

OPINION ENTERED: SEPTEMBER 26, 2012

CLAIM NO. 200701298

JOSE CARLOS ARCE

PETITIONER

VS.

APPEAL FROM HON. GRANT S. ROARK,  
ADMINISTRATIVE LAW JUDGE

PINNER TRANSPORTATION, INC.;  
HOWES & PAGE, PLLC;  
and HON. GRANT S. ROARK,  
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION  
AFFIRMING**

\* \* \* \* \*

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

**ALVEY, Chairman.** Jose Arce ("Arce") seeks review of an order issued July 9, 2012 by Hon. Grant S. Roark, Administrative Law Judge ("ALJ"), denying his motion for proceedings consistent with the Workers' Compensation Board Order. Specifically, Arce appeals the ALJ's ruling he does not have authority or jurisdiction to render an order

requiring Howes & Paige, Arce's former attorneys, to refund litigation expenses collected but not paid.

On appeal, Arce specifically argues the ALJ erred in determining he lacks the authority or jurisdiction to compel Howes & Paige to produce evidence it had paid for an independent medical examination ("IME") the cost of which was deducted from benefits paid to him. Arce also argues the ALJ erred in finding he lacked the authority or jurisdiction to order Howes & Paige to refund litigation expenses which were not incurred. We disagree and affirm.

It is necessary to discuss the procedural history of this appeal. In an Opinion, Order and Award rendered September 14, 2009, the ALJ awarded Arce temporary total disability ("TTD") benefits, permanent partial disability ("PPD") benefits based upon an 11% impairment rating, and medical benefits, due to injuries to his left foot, right hand and back in an accident which occurred on August 23, 2007 while working for Pinner. Pinner previously appealed the ALJ's decision, and Arce filed a cross-appeal asserting the ALJ should have awarded vocational rehabilitation expenses, and likewise should have assessed sanctions for Pinner's failure to timely pay TTD benefits.

We entered an opinion on July 15, 2010, affirming in part, reversing in part, remanding on appeal, and

affirming on cross-appeal. We concluded the ALJ erred in his application of the multipliers pursuant to KRS 342.730(1)(c)2. This Board directed as follows:

Accordingly, on remand the ALJ shall enter an award awarding Arce TTD benefits through December 18, 2007.

Thereafter Arce shall be awarded PPD benefits in the amount of \$53.17 through October 25, 2008. Arce's benefits shall then be enhanced by the two multiplier and Arce shall be awarded the sum of \$106.33 per week from and after October 25, 2008, in accordance with KRS 342.730(1)(c)2 and Ball v. Big Elk Creek Coal, *supra*.

We affirmed the remainder of the ALJ's decision. In an order entered September 28, 2010, the ALJ complied with the direction from the Board, and amended the benefits awarded. In that same order, the ALJ granted Pinner twenty days to pay "all outstanding medical expenses relating to plaintiff's compensable injuries". The ALJ further declined to assess sanctions until Pinner provided an explanation for its failure to pay medical expenses for the foot injury pursuant to a previous interlocutory order. We will not discuss subsequent orders pertaining to the payment of medical expenses and sanctions.

On April 1, 2011, Arce filed a "Request for Proof of Payment", requesting the ALJ order Arce's attorneys to provide proof they had paid for an evaluation performed by

Dr. Barefoot. On April 8, 2011, Arce's counsel filed a "Response/objection to Request for Proof of Payment", and provided the date and check number for the payment.

On August 31, 2011, the ALJ issued two orders. In the first order, the ALJ dealt with the employer's payment of medical bills, which does not concern the issues which are the subject of this appeal. In the second order issued on that date, the ALJ addressed Arce's ongoing dispute with his own attorneys. In that order, the ALJ found:

Having considered plaintiff's motion and reviewing the matter again, and having had teleconferences with plaintiff and counsel for the defendant employer on August 16<sup>th</sup> and 30<sup>th</sup> regarding an unrelated issue of a medical fee dispute, the Administrative Law Judge hereby rescinds the April 27, 2011 Order. In reviewing the matter, plaintiff filed a notice of change of address on May 23, 2011 (which indicates was mailed on May 17, 2011) which showed service upon Howes & Paige. However, Howes & Paige's April 8, 2011 Response shows it was mailed to plaintiff's previous address. The Administrative Law Judge therefore believes it likely that plaintiff did not receive the defendant's Response. Moreover, the April 27, 2011 Order from the Administrative Law Judge only shows service upon plaintiff and counsel for the defendant employer and does not indicate it was properly served upon Howes & Paige.

For these reasons, the April 27, 2011 Order is rescinded.

With the information contained in Howes & Paige's April 8, 2011 Response (a copy of which is attached), Howes & Paige have provided some degree of proof it made payment to Dr. Barefoot (reference made to a specific check # issued as payment). It further appears plaintiff may have actually undergone two IMEs with Dr. Barefoot: the first being December 27, 2007 as arranged and purportedly paid for by Howes & Paige; the second being July 8, 2008. If plaintiff was examined twice, that would explain why he was billed separately for the second examination even though only one IME report was ultimately issued. **For these reasons, plaintiff has 20 days to show cause why this matter should not now be final on all issues to allow any appeals to be taken or to be administratively closed.** (emphasis added)

Arce filed an appeal prior to compliance with the show cause order issued by the ALJ. We then remanded the claim to the ALJ for further proceedings solely for consideration of the issues contained in the second order dated August 31, 2011. We made no determination as to whether the ALJ had jurisdiction to order Howes & Paige to reimburse litigation costs to Arce.

In an order issued July 9, 2012, the ALJ stated as follows:

In its Order remanding, the Board pointed out that plaintiff did not comply with this Administrative Law

Judge's August 31, 2011 Order giving plaintiff 20 days to show cause why the matter should not be closed as it appeared the physician in question may actually have performed two examinations, thereby justifying two separate fees. The Board therefore remanded the matter with instruction to have plaintiff comply with the show cause order and to render any determination deemed necessary by the underlying dispute between plaintiff and his former attorney.

In his Motion, plaintiff requests findings consistent with the Board's Order on remand. However, plaintiff also specifically requests a ruling that there is no proof his former attorney's office paid for the IME report in question; and to Order the former attorney to refund the cost of the IME it received from plaintiff.

Having considered the matter, it is more than apparent that the purpose of plaintiff's dispute and request for findings is to obtain an Order requiring his former attorney to refund him \$450. However, the Administrative law Judge does not have authority or jurisdiction to render such an Order. Such a dispute is a contractual matter between plaintiff and his former attorney that must be resolved in civil court by a dispute with the Kentucky Bar Association or some combination thereof. Nothing in KRS 342 authorizes an Administrative Law Judge to order an attorney to refund costs to a client or former client. For these reasons, plaintiff's motion is denied and this matter is now closed.

On appeal, Arce argues the ALJ erred by ruling he lacked the authority to compel Howes & Paige to produce evidence they had paid for the IME in question. Arce also argues the ALJ erred by finding he lacked authority, or jurisdiction to order Howes & Paige to refund the amount withheld for payment for the IME he contends was never paid.

KRS 342.320 states as follows:

(1) All fees of attorneys and physicians, and all charges of hospitals under this chapter, shall be subject to the approval of an administrative law judge pursuant to the statutes and administrative regulations.

(2) In an original claim, attorney's fees for services under this chapter on behalf of an employee shall be subject to the following maximum limits:

(a) Twenty percent (20%) of the first twenty-five thousand dollars (\$25,000) of the award, fifteen percent (15%) of the next ten thousand dollars (\$10,000), and five percent (5%) of the remainder of the award, not to exceed a maximum fee of twelve thousand dollars (\$12,000). This fee shall be paid by the employee from the proceeds of the award or settlement; and

(b) Attorney-client employment contracts entered into and signed after July 14, 2000, shall be subject to the conditions of paragraph (a) of this subsection.

This statute addresses only attorney fees, and is silent regarding litigation costs and expenses. As determined by the ALJ, there exists no statutory provision in the Kentucky Workers' Compensation Act which provides for the reimbursement to counsel by his client of costs expended in pursuing a claim. Likewise, it contains no provision providing a refund to a disgruntled claimant for expenses he or she believes the attorney collected, but may have failed to pay. Workers' compensation is a creature of statute. Travelers Indemnity Company v. Reker, 100 S.W.3d 756, 760 (Ky. 2003). As such, jurisdiction in a workers' compensation claim extends only to those items specifically enumerated in the statute. No statutory provision exists which provides the ALJ with authority to determine litigation costs or expenses, and therefore he or she is precluded from doing so.

Arce asserts the ALJ erred by failing to delve into the question of payment, or reimbursement of funds retained for payment of an IME for which he contends was never paid. As noted above, KRS 342.320 concerns only payment of attorney fees, not expenses. We believe the ALJ correctly determined Arce's remedy lies in either civil court, or in a complaint filed with the Kentucky Bar Association, or a combination thereof. Neither the ALJ,

nor this Board, has the authority to grant the relief requested, or to enforce discovery for matters for which no jurisdiction has been conferred. Therefore, we believe the ALJ committed no error in determining he lacks jurisdiction or authority to compel discovery, or reimbursement of litigation costs and expenses.

Accordingly, the ALJ's order entered July 9, 2012, is hereby **AFFIRMED**.

ALL CONCUR.

**PETITIONER:**

JOSE CARLOS ARCE  
DOC NO. 205479/IHU DORM/J-27U  
PLAINFIELD CORRECTIONAL FACILITY  
727 MOON ROAD  
PLAINFIELD, IN 46168

**COUNSELS FOR RESPONDENTS:**

HON JAMES R WAGONER  
333 GUTHRIE GREEN, STE 203  
LOUISVILLE, KY 40202

HOWES & PAIGE, PLLC  
1501 DURRETT LANE, STE 200  
LOUISVILLE, KY 40213

**ADMINISTRATIVE LAW JUDGE:**

HON GRANT S ROARK  
410 WEST CHESTNUT ST, 7TH FLOOR  
LOUISVILLE KY 40202