

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: May 15, 2015

CLAIM NO. 201400598

AK STEEL CORPORATION

PETITIONER

VS.

**APPEAL FROM HON. JANE RICE WILLIAMS,
ADMINISTRATIVE LAW JUDGE**

GARY FIELDS
JASON AND JAMIE ALEXANDER
d/b/a JABEZ TRANSPORTATION LLC
and HON. JANE RICE WILLIAMS,
ADMINISTRATIVE LAW JUDGE
UNINSURED EMPLOYERS' FUND
and PITTSBURGH LOGISTICS SYSTEMS, INC.

RESPONDENTS

AND

PITTSBURGH LOGISTICS SYSTEMS, INC.

PETITIONER

VS.

GARY FIELDS
JASON AND JAME ALEXANDER
d/b/a JABEZ TRANSPORTATION
AK STEEL CORPORATION
UNINSURED EMPLOYERS' FUND
and HON. JANE RICE WILLIAMS,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION AND ORDER
DISMISSING
* * * * *

BEFORE: ALVEY, Chairman, STIVERS and RECHTER, Members.

STIVERS, Member. Gary Fields ("Fields") has filed an objection to the Notices of Appeal filed by Pittsburgh Logistics Systems, Inc. ("Pittsburgh Logistics") and AK Steel Corporation ("AK Steel") asserting both parties are attempting to appeal from an interlocutory order. Fields asserts interlocutory appeals are not appealable and therefore the attempted appeals should be summarily overruled. Both parties have filed responses. Even though Fields has not filed a motion to dismiss we will treat his objection to the Notices of Appeal as a motion to dismiss and accordingly dismiss both appeals.

On April 22, 2015, Pittsburgh Logistics and AK Steel filed Notices of Appeal. In each Notice of Appeal both parties state they are appealing from the February 18, 2015, Interlocutory Opinion and Order of Hon. Jane Rice Williams, Administrative Law Judge ("ALJ") and from the March 25, 2015, Order ruling on the petitions for reconsideration. In the February 18, 2015, decision styled Interlocutory Opinion and Order, the ALJ noted that in an Interlocutory Opinion dated October 24, 2014, the ALJ

determined Fields was an employee of Jabez Transportation at the time of the injury. She noted the parties participated in a telephonic conference and agreed to submit the claim for a determination of up-the-ladder liability and it stands submitted on that issue.

After summarizing the relevant evidence, the ALJ entered findings of fact and conclusions of law determining as follows: "Pittsburg Logistics Systems, Inc. followed by A.K. Steel have 'up the ladder' liability pursuant to KRS 342.610(2)." The ALJ ordered Fields is entitled to benefits as an employee of Jabez Transportation, Inc. and should the employer fail to pay the benefits then Pittsburgh Logistics is liable as the direct up-the-ladder contractor followed by AK Steel as the next up-the-ladder contractor. The ALJ dismissed the Uninsured Employers' Fund as a party. Fields was awarded medical benefits for the cure and relief from the effects of the January 14, 2014, work-related injury. The ALJ also awarded temporary total disability ("TTD") benefits beginning January 14, 2014, and continuing until Fields attained maximum medical improvement ("MMI"). Upon reaching MMI, either party may file a motion to terminate TTD benefits and place the claim on the active docket. The ALJ ordered the claim placed in abeyance until such time as treatment was complete. Status

reports were to be filed within sixty days of the date of the order and every thirty days thereafter.

Both Pittsburgh Logistics and AK Steel filed petitions for reconsideration. In the March 25, 2015, Order denying the petitions for reconsideration, the ALJ noted one of the issues raised was a request by Pittsburgh Logistics to convert the interlocutory order to a final and appealable order. The ALJ found there was no basis for such a request and also expressed the opinion the Board would not consider the appeal until all issues had been decided. The ALJ also noted the last issue to be considered was the argument by Pittsburgh Logistics that Fields had not proven his entitlement to interlocutory relief which she concluded was without merit as the parties had not disputed Fields was injured. Significantly, the ALJ ordered that all other issues such as extent and duration would be determined following the date Fields reached MMI.

Because we conclude as a matter of law the ALJ's interlocutory opinion and order of February 18, 2015, is interlocutory and does not represent a final and appealable order, we dismiss the appeals.

803 KAR 25:010, § 21(2)(a), provides as follows:
"[w]ithin thirty (30) days of the date of a final award,

order or decision rendered by an administrative law judge pursuant to KRS 342.275(2) is filed, any party aggrieved by that award, order or decision may file a notice of appeal to the Workers' Compensation Board." 803 KAR 25:010, § 21(2)(b) defines a final award, order or decision as follows: "[a]s used in this section, a final award, order or decision shall be determined in accordance with Civil Rule 54.02(1) and (2)."

Civil Rule 54.02(1) and (2) state as follows:

(1) When more than one claim for relief is presented in an action, . . . the court may grant a final judgment upon one or more but less than all the claims or parties only upon a determination that there is no just reason for delay. The judgment shall recite such determination and shall recite that the judgment is final. In the absence of such recital, any order or other form of decision, however designated, which adjudicates less than all the claims or the rights and liabilities of less than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is interlocutory and subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

(2) When the remaining claim or claims in a multiple claim action are disposed of by judgment, that judgment shall be deemed to readjudicate finally as of that date and in the same terms all prior interlocutory orders and

judgments determining claims which are not specifically disposed of in such final judgment.

Hence, an order of an ALJ is appealable only if:

1) it terminates the action itself; 2) acts to decide all matters litigated by the parties; and, 3) operates to determine all the rights of the parties so as to divest the ALJ of authority. Cf. KI USA Corp. v. Hall, 3 S.W.3d 355 (Ky. 1999); Ramada Inn v. Thomas, 892 S.W.2d 593 (Ky. 1995); Transit Authority of River City v. Saling, 774 S.W.2d 468 (Ky. App. 1980).

The ALJ's February 18, 2015, decision and subsequent order on petitions for reconsideration meet none of these requirements. The ALJ's opinion does not operate to terminate the action. Moreover, the ALJ's ruling does not act to finally decide all outstanding issues, nor does it operate to determine all rights of the parties so as to divest the ALJ once and for all of authority to decide the overall merits of the case. Instead, the ALJ has yet to decide numerous issues involving Fields' claim, including but not limited to his entitlement to permanent partial disability benefits or total disability benefits, and future medical expenses. As evidenced by the express language used in both the interlocutory opinion and order and the order overruling the petitions for reconsideration,

it is clear the ALJ's decision is not final. In addition, the ALJ has not determined the respective liability of the parties for any benefits due Fields. As a matter of law, therefore, the February 18, 2015, Interlocutory Opinion and Order and the March 25, 2015, Order ruling on the petitions for reconsideration must be deemed interlocutory. Thus, it is the ALJ as fact-finder, not this Board, who retains jurisdiction. See KRS 342.275.

Accordingly, this Board is without authority to review the February 18, 2015, Interlocutory Opinion and Order and subsequent order denying the petitions for reconsideration dated March 25, 2015. **THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED** that the appeals filed by Pittsburgh Logistics and AK Steel are **DISMISSED**.

ALL CONCUR.

FRANKLIN STIVERS, MEMBER
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