. This argument is part and parcel of the due process argument and was addressed in discussion of the second issue. Under K.S.A. 44-534a, the ALJ has authority to order payment of medical benefits.

WHEREFORE, the Board affirms the June 15, 2022, Order.

IT IS SO ORDERED.

Dated this _____ day of August, 2022.

JOHN F. CARPINELLI
BOARD MEMBER

c: (via OSCAR)
William Phalen
Steven Quinn
Hon. Steven Roth

¹⁴ *Kimbrough v. University of Kansas Med. Center*, 276 Kan. 853, 857, 79 P.3d 1289 (2003).