

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: NOVEMBER 2, 2011

CLAIM NO. 200669121

CHARLES WILLIAMS

PETITIONER

VS.

APPEAL FROM HON. OTTO D. WOLFF, IV,
ADMINISTRATIVE LAW JUDGE

FRITO-LAY
and HON. OTTO D. WOLFF, IV,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION AND ORDER
DISMISSING

* * * * *

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

ALVEY, Chairman. Charles Williams ("Williams") seeks review of an order entered September 27, 2011 by Hon. Otto D. Wolff, Administrative Law Judge ("ALJ") referring him for a medical evaluation to be performed by a University of Kentucky physician pursuant to KRS 342.315. The ALJ previously entered an order on September 23, 2011 granting

Frito-Lay's (Frito) motion for appointment of a university evaluator. Williams did not file a petition for reconsideration.

A brief recitation of the procedural history of this claim is necessary. On January 18, 2010, the ALJ entered an opinion, order and award granting permanent total disability benefits to Williams. On March 5, 2010, Frito filed a motion to reopen and medical fee dispute, along with a notice of appeal. The ALJ's opinion was affirmed by this Board on July 14, 2010. In an order entered November 1, 2010, the ALJ reopened the claim and ordered the parties to agree upon a physician to perform an evaluation. The ALJ also ordered the parties to file status reports at the end of thirty days apprising the ALJ "of the status of the cooperative effort". Williams filed a notice of appeal of the November 1, 2010 order on November 16, 2010. On March 16, 2011, this Board dismissed that appeal because he sought to appeal an interlocutory order.

As noted previously, the ALJ entered an order on September 23, 2011, granting Frito's motion for a university evaluation pursuant to KRS 342.315. In his notice of appeal, Williams specifically designated he is appealing the ALJ's order entered September 27, 2011 for a

university evaluation related to causation, work-relatedness, pre-existing condition - - active/dormant, functional impairment rating, and restrictions as being *res judicata*.

Because we conclude the ALJ's order is interlocutory and does not represent a final and appealable order, we dismiss Williams' 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 ALJ's order entered September 27, 2011 merely refers this claim to the

University of Kentucky for an evaluation to be performed pursuant to KRS 342.315. The order does not operate to finalize or terminate litigation pertaining to Frito's reopening. The ALJ had previously ordered the claim reopened to resolve the medical fee dispute filed by Frito which 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 the medical dispute remains unresolved, the ALJ's order does not operate to terminate the action itself. Additionally, the ALJ's order does not act to finally decide all outstanding issues, nor does it 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.

This is the second time during the pending medical fee dispute Williams has filed an appeal from an interlocutory order. Any additional unfounded appeals will result in the assessment of sanctions pursuant to KRS 342.310.

Accordingly, for the reasons enumerated above, the appeal seeking review of the order entered September 27, 2011 by Hon. Otto D. Wolff, IV, Administrative law Judge, is hereby **DISMISSED**.

MICHAEL W. ALVEY, CHAIRMAN
WORKERS' COMPENSATION BOARD

ALL CONCUR.

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