

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

LEVI PEREZ PEREZ)
Claimant)
V.)
) AP-00-0481-818
MARTINEZ CONSTRUCTION LLC) CS-00-0480-783
Respondent)
AND)
)
ACCIDENT FUND INS. CO. OF AMERICA)
Insurance Carrier)

ORDER

Claimant appeals the March 8, 2024, preliminary hearing Order entered by Administrative Law Judge (ALJ) Julie A.N. Sample.

APPEARANCES

Gary Kessler and C. Albert Herdoiza appeared for Claimant. Samantha Benjamin-House appeared for Respondent and its insurance carrier.

RECORD AND STIPULATIONS

The Board has adopted the same stipulations and considered the same record as the ALJ, consisting of the Deposition of Levi U. Perez, Vol. I, taken February 16, 2024, with exhibits attached; Deposition of Levi U. Perez, Vol. II, taken February 26, 2024; transcript of Preliminary Hearing from February 28, 2024, with exhibits attached; the documents of record filed with the Division, and the parties' briefs.

ISSUE

Does the Board have jurisdiction to consider Claimant's appeal?

FINDINGS OF FACT

Claimant was injured in a work-related accident on June 26, 2023. Claimant suffered a severe injury to his spine. Respondent has accepted this as a compensable workers compensation claim. Claimant received and continues to receive authorized medical treatment and temporary total disability benefits.

Claimant's preliminary request was for Respondent to provide Americans With Disabilities Act (ADA) compliant housing as outlined by Dr. Blake, the treating physician, until Claimant reaches maximum medical improvement (MMI).

Respondent is currently paying Claimant temporary total benefits and providing transportation and translation services for all Claimant's medical appointments. Respondent provided for modifications to Claimant's current residence as recommended by an assessment obtained by Dr. Blake. A ramp was installed, a screen door was removed and a toilet and shower chair provided.

The ALJ denied Claimant's request for ADA-compliant apartment or dwelling until MMI, finding the request based on the current record, does not under the Act provide any relief and Respondent has done what it can to adapt the current dwelling to Claimant's need within the structure of the Act.

PRINCIPLES OF LAW AND ANALYSIS

Claimant argues temporary housing in an ADA-compliant facility is necessary to cure and relieve Claimant from the effects of his injury and has Claimant in an exceptional situation and requires extraordinary medical circumstances. Claimant requests the Board reverse the ALJ's Order denying the request and Claimant believes his current housing arrangement is insufficient for his needs and the Workers Compensation Act and the ADA compels Respondent to provide him with more appropriate housing.

Respondent argues the ALJ's Order should be affirmed.

There are limitations as to which appeals from preliminary hearing orders are jurisdictional and can be considered by the Board.

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.¹

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

Claimant appealed an issue as to whether Respondent should provide Claimant with sufficient housing under the ADA and the Workers Compensation Act. There is no issue as to compensability of the claim in the appealed preliminary hearing order. There is no issue before this Board which is considered jurisdictional and subject to review by the Workers Compensation Act. Claimant's appeal is dismissed for lack of jurisdiction.

DECISION

WHEREFORE, it is the finding, decision and order of the undersigned Board Member Claimant's appeal is dismissed for lack of jurisdiction.

IT IS SO ORDERED.

Dated this _____ day of May, 2024.

REBECCA SANDERS
BOARD MEMBER

c: Via OSCAR

Gary Kessler and C. Albert Herdoiza, Attorneys for Claimant
Samantha Benjamin-House, Attorney for Respondent and its Insurance Carrier
Hon. Julie A.N. Sample, Administrative Law Judge