

- (1) Claimant alleges and the Assistant Director found that claimant injured his back at work on February 27, 1998, lifting furniture.

(2) Claimant was released to return to work without restrictions on March 20, 1998, by John C. Davis, D.C. Temporary restrictions were later recommended by Dr. Davis.

(3) Claimant did not return to work, however, and on March 24, 1998, respondent terminated claimant for reasons it alleges are unrelated to claimant's injury and claimant has not worked since then.

(4) On May 21, 1998, James D. Seeman, M.D., recommended claimant not return to full duty work but, instead, should be restricted to no lifting over 20 pounds. Dr. Seeman's report dated May 29, 1998, was included in the record by agreement of the parties.

(5) Respondent contends it could accommodate claimant's medical restriction and, therefore, claimant would now be working had he not been terminated for cause.

CONCLUSIONS OF LAW

This appeal should be dismissed.

The Appeals Board's jurisdiction to review preliminary hearing findings and orders is limited by K.S.A. 1997 Supp. 44-534a to the following issues:

- (1) Did the worker sustain an accidental injury?
- (2) Did the injury arise out of and in the course of employment?
- (3) Did claimant provide timely notice and claim?
- (4) Do certain defenses apply that go to the very basis and compensability of the claim?

Further, K.S.A. 1997 Supp. 44-551 limits the review of preliminary hearing orders to only those instances where the administrative law judges have exceeded their jurisdiction and authority.

The issue of whether an individual is temporarily and totally disabled within the meaning of K.S.A. 44-510c is a question of fact that the judges are specifically empowered to determine at the preliminary stage of the proceeding. It is not a preliminary hearing finding that is reviewable from a preliminary hearing order. But, as provided by K.S.A. 1997 Supp. 44-534a, the finding is not binding and is subject to modification upon a full hearing on the claim.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that this appeal should be, and hereby is, dismissed.

IT IS SO ORDERED.

Dated this ____ day of August 1998.

BOARD MEMBER

c: Mitchell D. Wulfekoetter, Topeka, KS
Frederick J. Greenbaum, Kansas City, KS
Brad E. Avery, Assistant Director
Philip S. Harness, Director