

**BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD**

<b>DEBRA OSBORNE</b>	)	
Claimant	)	
V.	)	
<b>DUSTROL, INC.</b>	)	CS-00-0457-348
Respondent	)	AP-00-0473-123
AND	)	
<b>OLD REPUBLIC INSURANCE CO.</b>	)	CS-00-0458-524
Insurance Carrier	)	AP-00-0473-319

**ORDER**

Claimant appeals the January 11, 2023, preliminary hearing Order entered by Administrative Law Judge (ALJ) Ali N. Marchant.

**APPEARANCES**

Randy Stalcup appeared for Claimant. Brock Baxter 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 Evidentiary Deposition of Debra Osborne, taken June 17, 2021; Evidentiary Deposition of Rod Ellison, taken June 25, 2021, with exhibits attached; transcript of Preliminary Hearing from July 1, 2021, with exhibits attached; transcript of Preliminary Hearing from December 8, 2022, with exhibits attached; and the documents of record filed with the Division. The briefs submitted by the parties were reviewed.

**ISSUE**

Does the Board have jurisdiction to decide an appeal from preliminary hearing order denying payment of temporary total benefits and medical bills?

**FINDINGS OF FACT**

On August 2, 2021 the ALJ issued an Order finding Claimant proved she met with personal injury of her right ankle by accident while working for Respondent on August 26,

2020, and August 27, 2020, and Claimant's work-related accidents were the prevailing factor causing her right ankle injury. The ALJ further found Claimant did not prove her work-related accidents were the prevailing factor causing her right knee, right hip, or low back injuries.

At the preliminary hearing held on December 8, 2020, Claimant requested temporary total benefits be paid from August 26, 2020, to September 13, 2021, except for some weeks during this time period benefits would not be payable. Claimant also requested payment of certain medical bills.

The ALJ found Claimant failed to prove she is entitled to temporary total disability benefits and denied the request for payment of temporary total disability benefits from August 26, 2020, through September 13, 2021. Claimant's request for payment of medical bills incurred on or after November 25, 2020, was denied. As a result, the Court maintained its prior finding that Claimant's medical bills incurred between September 11, 2020, and November 24, 2020, were unauthorized, and Claimant is entitled to payment of them subject to the \$500.00 statutory limit set forth in K.S.A. 44-510h(b)(2) pursuant to the Kansas Workers Compensation Fee Schedule.

In her Application for Review Claimant stated the issues being appealed are the "entitlement to TTD benefits and an award requiring respondent/insurance carrier to pay for the medical services as contended by Claimant in the Preliminary Hearing."

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

Claimant argues she is entitled to temporary total disability benefits, as well as payment of the medical bills.

Respondent argues the Board does not have jurisdiction to consider this appeal. But even if the Board finds it does have jurisdiction, Claimant failed to prove she is entitled to temporary total disability benefits or payment of her medical bills beyond the \$500.00 maximum for unauthorized medical treatment.

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 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.<sup>1</sup>

The primary issues appealed from the preliminary hearing order are payment of temporary total benefits and payment of medical bills. Neither of these issues determines the compensability of a claim. Therefore, the Board does not have jurisdiction over an appeal challenging the receipt of temporary total benefits and payment of medical bills.

This ruling is consistent with prior Board cases.<sup>2</sup>

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 Ali N. Marchant dated January 11, 2023, is dismissed. The Order remains in full force and effect.

**IT IS SO ORDERED.**

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

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REBECCA SANDERS  
BOARD MEMBER

c: Via OSCAR

Randy Stalcup, Attorney for Claimant  
Brock Baxter, Attorney for Respondent and its Insurance Carrier  
Hon. Ali N. Marchant, Administrative Law Judge

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<sup>1</sup> *Carpenter v. National Filter Service* 26 Kan. App.2d 672,675, 994 P. 2d 641 (1999)

<sup>2</sup> See *Boateng v. Flowers Baking Co. of Lenexa*, AP-00-0472-819, 2023 WL 2376937 (Kan. WCAB February 8, 2023) and *Hudgeons v. Jiffy Lube*, No. 1,071,263, 2015 WL 510339 (Kan. WCAB January 26, 2015).