OPINION ENTERED: May 24, 2013

CLAIM NO. 200900052

CONSOL OF KENTUCKY, INC. PETITIONER

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

LARRY HAMILTON
and HON. J. LANDON OVERFIELD,
CHIEF ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION & ORDER
DISMISSING
* * * * * *

BEFORE: ALVEY, Chairman, and STIVERS, Member.

ALVEY, Chairman. Consol of Kentucky, Inc. ("Consol") seeks review of an order entered April 4, 2013 by Hon. J. Landon Overfield, Chief Administrative law Judge ("CALJ"), finding Larry Hamilton ("Hamilton") had presented a *prima facie* case for reopening, and placing the claim in abeyance. No petition for reconsideration was filed.

Hamilton was awarded retraining incentive benefits by Hon. Caroline Pitt Clark, Administrative Law Judge, in an opinion rendered December 1, 2009. On January 25, 2013, Hamilton filed a motion to reopen his claim alleging a worsening of his condition. The motion was sustained by an order entered by the CALJ on April 4, 2013. In the order, the CALJ stated, "This claim will be removed from abeyance and scheduled for a University evaluation after CWP claims previously filed and placed in abeyance before it have been removed from abeyance and scheduled for a University evaluation." Consol then filed this appeal on April 29, 2013.

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) 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 dated April 4, 2013 merely places the claim in abeyance, without making a determination on the merits. The CALJ clearly stated the claim was placed in abeyance until a University Evaluation could be scheduled. It is obvious further action is to be taken in the claim, and the order is not final and appealable. The ALJ's order does not operate to terminate the action or to finally decide all outstanding issues. Likewise, it does not operate to determine all the rights of the parties so as to divest the CALJ once and for all of the authority to decide the merits of the claim.

Accordingly, the appeal seeking review of the order entered April 4, 2013, entered by Hon. J. Landon Overfield, Chief Administrative Law Judge, is hereby **DISMISSED**.

STIVERS, MEMBER, CONCURS.

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MICHAEL W. ALVEY, CHAIRMAN
WORKERS' COMPENSATION BOARD

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