Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: October 5, 2015

CLAIM NO. 201401677

COYNE TEXTILE SERVICES PETITIONER

VS. **APPEAL FROM HON. WILLIAM J. RUDLOFF, ADMINISTRATIVE LAW JUDGE**

POLLY COMBS and
HON. WILLIAM J. RUDLOFF,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
DISMISSING

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

ALVEY, Chairman. Coyne Textile Services ("Coyne") seeks review of an Interlocutory Opinion and Order rendered August 11, 2015 by Hon. William J. Rudloff, Administrative Law Judge ("ALJ") awarding temporary total disability ("TTD") benefits and medical benefits to Polly Combs ("Combs"). The ALJ's decision specifically notes it is

interlocutory, and is not final and appealable. The ALJ noted Combs has not yet reached maximum medical improvement ("MMI"). Coyne also appeals from the September 2, 2015 order denying its petition for reconsideration.

Combs filed a Form 101, Application for Resolution of Injury Claim, on September 2, 2014 alleging she injured her right upper extremity when boxes fell onto her on July 11, 2013. A Benefit Review Conference ("BRC") was held on February 11, 2015. The BRC order and memorandum indicates the issues preserved for decision included work-relatedness/causation; injury as defined by the Act; TTD; and pre-existing active. The BRC Order and Memorandum also contains the following handwritten notation, "MMI? and permanent total disability. Bifurcation on the issues of permanent injury, MMI, TTD; work-relatedness/causation; injury as defined by the Act and Pre-existing Active."

In the "Interlocutory Opinion and Order" rendered March 30, 2015, the ALJ determined Combs had not yet reached MMI based upon the opinion of Dr. Robert Hoskins, and was therefore entitled to TTD benefits and medical benefits. Coyne filed petitions for reconsideration on April 9, 2015 and April 30, 2015 which were denied by the ALJ on May 15, 2015.

On May 15, 2015, the ALJ entered an order scheduling a hearing which was subsequently held on July 28, 2015. Additional medical evidence was also filed by the parties. On August 11, 2015, the ALJ again determined Combs had not reached MMI, and ordered TTD and medical benefits based upon the opinions of Drs. Marvin Favetto and Hoskins. On August 19, 2015, Coyne again filed a petition for reconsideration which was denied by order entered September 2, 2015.

Because we conclude the ALJ's August 11, 2015 ruling is interlocutory and does not represent a final and appealable order, we dismiss this 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 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).

The ALJ, in arriving at his decision, stated he relied upon the opinions expressed by Drs. Favetto and Hoskins in reaching his determination. In his report dated October 27, 2014, Dr. Hoskins determined Combs had not reached MMI, and would not reach that plateau until she had exhausted all reasonable surgical options. In his note dated July 30, 2013, Dr. Favetto recommended an MRI and EMG, and follow-up with a spine surgeon. Therefore, the ALJ could reasonably determine from the record Combs has not reached MMI based upon Dr. Hoskins' opinion additional treatment is required and the recommendations by Dr. Favetto.

After reviewing the file, it is clear the opinion rendered August 11, 2015, and the September 2, 2015 order on reconsideration are interlocutory, and as such are not final and appealable as they do not operate to terminate the action or 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.

That said, the appeal filed by Coyne is hereby dismissed, and the claim is remanded to the ALJ to conduct all proceedings necessary for final adjudication of the claim, including a BRC and Hearing if required.

The ALJ is reminded in determining the appropriate period of TTD benefits, he must apply the appropriate standard as set forth in W.L. Harper Construction Company v. Baker, 858 S.W.2d 202 (Ky. App. 1993); Central Kentucky Steel v. Wise, 19 S.W.3d 657 (Ky. 2000); and Magellan Behavioral Health v. Helms, 140 S.W.3d 579 (Ky. App. 2004).

Also, while not required to do so, the ALJ should consider requiring status reports filed on a periodic basis to advise the status of Combs' recovery. Nothing in this decision shall abridge the right of either party to appeal the final decision.

Accordingly, the appeal seeking review of the interlocutory decision rendered August 11, 2015, and the order denying the petition for reconsideration issued September 2, 2015, by Hon. William J. Rudloff, Administrative Law Judge, is hereby **DISMISSED**.

ALL CONCUR.

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