

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

BEVERLY JONSON)	
Claimant)	
V.)	
)	AP-00-0459-622
HOSPITAL LINEN SERVICES, INC.)	CS-00-0452-820
Respondent)	
AND)	
)	
CINCINNATI INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Respondent requests review of the August 16, 2021, preliminary hearing Order entered by Administrative Law Judge (ALJ) Julie A.N. Sample.

APPEARANCES

Michael Downing appeared for Claimant. Christopher J. McCurdy 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 held December 2, 2020; transcript of Preliminary Hearing Testimony of Beverly Jonson from February 2, 2021; transcript of Preliminary Hearing Testimony of Gabriela Rodriguez from February 2, 2021, with exhibits attached; transcript of Preliminary Hearing held August 11, 2021, with exhibits attached, and the documents of record filed with the Division.

ISSUE

Does the Board have jurisdiction to consider this appeal?

FINDINGS OF FACT

Claimant filed an Application for Preliminary hearing on September 18, 2020, asking for temporary total disability benefits, medical treatment and payment of medical bills. A

preliminary hearing was held on December 2, 2020, and the ALJ found Claimant was not injured out of or in the course of her employment and denied compensation. Claimant appealed. The issue was whether Claimant sustained an issue from an accident arising out of and in the course of Claimant's employment. On May 24, 2021, the Board issued an Order. The Board reversed the ALJ and found Claimant suffered an accidental injury arising out of and in the course of Claimant's employment. The matter was remanded to the ALJ to make findings related to Claimant's requests for temporary total disability, medical treatment, and payment of medical expenses.

On August 11, 2021, the ALJ held a hearing to address Board's remand Order of May 24, 2021. Respondent argued, again, Claimant did not suffer an injury from an accident arising out of and in the course of Claimant's employment. The ALJ ruled:

After thoughtful consideration of the additional medical records and exhibits provided by the parties, the Court reluctantly concludes that it must follow the Appeals Board's directive. The Appeals Board concluded Claimant's fall was compensable. After a review of the record, the Court concludes there is sufficient evidence to determine Claimant was temporarily and totally disabled from her work related accident beginning July 21, 2020 to December 2, 2020, at the statutory maximum rate of \$687 per week. Therefore, the Court orders Respondent and its carrier to pay Claimant TTD for those dates and at that rate.

As for the medical bills, the Court will refrain from entering an order relating to those bills at this juncture of the claim.¹

In their appeal of this order, Respondent again asks the Board to reconsider the compensability of this claim. Respondent, again, argues Claimant's injury did not arise out of and in the course of her employment, but rather from a personal risk. Respondent presented additional evidence, a civil engineer's report indicating the mat Claimant fell on was within the safety guidelines of the Americans with Disabilities Act Accessibility Guidelines (ADAAG). Respondent requests the Board reverse the decision Claimant's accident arose out of and in the course of her employment. In the alternative, Respondent argues should the Board continue to find Claimant's injury arose out of in the course of employment, it is not compensable as the accident arose directly or indirectly from an idiopathic cause which was an issue the Board did not consider in its first review of this claim.

There was no new Application for Preliminary Hearing filed by Respondent disputing compensability.

¹ ALJ Order (Aug. 16, 2021) at 4.

PRINCIPLES OF LAW AND ANALYSIS

The only issues before the ALJ on August 11, 2021, were whether temporary total disability should be paid, whether additional medical treatment should be granted and whether medical bills should be paid. The issue of compensability was not before the ALJ. The Board limited the scope of the ALJ's actions in its Order of May 24, 2021. The ALJ was ordered to make a determination on benefits consistent with the Board's determination of compensability. The issue of whether Claimant's accidental arose out of and in the course of Claimant's employment was already decided.

The only decision made by the ALJ was temporary total benefits should be paid in accordance with the Board's finding Claimant's accidental injury arose out of and in the course of Claimant's employment. Therefore, the only issue before the Board is whether temporary total benefits were properly awarded.

The Board must first decide whether it possesses jurisdiction to consider the issue at this time. In the context of a preliminary hearing decision the Board's jurisdiction is limited to: whether the employee suffered an accidental injury, whether the injury arose out of and in the course of the employee's employment; whether notice is given, and whether certain defenses apply.² None of the issues listed in K.S.A. 44-534a conferring jurisdiction on the Board were present in the ALJ decision. Simply wanting to raise an issue does not give the Board jurisdiction.

The Board does not have jurisdiction to hear the appeal by Respondent. The ALJ's Order is confined to the award of temporary total disability and the Board does not have jurisdiction to hear such an appeal, at this time. Accordingly, Respondent's appeal is dismissed.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.³ Moreover, this review of a preliminary hearing Order has been determined by one Board Member, as permitted by K.S.A. 2020 Supp. 44-551(I)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

² K.S.A. 2020 Supp.44-534a(a)(2).

³ K.S.A. 2020 Supp. 44-534a.

DECISION

WHEREFORE, it is the finding, decision and order of the undersigned Board Member the Order of Administrative Law Judge Julie A.N. Sample, dated August 16, 2021, remains in full force and effect. Respondent's application for review is dismissed for lack of jurisdiction.

IT IS SO ORDERED.

Dated this _____ day of November, 2021.

HONORABLE REBECCA SANDERS
BOARD MEMBER

c: Via OSCAR

Michael Downing, Attorney for Claimant
Christopher J. McCurdy, Attorney for Respondent and its Insurance Carrier
Hon. Julie A.N. Sample, Administrative Law Judge