OPINION ENTERED: MAY 31, 2012

CLAIM NO. 201079981

JESSE MILLER PETITIONER

VS. **APPEAL FROM HON. JONATHAN R. WEATHERBY, ADMINISTRATIVE LAW JUDGE**

TECO COAL CORPORATION/PERRY COUNTY
and HON. JONATHAN R. WEATHERBY,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION AND ORDER DISMISSING

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

SMITH, Member. Jesse Miller ("Miller") seeks review of the Opinion, Order and Award of Hon. Jonathan R. Weatherby, Administrative Law Judge ("ALJ"), dated April 13, 2012, (as amended April 17, 2012) and from the order on reconsideration dated May 3, 2012 awarding benefits for Miller's physical impairment and determining it was premature to assess any award based upon his psychological claim.

Miller also filed a motion to hold the appeal in abeyance noting the ALJ determined he was not at maximum medical improvement ("MMI") with respect to the psychological component of the claim. He stated, "[T]hat portion of the claim is still pending and will likely result in an additional impairment rating."

The Board notes that, in his Opinion, Order and Award, the ALJ stated:

> The Plaintiff's psychologist, Phil Pack, MS, opined that the Plaintiff suffers from ongoing symptoms of post-traumatic stress disorder and that he has yet to reach MMI with regard to this condition. His opinion was thorough and persuasive. It is therefore premature to issue any award based upon the psychological portion of the Plaintiff's claim.

Because we conclude the ALJ's ruling is interlocutory and does not represent a final and appealable order, we dismiss Miller'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) 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 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 concluded the psychological portion of Miller's claim was yet to be resolved. His Opinion, Order and Award was not dispositive of that issue. Therefore, the opinion does not operate to terminate the action itself, but rather puts all parties on notice that Miller's psychological claim has yet to be decided. The ALJ’s ruling does not act to finally decide all outstanding issues, nor does it 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 overall merits of the claim.

Accordingly, the appeal seeking review of the Opinion, Order and Award of Hon. Jonathan R. Weatherby, Administrative Law Judge, entered April 13, 2012, as amended April 17, 2012 is hereby **DISMISSED**.

ALL CONCUR.

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