OPINION ENTERED: JUNE 14, 2013

CLAIM NO. 201201195

CEDAR CREEK COAL CO., INC. PETITIONER

VS. **APPEAL FROM HON. GRANT S. ROARK, ADMINISTRATIVE LAW JUDGE**

BRUCE FIELDS
and HON. GRANT S. ROARK,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION & ORDER
DISMISSING
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BEFORE: ALVEY, Chairman, STIVERS, Member.

ALVEY, Chairman. Cedar Creek Coal Co., Inc. ("Cedar Creek") seeks review of an interlocutory opinion and order rendered April 1, 2013 by Hon. Grant S. Roark, Administrative Law Judge ("ALJ") determining Kentucky had jurisdiction of the claim filed by Bruce Fields ("Fields") on September 12, 2012. Cedar Creek also appeals from the

order denying its petition for reconsideration issued May 13, 2013.

Fields filed a Form 101 on September 12, 2012 alleging injuries to his back and neck while working for Cedar Creek. A Benefit Review Conference ("BRC") was held on January 16, 2003. In the BRC order and memorandum, the ALJ noted, "Claim bifurcated to first decide coverage issue." In the opinion rendered April 1, 2012, the ALJ determined jurisdiction is appropriate pursuant to KRS 342.670. The order further reflected, "This matter shall proceed with litigation of all issues." Cedar Creek filed a petition for reconsideration on April 15, 2013 arguing the ALJ erred in finding Kentucky has jurisdiction of the claim. The petition for reconsideration was denied by order dated May 13, 2013. Cedar Creek then filed this appeal.

Because we conclude the ALJ's ruling is interlocutory and does not represent a final and appealable order, we dismiss Cedar Creek'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 <u>only</u> 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 ALJ's order is not a final determination, and is not appealable. Clearly, the orders entered by the ALJ on April 1, 2013 and May 3, 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. It is specifically noted the ALJ, after issuing the ruling on jurisdiction, noted the claim would proceed on all issues.

Accordingly, the appeal seeking review of the orders entered April 1, 2013 and May 13, 2013, by Hon. Grant S. Roark, Administrative Law Judge, is hereby **DISMISSED**.

STIVERS, MEMBER, CONCURS.

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MICHAEL W. ALVEY, CHAIRMAN
WORKERS' COMPENSATION BOARD

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