

OPINION ENTERED: APRIL 12, 2012

CLAIM NO. 201200062

CONSOL OF KENTUCKY, INC.

PETITIONER

VS.

APPEAL FROM HON. JEANIE OWEN MILLER,
ADMINISTRATIVE LAW JUDGE

OSIE DANIEL GOODGAME, JR.
and HON. JEANIE OWEN MILLER,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION DISMISSING

* * * * *

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

SMITH, Member. Consol of Kentucky, Inc. ("Consol"), seeks review of an order entered March 1, 2012 by Hon. Jeanie Owen Miller, Administrative Law Judge ("ALJ") overruling its motion to dismiss the application for resolution of injury claim filed January 17, 2012, by Osie Daniel Goodgame, Jr. ("Goodgame"). Goodgame alleges he was injured within the scope and course of his employment with

Consol at Deane, Letcher County, Kentucky sustaining cumulative trauma injuries manifesting on January 19, 2010. However, Consol maintains the records will show that Goodgame last worked in Kentucky on or about August 1, 2009, and then was transferred to the Buchanan Mine in Grundy, Virginia, where he worked until January 19, 2010, and he retired effectively February 1, 2010. Consol argues Goodgame's claim was filed on January 25, 2012, clearly outside of the two year statute of limitations set out in KRS 342.185. Consol further argued Goodgame was employed by Consol in another state after leaving Kentucky.

On February 15, 2012, Goodgame filed a reply disputing Consol's assertion that the claim was filed outside of the two year statute of limitations. Goodgame asserted he was last employed by Consol on January 19, 2010, and his claim was filed on January 17, 2012, and not January 25, 2012 as Consol alleged.

Goodgame also argued Consol's assertion that his assignment to work in Virginia did not satisfy the requirement for extraterritorial jurisdiction is contrary to the provisions of KRS 342.670. Goodgame pointed out he had been employed by Consol for 18 years and had been assigned duty in Virginia only for the last 5 1/2 months. He also had been domiciled in the Commonwealth of Kentucky

for the entire time, bringing him clearly within the protection of the Kentucky Workers' Compensation Act.

The ALJ overruled the motion without comment on March 1, 2012. Thereafter, on March 27, 2012, Consol, filed a notice of appeal.

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

In this instance, the ALJ's order merely failed to rule in Consol's favor by refusing to summarily decide the statute of limitations issue. The order entered March 1, 2012 is not dispositive of that issue. The ALJ's order

does not operate to terminate the action itself, but rather sets forth the issue is not ripe for final determination. The ALJ's ruling 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 overall merits of the claim.

Accordingly, the appeal seeking review of the order entered March 1, 2012 of Hon. Jeanie Owen Miller, Administrative Law Judge, is hereby **DISMISSED**.

ALL CONCUR.

LAWRENCE F. SMITH, MEMBER
WORKERS' COMPENSATION BOARD

COPIES TO:

HON. A. STUART BENNET
PO BOX 2150
LEXINGTON, KY 40588

HON. SHERRY BRASHEAR
PO BOX 1626
HARLAN, KY 40831

HON. JEANIE OWEN MILLER
PO BOX 2070
OWENSBORO, KY 42302