Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: October 7, 2015

CLAIM NO. 199207327

KAY BROOKS PETITIONER

VS. **APPEAL FROM HON. R. SCOTT BORDERS, ADMINISTRATIVE LAW JUDGE**

KENTUCKY TRANSPORTATION CABINET
WORKERS' COMPENSATION FUND (FKA SPECIAL FUND)
and HON. R. SCOTT BORDERS,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

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

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

STIVERS, Member. On September 9, 2015, Kay Brooks ("Brooks") filed a Notice of Appeal from the Orders of Hon. R. Scott Borders, Administrative Law Judge ("ALJ") rendered July 21, 2015, August 4, 2015, and the August 19, 2015, Order ruling on its petition for reconsideration. The Kentucky Transportation Cabinet ("Transportation Cabinet")

moves this Board to dismiss the appeal as being an appeal taken from an interlocutory order. For reasons set forth herein, the motion is **GRANTED**.

On August 14, 2014, the Transportation Cabinet filed a motion to reopen and Form 112 medical fee dispute contesting medical treatment rendered and recommended to Brooks by Dr. Xiulu Ruan. On September 23, 2014, the ALJ sustained the motion to reopen and joined Dr. Ruan as a party and set a telephonic conference. The Transportation Cabinet subsequently filed additional medical fee disputes.

In response to multiple motions filed by the Transportation Cabinet in which it sought to choose Brooks' treating physician, on July 21, 2015, the ALJ entered the following order:

> IT IS HEREBY ORDERED that Defendant's Motion is SUSTAINED. The Employer shall be allowed twenty (20) days from the date of this Order to choose a new treating physician for Plaintiff. The other issues in this Medical Fee Dispute/Motion to Reopen shall remain pending.[1]

In response to the Transportation Cabinet's motion to join medical providers as parties to the medical fee dispute, the ALJ entered an August 4, 2015, Order

[1] In its July 2, 2015, Renewed Motion to Choose Treating Provider, the Transportation Cabinet noted Dr. Ruan had been arrested on fraud and drug-related charges by the Federal Bureau of Investigation ("FBI") and Drug Enforcement Administration ("DEA").

joining Doctor's Medical LLC, RX Development Associates, and Industrial Pharmacy Management as parties to the action.

Brooks filed a petition for reconsideration regarding the July 21, 2015, Order which the ALJ overruled by Order dated August 19, 2015. In overruling the petition for reconsideration, the ALJ found the Transportation Cabinet had made a *prima facie* showing entitling it to choose Brooks' treating physician. The ALJ found the case made by the Transportation Cabinet was persuasive, therefore the July 21, 2015, Order would remain unaltered.

Brooks filed an appeal.

In addition to allowing the Transportation Cabinet to have twenty days from August 4, 2015, to choose a new treating physician, the ALJ also ordered: "[t]he other issues in this Medical Fee Dispute/Motion to Reopen shall remain pending." Thus, the ALJ has yet to resolve the remaining contested issues raised in multiple medical fee disputes filed by the Transportation Cabinet. By the express language contained in the August 4, 2015, Order, a final and appealable decision has yet to be rendered by the ALJ. The same holds true for the subsequent orders of August 4, 2015, and the August 19, 2015, Order ruling on the petition for reconsideration. For purposes of Chapter

342, a final award, order or decision is determined according to CR 54.02(1) and (2). 803 KAR 25:010. The July 21, 2015, Order acknowledges other contested issues remain to be decided by the ALJ. A review of the medical fee disputes reveals, at a minimum, the reasonableness and necessity of Brooks' past treatment by Dr. Ruan and the medications he prescribed remain as contested issues to be resolved by the ALJ. Pursuant to CR 54.02, an order is appealable only if it terminates the action itself, acts to decide all matters litigated by the parties, and 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). Accordingly, this Board is without authority to review the July 21, 2015, and August 4, 2015, Orders and the subsequent August 19, 2015, Order denying Brooks' petition for reconsideration.

IT IS HEREBY ORDERED AND ADJUDGED that the Transportation Cabinet's motion is **SUSTAINED** and the appeal is **DISMISSED**. This matter is **REMANDED** to the ALJ for entry of a final and appealable decision resolving all issues raised by the medical fee disputes filed by the Transportation Cabinet.

ALL CONCUR.

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FRANKLIN STIVERS, MEMBER
WORKERS' COMPENSATION BOARD

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