Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: NOVEMBER 2, 2011

CLAIM NO. 200874483

BIG LOTS, INC. PETITIONER

VS. **APPEAL FROM HON. JOHN B. COLEMAN, ADMINISTRATIVE LAW JUDGE**

LORITTA F. WHITWORTH
and HON. JOHN B. COLEMAN,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION & ORDER
DISMISSING

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BEFORE: ALVEY, Chairman; COWDEN and STIVERS, Members.

ALVEY, Chairman. Big Lots, Inc. ("Big Lots") seeks review of an order entered August 31, 2011 by Hon. J. Landon Overfield, Chief Administrative Law Judge ("CALJ") sustaining Loritta Whitworth's ("Whitworth") motion to reopen her claim for injuries suffered on April 25, 2008. Her claim was previously resolved by opinion, award and

order entered May 26, 2010 by Hon. Douglas W. Gott, Administrative Law Judge ("ALJ"), who awarded Whitworth benefits based upon an 11% impairment rating, enhanced pursuant to KRS 342.730(1)(c)1. Big Lots also appeals from the order entered October 10, 2011, by Hon. James L. Kerr, ALJ, denying its petition for reconsideration. Big Lots erroneously noted in its notice of appeal the order on reconsideration was entered by Hon. John B. Coleman, ALJ.

A brief recitation of the procedural history of this claim is necessary. On May 26, 2010, ALJ Gott entered an opinion, award and order granting permanent partial disability benefits to Whitworth based upon an 11% impairment rating enhanced pursuant to KRS 342.730(1)(c)1. On July 14, 2011, Whitworth filed a motion to reopen her claim due to an alleged worsening of her condition. On August 4, 2011, the CALJ passed ruling upon the motion to reopen for thirty days in order for Whitworth to file medical documentation to support her motion. On August 19, 2011, Whitworth filed an amended motion to reopen with the medical documentation attached. On August 31, 2011, the CALJ issued an order sustaining Whitworth's motion to reopen, and directing the claim be assigned to an ALJ for further proceedings. On September 6, 2011, Big Lots filed a petition for reconsideration of the August 31, 2011

order. On September 20, 2011, a scheduling order was entered assigning the claim to ALJ Kerr. On October 10, 2011, ALJ Kerr denied Big Lots' petition for reconsideration. Also on October 10, 2011, ALJ Kerr entered an order transferring the claim to ALJ Coleman. On October 27, 2011, Big Lots filed an appeal of the CALJ's order entered August 31, 2011, and the October 10, 2011 order on reconsideration.

Because we conclude the order of both the CALJ and ALJ Kerr are interlocutory and do not represent final and appealable orders, we dismiss Big Lots' appeal. 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 re-adjudicate 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).

In this instance, the CALJ's August 31, 2011 order merely determined Whitworth set forth a *prima facie* case for allowing her claim to proceed regarding whether she has suffered a worsening of her condition as she has alleged. He made no determination she has indeed suffered a worsening of condition for which she is entitled to increased benefits. This is reflected in the October 10, 2011 order entered by ALJ Kerr denying its petition for reconsideration. Whether Whitworth has experienced a worsening of her work-related condition remains undecided, and requires additional evidence necessitating additional findings and a subsequent decision on the merits. As such, it does not meet the above requirements. Because this determination remains unresolved, the CALJ's order and ALJ Kerr's order on reconsideration do not operate to terminate the action. Additionally, these orders do not act to finally decide all outstanding issues nor do they operate to determine all the rights of the parties so as to divest ALJ Coleman once and for all of the authority to decide the overall merits of the claim.

Accordingly, for the reasons enumerated above, the appeal seeking review of the order entered August 31,

2011 by Hon. J. Landon Overfield, Chief Administrative Law Judge, as well as the order denying Big Lots' petition for reconsideration entered October 10, 2011 by Hon. James L. Kerr are hereby **DISMISSED**.

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MICHAEL W. ALVEY, CHAIRMAN
WORKERS' COMPENSATION BOARD

ALL CONCUR.

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