

Commonwealth of Kentucky  
Workers' Compensation Board

OPINION ENTERED: February 20, 2014

CLAIM NO. 201289630

KIMBERLY A. MANSFIELD

PETITIONER

VS.

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

KELLY SERVICES, INC.  
and HON. GRANT S. ROARK,  
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION AND ORDER  
DISMISSING AND REMANDING

\* \* \* \* \*

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

**STIVERS, Member.** Kelly Services, Inc. ("Kelly Services") has filed a motion to dismiss the appeal filed by Kimberly A. Mansfield ("Mansfield") asserting she has improperly filed an appeal from an interlocutory opinion and order. On November 4, 2013, Hon. Grant S. Roark, Administrative Law Judge ("ALJ") entered a decision styled "Interlocutory Opinion and Order." In the statement of the case the ALJ

stated the claim had been bifurcated to first determine whether Mansfield's scaphoid fracture is work-related. After summarizing all the evidence and setting forth the stipulations, the ALJ entered the following analysis, findings of fact, and conclusions of law:

This claim has been bifurcated to first determine the compensability of plaintiff's scaphoid fracture. On this issue, the Administrative Law Judge is first persuaded by the testimony of Dr. Manon-Matos that such fractures do not occur with repetitive trauma and can only occur with a fall upon an outstretched hand. Crediting Dr. Manon-Matos' opinion in this regard, the ALJ finds plaintiff did not suffer a scaphoid fracture at work.

A review of the records indicates plaintiff never reported a traumatic injury or a 'pop' to her wrist to any provider or evaluation physician. It was not until the final hearing when plaintiff first suggested a traumatic pop to her wrist. Given these facts, the ALJ is simply not persuaded plaintiff ever suffered scaphoid fracture at work as she alleges. Accordingly, that portion of her claim is dismissed.

Accordingly, the ALJ ordered as follows:

1. Plaintiff's scaphoid fracture is not compensable and that portion of her claim is dismissed, with prejudice.
2. The parties have 50 days to complete proof on all remaining issues and move for a final hearing or to submit on the record.

Based on our review of the November 7, 2013, order, we conclude as a matter of law the ALJ's decision is interlocutory and does not represent a final and appealable order. 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 November 4, 2013, opinion and order and the subsequent December 16, 2013, order denying Mansfield's 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 Mansfield and Kelly Services so as to divest the ALJ once and for all of authority to decide the overall merits of the case.

Instead, the ALJ has yet to decide several potential issues involving Mansfield's claim, including but not limited to her right to income and medical benefits for other alleged injuries which, as noted by the ALJ, include "cumulative trauma to both wrists and hands as a result of performing moderate to heavy repetitive work activities as an order picker." Therefore, as a matter of law, the November 4, 2013, interlocutory opinion and order and the subsequent December 16, 2013, order ruling on the petition for reconsideration must be deemed interlocutory. Consequently, the ALJ as fact-finder, not this Board, retains jurisdiction. See KRS 342.275.

**ACCORDINGLY, IT IS HEREBY ORDERED** that Kelly Services' motion to dismiss is **SUSTAINED** and the above-styled appeal of Mansfield is **DISMISSED**. This claim is **REMANDED** to the ALJ for additional proceedings relating to the remainder of Mansfield's pending claim.

ALL CONCUR.

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FRANKLIN A. STIVERS, MEMBER  
WORKERS' COMPENSATION BOARD

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