Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: March 28, 2014

CLAIM NO. 201260799

FIRST CLASS SERVICES, INC. PETITIONER

VS. **APPEAL FROM HON. OTTO DANIEL WOLFF, IV, ADMINISTRATIVE LAW JUDGE**

GURAL W. HENSLEY
and HON. OTTO DANIEL WOLFF,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
DISMISSING

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

ALVEY, Chairman. First Class Services, Inc. ("First Class") seeks review of an Opinion and Order rendered December 23, 2013 by Hon. Otto Daniel Wolff, IV, Administrative Law Judge ("ALJ") finding the claim filed by Gural Hensley ("Hensley") is not barred by the "going and coming" rule, and scheduling a telephonic conference. First Class also

appeals from the February 11, 2014 order denying its petition for reconsideration.

Hensley filed a Form 101, Application for Resolution of Injury Claim, on February 8, 2013 alleging injuries to his back, neck, head, ribs, heart, left lung and arm in a motor vehicle accident occurring November 15, 2012. A Benefit Review Conference ("BRC") was held on October 23, 2013. The BRC order and memorandum indicates the claim was bifurcated for, "1 bifurcated – 1st iss. Is going & coming defense, and w/in exception to defense, if determine under coverage of ACT, then go into abeyance for further med. treatment." A hearing was held on the same date.

In the opinion rendered December 23, 2013, the ALJ found Hensley's claim was not precluded by the "going and coming" rule, and scheduled a telephonic conference for January 7, 2014. No memorandum of such telephonic conference exists in the record. Subsequently, the ALJ entered an order on February 11, 2014, overruling a petition for reconsideration filed by First Class. Because we conclude the ALJ's December 23, 2013 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).

It is readily apparent First Class filed a prophylactic appeal because the ALJ's decision did not denote his orders were interlocutory. After reviewing the file, it is clear the opinion rendered December 23, 2013, and the order on reconsideration are interlocutory, and as such are not final and appealable as they do not operate to terminate the action or to 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 First Class is hereby dismissed, and the claim is remanded to the ALJ to issue a scheduling order allowing the parties time to introduce evidence on the remaining issues, and 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, the appeal seeking review of the opinion rendered December 23, 2013 and the order on reconsideration issued February 11, 2014, by Hon. Otto Daniel Wolff, IV, Administrative Law Judge, is hereby **DISMISSED**.

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MICHAEL W. ALVEY, CHAIRMAN
WORKERS' COMPENSATION BOARD

COUNSEL FOR PETITIONER:

HON R CHRISTION HUTSON
PO BOX 995
PADUCAH, KY 42002

COUNSEL FOR RESPONDENT:

HON PAUL A BRIZENDINE
300 MISSOURI AVE, STE 200
JEFFERSONVILLE, IN 47130

ADMINISTRATIVE LAW JUDGE:

HON OTTO DANIEL WOLFF, IV
8120 DREAM STREET
FLORENCE, KY 41042