

OPINION ENTERED: JUNE 14, 2013

CLAIM NO. 201300274

BOWLIN ENERGY

PETITIONER

VS.

**APPEAL FROM HON. WILLIAM J. RUDLOFF,  
ADMINISTRATIVE LAW JUDGE**

TIM WAYNE COLYER  
and HON. WILLIAM J. RUDLOFF,  
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION & ORDER  
DISMISSING**

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BEFORE: ALVEY, Chairman, STIVERS, Member.

**ALVEY, Chairman.** Bowlin Energy ("Bowlin") seeks review of an order entered March 28, 2013 by Hon. William J. Rudloff, Administrative Law Judge ("ALJ") placing the claim in abeyance, and granting Tim Wayne Colyer ("Colyer") interlocutory relief in the form of temporary total disability ("TTD") benefits, payable until he reaches maximum medical improvement ("MMI"), and medical benefits.

Bowlin also appeals from the May 1, 2013 order denying its petition for reconsideration.

Colyer filed a Form 101, Application for Resolution of Injury Claim, on February 25, 2013 alleging injuries to his back, hip and left leg occurring on November 28, 2012 due to sleeping in bucket trucks and setting poles. Colyer filed a motion for interlocutory relief on February 21, 2013. A copy of the motion was served on the Workers' Compensation insurer. No response was filed. A motion to dismiss the claim for lack of jurisdiction, and motion to set-aside the order of interlocutory relief was filed on April 22, 2013, alleging Kentucky does not have jurisdiction of the claim. In the May 1, 2013 order, the ALJ deferred ruling on the motion until a final resolution of the merits of the claim.

Because we conclude the ALJ's ruling is interlocutory and does not represent a final and appealable order, we dismiss Bowlin's 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 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).

While we are sympathetic with Bowlin's position, in this instance, the ALJ's order is not a final determination, and is not appealable. Clearly, the orders entered by the ALJ on March 28, 2013 and May 1, 2013, are not final and appealable as they do not operate to terminate the action or to finally decide all outstanding issues. Likewise, they do not operate to determine all the rights of the parties so as to divest the ALJ once and for all of the authority to decide the merits of the claim.

That said, we respectfully suggest the ALJ to review the motion to dismiss the claim based upon lack of jurisdiction pursuant to KRS 342.670.

Accordingly, the appeal seeking review of the orders entered January 25, 2013 and February 15, 2013, by Hon. William J. Rudloff, Administrative Law Judge, is hereby **DISMISSED**.

STIVERS, MEMBER, CONCURS.

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MICHAEL W. ALVEY, CHAIRMAN  
WORKERS' COMPENSATION BOARD

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