

**BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD**

**DEBORAH BOATENG** )  
Claimant )  
V. )  
 ) AP-00-0472-819  
**FLOWERS BAKING CO. OF LENEXA LLC** ) CS-00-0470-573  
Respondent )  
AND )  
 )  
**INDEMNITY INS. CO. OF N. AMERICA** )  
Insurance Carrier )

**ORDER**

Respondent appeals the December 20, 2022, preliminary hearing Order entered by Administrative Law Judge (ALJ) Troy A. Larson.

**APPEARANCES**

John O'Connor appeared for Claimant. Weston Mills appeared for Respondent and its insurance carrier.

**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 December 13, 2022, with exhibits attached, and the documents of record filed with the Division.

**ISSUE**

Does the Board have jurisdiction to decide an appeal from a preliminary hearing order, Claimant be paid temporary total disability benefits?

**FINDINGS OF FACT**

On January 10, 2022, Claimant suffered a head injury after she slipped on some breadcrumbs while at work and fell backwards while assisting in the maintenance of a machine. Claimant hit her head and was unconscious for several minutes. Claimant was taken to the hospital and received treatment for a neck injury and a concussion.

Two weeks after the accident, Claimant returned to work with restrictions. On April 14, 2022, Claimant was released to work without restrictions. Claimant was prescribed Nortriptyline to treat any concussion symptoms. Claimant returned to full duty and attempted to work 12-plus hours as she had before the accident, but found she was not able to work full duty because of headaches and dizziness. The Nortriptyline made her sleepy, especially when the headaches were severe. Claimant felt she was unable to work.

Claimant quit her job effective April 25, 2022, because she was unable to work. She did not give her employer a reason for her resignation because she did not want to share personal medical information.

Claimant was examined by Dr. Rippee, a concussion specialist, on September 28, 2022, who assigned Claimant work restrictions.

The primary issue at the preliminary hearing held on December 13, 2022, was the payment of temporary total benefits to Claimant. Respondent agreed to pay temporary total benefits from September 6, 2022, to September 27, 2022. Claimant requested temporary total benefits starting April 26, 2022, and continuing through the present, except for the time period Respondent agreed to pay temporary total benefits.

The ALJ ordered payment of temporary total benefits to Claimant beginning September 28, 2022, and continuing. The ALJ found Claimant's resignation was not voluntary and did not bar her from receiving temporary total benefits.

### **PRINCIPLES OF LAW AND ANALYSIS**

Respondent argues the Board should reverse the ALJ's Order awarding temporary total benefits as Claimant voluntarily resigned her employment. Claimant submitted her two-week notice of resignation, made no mention of her inability to do the job, and told her employer it had been a pleasure working with them. Employer argues they were not given a choice to accept different restrictions and change Claimant's work environment. Rather, the only option Employer had was to accept Claimant's resignation. Respondent argues Claimant did not make a good faith effort to maintain her employment and, thus, Claimant voluntarily resigned her employment under K.S.A. 44-510c(b)(2)(C).

Claimant argues the Order should be affirmed as Claimant's resignation under the facts does not disqualify her from receiving temporary total disability.

K.S.A. 44-534a(a)(2) states in part:

A finding with regard to a disputed issue of whether the employee suffered an accident, repetitive trauma or resulting injury, whether the injury arose out and in the

course of the employee's employment, whether notice is given, or whether certain defenses apply, shall be considered jurisdictional, and subject to review by the board.

The term certain defenses refers to defenses disputing compensability of the injury under the Workers Compensation Act.

The primary issue here is payment of temporary total benefits. Receipt of temporary total benefits does not determine whether a claim is compensable. Therefore, the Board does not have jurisdiction over an appeal challenging the receipt of temporary total benefits.

The appeal is dismissed.

**DECISION**

**WHEREFORE**, it is the finding, decision and order of the undersigned Board Member the appeal of the Order of ALJ Troy A. Larson dated December 20, 2022, is dismissed. The Order remains in full force and effect.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of February, 2023.

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REBECCA SANDERS  
BOARD MEMBER

c: Via OSCAR

John O'Conner, Attorney for Claimant  
Weston Mills, Attorney for Respondent and its Insurance Carrier  
Hon. Troy A. Larson, Administrative Law Judge