Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: August 15, 2014

CLAIM NO. 201301217

GREGORY WINFIELD PETITIONER

VS. **APPEAL FROM HON. STEVEN BOLTON, ADMINISTRATIVE LAW JUDGE**

DENYO
and HON. STEVEN BOLTON,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION AND ORDER
DISMISSING AND REMANDING
* * * * * *

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

STIVERS, Member. Gregory Winfield ("Winfield") seeks review of an interlocutory decision rendered March 7, 2014, by Hon. Steven Bolton, Administrative Law Judge ("ALJ") resolving the bifurcated issue of causation of his alleged cervical spine injury. The ALJ determined Winfield did not sustain a work-related cervical spine injury. Winfield

also appeals from the April 14, 2014, Order sustaining in part and denying in part his petition for reconsideration.

On appeal, Winfield argues the ALJ erred in his assessment of the evidence by failing to find he suffered a compensable work-related cervical injury on August 17, 2011. In response, Denyo argues, in part, the ALJ's decision is interlocutory and not appealable. Because the March 7, 2014, Opinion and Order is interlocutory and several other contested issues remain unresolved, we dismiss and remand the claim.

The Form 101 filed by Winfield on August 9, 2013, alleges the following injuries occurred:

> 8/17/11 Claimant went to the doctor on his lunch break with symptoms (HBP, numbness and tingling in arm) originally attributed to potential heart condition. Family Doctor had him admitted to Hospital. 4/29/13 Claimant pushing 800 lbs. generator and had an increase in his numbness in left hand and hernia.

Winfield alleged "cervical, left upper extremity and hernia" injuries.

On August 30, 2013, Denyo filed a Form 111 disputing the cervical injury asserting it did not arise out of or in the course of Winfield's employment. However, it accepted the hernia claim as compensable.

During the pendency of the claim and with the approval of Denyo, Winfield underwent hernia repair surgery performed by Dr. Paul Deluca. As a result, on January 13, 2014, the ALJ entered an order placing the claim in abeyance.

The January 15, 2014, Benefit Review Conference Order and Memorandum ("BRC") reflects the contested issues were: "benefits per KRS 342.730; work-relatedness/causation (cervical); unpaid or contested medical expenses (cervical); injury as defined by the Act (cervical); and TTD (cervical). Under "Other" was handwritten: "extent & duration w/ multiplier; claim bifurcated as to causation of cervical injury." Under the heading "Other Matters" was handwritten: "[b]ifurcate cervical strain case. Leave groin injury in abeyance. Formal hearing waived on cervical & submit on record. 30 days for briefs."

The ALJ's March 7, 2014, Opinion and Order contains the following statement in the introduction: "[t]he claim has been <u>bifurcated</u> on the issue of causation of cervical injury." In the statement of the case, the ALJ stated as follows:

> The Plaintiff filed a motion to place the claim in abeyance on December 19, 2013. The Defendant/Employer filed a Motion to Remove Claim from Abeyance

> on January 13, 2014. The undersigned ALJ entered an order on January 13, 2013 placing the claim in abeyance.
>
> The parties participated in a Benefit Review Conference on January 15, 2013. The claim was bifurcated as to the causation of the cervical strain injury, leaving the groin (hernia) injury in abeyance. Formal hearing was waived on the cervical injury. The claim was submitted on the record and parties given 30 days for briefs. …

The ALJ set forth the stipulations, a summary of the evidence, and the contested issues. In his analysis, the ALJ stated as follows:

> As the parties have chosen to bifurcate this matter to address only issues pertaining to a claimed injury to the cervical spine, I will confine my observations to that issue. …

The ALJ found Winfield did not establish he sustained a work-related injury of the cervical spine. Accordingly, the ALJ denied and dismissed Winfield's claim for a cervical spine injury.

Winfield filed a petition for reconsideration which as previously noted the ALJ sustained in part and denied in part.

Winfield's argument notwithstanding, we conclude, as a matter of law, the ALJ's March 7, 2014, Opinion and Order is interlocutory and does not represent a final and appealable decision. We agree with Denyo's first argument

in its brief to the Board that the ALJ's decision did not operate to terminate the action and did not dispose of Winfield's claim for permanent income and medical benefits for the hernia injury.

803 KAR 25:010, § 21(2)(a), provides as follows: "[w]ithin thirty (30) days of the date of 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, § 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) state 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 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. *Cf.* KI USA Corp. v. Hall, 3 S.W.3d 355 (Ky. 1999); Ramada Inn v. Thomas, 892 S.W.2d 593 (Ky. 1995); Transit Authority of River City v. Saling, 774 S.W.2d 468 (Ky. App. 1980).

The ALJ's March 7, 2014, decision and subsequent order ruling on the petition for reconsideration meet none of these requirements. The ALJ's opinion does not operate to terminate the action. Moreover, the ALJ's ruling does not act to finally decide all outstanding issues, nor does it operate to determine all rights of Winfield and Denyo so as to divest the ALJ once and for all of authority to decide the overall merits of the case. Instead, the ALJ

still must decide the merits of Winfield's hernia injury claim which Denyo acknowledged is compensable. At the BRC, the parties agreed to "leave the groin injury in abeyance." The ALJ specifically noted in his opinion that he would confine his opinion to Winfield's alleged cervical injury. In his Form 101, Winfield alleged both injuries. Thus, his claim for income and medical benefits for the hernia injury is still pending and the ALJ has not fully adjudicated Winfield's claim. Significantly, the March 7, 2014, Opinion and Order does not state it is final and appealable.

The ALJ must resolve the remaining contested issues, such as Winfield's entitlement to income and medical benefits for the work-related hernia injury. By the express language used in the March 7, 2014, Opinion and Order, it is interlocutory and not final. Consequently, this Board is without authority to review the March 7, 2014, Opinion and Order and the April 14, 2014, Order denying the petition for reconsideration.

As a matter of law, therefore, the March 7, 2014, decision and subsequent order ruling on the petition for reconsideration must be deemed interlocutory, and the ALJ as fact-finder, not this Board, retains jurisdiction of this claim. *See* KRS 342.275.

ACCORDINGLY, IT IS ORDERED the appeal filed by Winfield is **DISMISSED** and this claim is **REMANDED** to the ALJ for entry of a final decision on all contested issues.

ALL CONCUR.

_____
FRANKLIN A. STIVERS, MEMBER
WORKERS' COMPENSATION BOARD

COUNSEL FOR PETITIONER:

HON WILLIAM BROWN
100 N MAIN ST #2
NICHOLASVILLE KY 40356

COUNSEL FOR RESPONDENT:

HON RONALD J POHL
271 W SHORT ST STE 100
LEXINGTON KY 40507

ADMINISTRATIVE LAW JUDGE:

HON STEVEN BOLTON
657 CHAMBERLIN AVE
FRANKFORT KY 40601