

**BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD**

<b>LAWRENCE ROSE</b>	)	
Claimant	)	
V.	)	
	)	AP-00-0473-997
<b>MODERN MANUFACTURING, INC.</b>	)	CS-00-0464-515
Respondent	)	
AND	)	
	)	
<b>TRUMBULL INSURANCE COMPANY</b>	)	
Insurance Carrier	)	

**ORDER**

Claimant appeals the February 15, 2023, preliminary hearing Order entered by Administrative Law Judge (ALJ) David J. Bogdan.

**APPEARANCES**

Lawrence Rose appeared Pro Se. Patti Wohlford 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 February 15, 2023, with exhibits attached, and the documents of record filed with the Division.

**ISSUE**

Does the Workers Compensation Appeals Board have jurisdiction to decide the appeal from a preliminary hearing order denying medical treatment and temporary total benefits?

**FINDINGS OF FACT**

Claimant suffered an accidental injury on February 8, 2022. Respondent sent Claimant to Concentra and Dr. Aspinwall for evaluation. Dr. Aspinwall saw Claimant three times and released him on March 10, 2022, without restrictions.

Claimant's former attorney sent him to see Dr. Zimmerman. Dr. Zimmerman saw Claimant on April 25, 2022. He recommended Claimant see a provider who can manage traumatic brain injuries and behavioral issues. Dr. Zimmerman also recommended medication and injections. He did not assign any restrictions on Claimant's ability to work.

On February 15, 2023, a preliminary hearing was held. Claimant appeared, representing himself. Claimant was unsuccessful obtaining another attorney after his attorney was allowed to withdraw last year. Claimant requested additional medical treatment and temporary total benefits.

Respondent did not challenge the compensability of the claim, but denied Claimant was in need of additional medical treatment and temporary total benefits.

The ALJ found Claimant failed to establish he needed additional treatment and was temporarily and totally disabled, and denied the request for treatment.

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

Claimant contends he is entitled to additional medical treatment and temporary total disability benefits and Respondent failed to provide it.

Respondent argues there are no disputed issues of whether the employee suffered an accident, repetitive trauma or resulting injury, whether the injury arose out of and in the course of the employee's employment, whether notice was given, or whether certain defenses applied. The only issues were whether he was entitled to additional medical treatment or if temporary total disability was owed. There were no compensability issues involved here. Therefore, the appeal should be dismissed for lack of jurisdiction.

The Workers Compensation Appeals Board's jurisdiction or ability to hear appeals from preliminary hearing orders, is limited to issues set out in K.S.A. 44-534a(a)(2).

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 of 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 the compensability of the injury under the Workers Compensation Act.<sup>1</sup>

The subject of the preliminary hearing order appealed here is the denial of additional medical treatment and temporary total benefits. This subject does not concern the compensability of the claim. The Board does not have jurisdiction over such an order. Therefore, the appeal is dismissed for lack of jurisdiction.

### **DECISION**

**WHEREFORE**, it is the finding, decision and order of the undersigned Board Member the appeal of the Order of ALJ David J. Bogdan, dated February 15, 2023, is dismissed for lack of jurisdiction.

**IT IS SO ORDERED.**

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

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REBECCA SANDERS  
BOARD MEMBER

c: Via OSCAR

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Patti Wohlford, Attorney for Respondent and its Insurance Carrier  
Hon. David J. Bogdan, Administrative Law Judge

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