Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: April 18, 2014

CLAIM NO. 201301753

CONSOL OF KENTUCKY, INC. PETITIONER

VS. **APPEAL FROM HON. J. LANDON OVERFIELD, CHIEF ADMINISTRATIVE LAW JUDGE**

RODNEY KELLY
and HON. J. LANDON OVERFIELD,
CHIEF ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
DISMISSING

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

ALVEY, Chairman. Consol of Kentucky, Inc. ("Consol") seeks review of an order issued on April 4, 2014 by Hon. J. Landon Overfield, Chief Administrative Law Judge ("CALJ") sustaining a motion to reopen filed by Randy Kelly ("Kelly"), removing the claim from abeyance, consolidating the claim with claims numbered 2007-00402 and 2006-01405,

and referring the claim to Hon. Roland R. Case, Administrative Law Judge ("ALJ Case"). No petition for reconsideration of the order was filed.

Kelly filed a Form 102CWP, Application for Resolution of Coal Workers' Pneumoconiosis Claim, on November 18, 2013. The claim was dismissed by order entered by CALJ Overfield on February 6, 2014. Kelly filed a petition for reconsideration on February 18, 2014, which he supplemented on February 24, 2014. Consol filed a response to the petition for reconsideration on February 24, 2014. The CALJ entered an order setting aside the February 6, 2014 order on March 10, 2014 and sustained Kelly's motion to place the claim in abeyance. On April 4, 2014, the CALJ entered an order outlined above from which Consol appeals.

It is clear the April 4, 2014 order is not final and appealable. 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 CALJ's order does not terminate the action, does not decide all matters litigated by the parties, and does not determine the rights of the parties. Again, it is clear the CALJ's April 4, 2014 order is not final and appealable. Therefore, the appeal filed by Consol must be dismissed, and the claim remanded to ALJ Case to conduct all proceedings necessary for final adjudication of the claim, including a BRC and Hearing if required.

Accordingly, the appeal seeking review of the order rendered April 4, 2014 by Hon. J. Landon Overfield, Chief Administrative Law Judge, is hereby **DISMISSED**.

ALL CONCUR.

MICHAEL W. ALVEY, CHAIRMAN
WORKERS' COMPENSATION BOARD

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