

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

TIMOTHY SMITHE	)	
Pro Se Claimant	)	
V.	)	
	)	AP-00-0497-663
VILLAGE TOURS, LLC	)	CS-00-0491-742
Respondent	)	
AND	)	
	)	
TRIUMPHE CASUALTY COMPANY	)	
Insurance Carrier	)	

ORDER

Claimant requested review of the July 28, 2026, Order entered by Administrative Law Judge (ALJ) Gary K. Jones.

Appearances

Timothy Smithe appeared Pro Se. Kevin Johnson 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 the Motion/Preliminary Hearing held July 28, 2026, with exhibits attached, and the documents of record filed with the Division, including the parties' briefs.

Issue

Does the Board have jurisdiction to review the preliminary order denying Claimant's request regarding temporary total disability (TTD) benefits?

Findings of Fact

On June 27, 2025, while moving luggage and equipment, Claimant felt a pain in his abdomen. He reported his injury and sought workers compensation benefits. A preliminary hearing was held on October 28, 2025, and an Order was issued by the ALJ on October 30, 2025. The ALJ found the accident was the prevailing factor causing

Claimant's hernia and Claimant proved all the other necessarily elements of a compensable claim. Dr. Grantham was designated as the authorized treating physician, and TTD compensation was awarded. Respondent appealed this Order to the Board arguing Claimant did not prove the accident was the prevailing factor causing his condition and compensation should be denied. Claimant maintained the Order should be affirmed and requested penalties and attorney fees.

In an Order dated December 18, 2025, a single Board Member determined Claimant proved he sustained personal injury from an accident arising out of and in the course of his employment with Respondent. The requests for temporary total disability benefits, penalties and attorney fees were dismissed for lack of jurisdiction.

Following a hearing on December 23, 2025, the ALJ issued an Order on January 9, 2026, authorizing hernia surgery, continuation of TTD to be paid at a new rate of \$816.54 per week, requiring Respondent to pay the underpayment of TTD and denying Claimant's request for a colonoscopy.

At a hearing on July 28, 2026, Claimant offered to settle his claim for \$72,000, sought enforcement of the January 9, 2026, Order, requested an Independent Medical Examination (IME) and requested the issue of fringe benefits, wage calculation and payment of unpaid temporary total benefits remain open. Claimant also requested payment for penalties for the incomplete payment of benefits and for his time in pursuing these issues.

The ALJ denied Claimant's request for an IME noting there was no agreement between the parties pursuant to K.S.A. 44-516; acknowledged the issue of the TTD rate remains open; denied Claimant's request for penalties because there was no basis for ordering penalties; denied Claimant's request for payment of enforcement costs because there is not a provision within the Kansas Workers Compensation Act for Respondent to pay such costs; and noted settlement negotiations are matters between the parties.

Principles of Law and Analysis

Claimant appealed and requested the Board "remand this matter to the Administrative Law Judge for further proceedings limited to the open TTD-rate issue reserved by the January 9, 2026 Order and preserved by the July 12, 2026 Notice of Supplemental Evidence."¹ Respondent maintains the Order of the ALJ should be affirmed.

¹ Appellant's Letter Brief filed August 20, 2026.

The Board does not have jurisdiction to review Claimant's appeal regarding TTD.

The Board's authority to review appeals of preliminary orders is limited to questions of whether the employee suffered an accident, repetitive trauma, or resulting injury; whether the injury arose out of and in the course of employment; whether timely notice was given; or whether "certain defenses" apply.² "Certain defenses" grant jurisdiction only if they dispute the compensability of the injury under the Kansas Workers Compensation Act.³

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.⁴ The determination regarding temporary total disability compensation, including the TTD rate, is within the ALJ's discretion and not reviewable by the Board.⁵

The Board does not have jurisdiction over the issue of Claimant's entitlement to TTD or the rate ordered by the ALJ on an appeal from a preliminary Order. When it is determined the Board does not have jurisdiction over an issue preliminarily determined by an ALJ, the Board's only recourse is to dismiss the appeal for lack of jurisdiction. The Order then remains in full force and effect. The plain language of K.S.A. 44-534a does not grant the Board authority to address this issue preliminarily.

ORDER

WHEREFORE, it is the finding, decision and order of the undersigned Board Member that the Appeal of the Order of Administrative Law Judge Gary K. Jones, dated July 28, 2026, is dismissed for lack of jurisdiction.

² See K.S.A. 44-534a(a)(2).

³ See *Carpenter v. National Filter Service*, 26 Kan. App. 2d 672, 675, 994 P.2d 641 (1999).

⁴ *Allen v. Craig*, 1 Kan. App. 2d 301, 564 P.2d 552, *rev. denied* 221 Kan. 757 (1977).

⁵ *Hargraves v. Goodyear Tire & Rubber Co.*, No. 1,022,008, 2005 WL 2519631 (Kan. WCAB Sept. 9, 2005).

IT IS SO ORDERED.

Dated this _____ day of September, 2026.

CHRIS A. CLEMENTS
BOARD MEMBER

c: Via OSCAR and Email

Timothy Smithe, Pro Se Claimant
Kevin Johnson, Attorney for Respondent and its Insurance Carrier
Hon. Gary K. Jones, Administrative Law Judge