Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: October 17, 2014

CLAIM NO. 201301973

AMAR GUEYE PETITIONER

VS. **APPEAL FROM HON. STEVEN G. BOLTON, ADMINISTRATIVE LAW JUDGE**

FLEET STAFF, INC.
DHL EXPRESS, INC.
HON. STEVEN G. BOLTON,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION AND ORDER
DISMISSING

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

ALVEY, Chairman. Amar Gueye ("Gueye"), *pro se*, filed a Notice of Appeal on August 4, 2014. On August 27, 2014, this Board entered an order granting Gueye thirty (30) days to file a compliant Notice of Appeal. On September 15, 2014, Gueye filed a Notice of Appeal from orders of Hon.

Steven G. Bolton, Administrative Law Judge ("ALJ") dated March 5, 2014; March 14, 2014; and August 6, 2014. No benefit review conference ("BRC") has been held in this claim.

A brief recitation of the history of the claim is necessary. On December 20, 2013, Gueye filed a claim against Fleet Staffing ("Fleet") and DHL Express ("DHL") for alleged back and right wrist injuries. No injury date was noted in the Form 101. The remaining significant pleadings/orders are listed as follows:

-February 10, 20014-DHL filed a Motion to Dismiss denying Gueye was ever its employee.

-February 14, 2014-Fleet filed a Notice of representation.

-February 14, 2014-Fleet filed a Motion to Dismiss.

-February 28, 2014-Gueye filed a response to the Motion to Dismiss filed by DHL, and requested documents be provided.

-February 28, 2014-Gueye filed a response to the Motion to Dismiss filed by Fleet, and requested documents to be provided.

-March 3, 2014-Fleet filed a response to DHL's Motion to Dismiss and agreed DHL should be dismissed as a party.

-March 3, 2014-Fleet filed a Motion to Bifurcate regarding the issues of causation, course and scope of employment and notice.

-March 5, 2014-The ALJ entered an order dismissing DHL.

-March 18, 2014-Gueye objected to the “illegal” order issued by the ALJ on March 5, 2014.

-March 18, 2014-Gueye filed an objection to Fleet’s Motion to Bifurcate.

-March 18, 2014-Gueye filed a Motion for a Protective Order.

-March 21, 2014-Fleet filed a renewed Motion to Dismiss on the grounds Gueye attached no medical report or documentation with the Form 101, and submitted no evidence despite his proof time having expired.

-March 21, 2014-Fleet responded to Gueye’s Motion for Protective Order.

-April 9, 2014-Fleet filed a Motion for Extension of Time.

-April 21, 2014-Gueye filed an objection and response to Fleet’s Motion for Extension of Time.

-April 28, 2014-Guye filed an objection to the ALJ’s “illegal” overruling the Motion for Protective Order and *ex parte* hearing held April 4, 2014.

-June 30, 2014-Fleet filed a motion to reset the BRC.

-July 21, 2014-The ALJ issued an order rescheduling the BRC for August 12, 2014 in Frankfort, Kentucky.

-August 4, 2014-Gueye filed an appeal.

Because we conclude this appeal is not from a final and appealable order, it is dismissed.

803 KAR 25:010 Sec. 21 (2)(a) provides as follows:

> [w]ithin thirty (30) days of the date 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 Sec. 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) states 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 of 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. Tube Turns Division vs. Logsdon, 677 S.W.2d 897 (Ky. App. 1984); *cf.* Searcy v. Three Point Coal Co., 280 Ky. 683, 134 S.W.2d 228 (1939); *and* Transit Authority of River City vs. Sailing, 774 S.W.2d 468 (Ky. App. 1980); *see also* Ramada Inn vs. Thomas, 892 S.W.2d 593 (Ky. 1995).

This appeal was filed despite the fact no dispositive or final orders had been issued, and no BRC had been held. While Gueye has identified numerous concerns, about which we express no opinion regarding the validity, none of these meet the finality of a claim necessary for an appeal. Here, the ALJ merely dismissed DHL because Fleet accepted liability for any benefits which may or may not be awarded by the ALJ. The ALJ then rescheduled a BRC, and no final or appealable order has been issued. Clearly, nothing has been done which would operate to terminate the action or finally decide all outstanding issues so as to divest the ALJ once and for all of the authority to decide the merits of the claim.

That said, the appeal filed by Gueye is hereby dismissed, and the claim is remanded to the ALJ to conduct all proceedings necessary for final adjudication of the claim, including a BRC and Hearing if required. Nothing in this decision shall abridge the right of either party to appeal the final decision.

Accordingly, the appeal filed by Gueye on August 4, 2014, and Amended Notice of Appeal filed September 15, 2014 by Gueye alleging numerous orders issued by Hon. Steven G. Bolton, Administrative Law Judge, is hereby **DISMISSED**.

ALL CONCUR.

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MICHAEL W. ALVEY, CHAIRMAN
WORKERS' COMPENSATION BOARD

PETITIONER, *PRO SE*:

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