Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: May 2, 2014

CLAIM NO. 201286000

CYNTHIA L. BAILEY PETITIONER

VS. **APPEAL FROM HON. JANE RICE WILLIAMS, ADMINISTRATIVE LAW JUDGE**

GENTIVA HEALTH CARE
and HON. JANE RICE WILLIAMS,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION & ORDER
DISMISSING
AND REMANDING

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

ALVEY, Chairman. Cynthia L. Bailey ("Bailey") seeks review of an Opinion and Order rendered January 9, 2014 by Hon. Jane Rice Williams, Administrative Law Judge ("ALJ") finding in favor of Gentiva Health Care Systems ("Gentiva") on the bifurcated issue of the compensability of a proposed right total hip replacement. Bailey also appeals from the

February 10, 2014 order denying her petition for reconsideration.

On appeal, Bailey argues the ALJ incorrectly defined the issues; failed to properly analyze factually and legally the issue of causation; Gentiva failed in its burden of proving she had a pre-existing active condition; and, the ALJ made unsupported assumptions to discredit her medical witnesses. Because the ALJ's decision resolved only the bifurcated issue, and therefore is not final and appealable, this appeal is dismissed and the claim is remanded for further proceedings.

Bailey filed a Form 101 alleging injury dates of July 23, 2010; February 1, 2011; July 15, 2011 and May 12, 2012. She alleged injuries to her neck, head, right hip, back, right foot and left knee. The claims were consolidated, and numerous extensions of time were granted. On June 6, 2012, Gentiva filed a motion to bifurcate the claim to determine the compensability of proposed surgery to the right hip. An order was entered on June 10, 2013, in which the claim was bifurcated solely for a determination of compensability of the proposed hip surgery.

A telephonic status conference was held on October 16, 2013. The order reflects, "Hearing on

bifurcated issue of Reasonableness & Necessity and Work Relatedness of R Hip and total arthroplasty." A hearing was held on November 20, 2013. The Hearing Transcript reflects the following:

> THE COURT: A benefit review conference was held in this claim - - well, actually, there have been several different conferences and several different phone calls, and on October 16, 2013, parties agreed the best thing to do would be to bifurcate and have a hearing on the issue of reasonableness and necessity and work-relatedness of the right hip, and a total hip replacement. So that's the only issue we're here for today. Is that correct as you all understand it?
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> MR. SCHABELL: Yes, Your Honor.
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> MR. POHL: Yes, ma'am.

In the opinion rendered January 9, 2014, the ALJ found the recommended total hip replacement was unrelated to the alleged work injuries, and was not compensable. Bailey filed a petition for reconsideration, acknowledging, "The bifurcated issue of this decision is the reasonableness, necessity and work relatedness of the hip and the total arthroscopy." She alleged the ALJ failed to properly address the issue of causation and apportionment. She also alleged the ALJ's decision was unclear regarding the factual and legal basis for her opinion. Bailey

requested the ALJ to make sufficient findings of fact and conclusions of law from the record to support her decision. The petition for reconsideration was denied by order entered February 10, 2014. On the same date, the ALJ issued a proof schedule for the remaining issues, and indicated a benefit review conference ("BRC") would be scheduled in June 1014, at the Florence Hearing site. Because we conclude the ALJ's January 9, 2014 decision 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.
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> (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 v. 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 v. Sailing, 774 S.W.2d 468 (Ky.

App. 1980); *see also* Ramada Inn v. Thomas, 892 S.W.2d 593 (Ky. 1995).

Bailey argues the ALJ applied the incorrect standard in determining the proposed hip surgery is not work-related, and therefore not compensable. In the orders referenced above, the Hearing Transcript, and even the petition for reconsideration, it is acknowledged the decision was rendered on a bifurcated issue. The February 10, 2014 order clearly reflects additional proof time was afforded for the remaining issues. After reviewing the file, it is clear the opinion rendered January 9, 2014, and the order on reconsideration issued February 10, 2014 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 Bailey must be dismissed, and the claim remanded to the ALJ to conduct all proceedings necessary for final adjudication of the claim, including a BRC and Hearing if required. Nothing in this decision shall abridge the right of either party to appeal the final decision.

Accordingly, **IT IS HEREBY ORDERD AND ADJUDGED** the appeal seeking review of the opinion rendered January 9, 2014 and the order on reconsideration issued February 10, 2014 by Hon. Jane Rice Williams, Administrative Law Judge, is **DISMISSED**, and the claim is **REMANDED** for further proceedings as outlined above.

ALL CONCUR.

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MICHAEL W. ALVEY, CHAIRMAN
WORKERS' COMPENSATION BOARD

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