OPINION ENTERED: FEBRUARY 6, 2013

CLAIM NO. 201076187

KINGFORD MANUFACTURING COMPANY PETITIONER

VS. **APPEAL FROM HON. EDWARD D. HAYS, ADMINISTRATIVE LAW JUDGE**

DANA ALAN MAYRAND
and HON. EDWARD D. HAYS,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION AND ORDER
DISMISSING

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

SMITH, Member. Kingsford Manufacturing Company ("Kingsford") seeks review of the Opinion, Award and Order rendered November 14, 2012, by Hon. Edward D. Hays, Administrative Law Judge ("ALJ"), placing the claim in abeyance, and finding requested companion care services reasonable and necessary for work-related injuries sustained by Dana Mayrand ("Mayrand") on September 24,

2010. Kingsford also appeals from the January 4, 2013 order overruling its petition for reconsideration. Mayrand filed a motion to dismiss on January 25, 2013, asserting this is an impermissible appeal from an interlocutory order which was not final and appealable.

On October 24, 2011, Mayrand filed a Form 101, Application for Resolution of Injury Claim, alleging work-related injuries sustained in a silo explosion. In the opinion rendered November 14, 2012, the ALJ determined Mayrand required companion care service on an "around the clock" basis and Ms. Mayrand's services provided to her husband were reasonable, necessary and compensable. The ALJ ordered all remaining issues in the claim were deferred for future determination, and he placed the claim in abeyance. The ALJ stated, upon appropriate motion, the claim would be removed from abeyance and a new scheduling order would be issued.

Because we conclude the ALJ's November 14, 2012 ruling is interlocutory and does not represent a final and appealable order, we dismiss Kingsford's appeal. 803 KAR 25:010 Sec. 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 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) states 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 re-adjudicate 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. 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 v. Sailing, 774 S.W.2d 468 (Ky. App. 1980); *see also* Ramada Inn v. Thomas, 892 S.W.2d 593 (Ky. 1995).

In this instance, the ALJ's November 14, 2012 opinion specifically acknowledges the claim was placed in abeyance pending the outcome of additional medical treatment. The ALJ clearly stated the remaining issues would be addressed after the removal of the claim from abeyance. Therefore, the requirements necessary to proceed with this appeal have not been met. Because there remain issues yet to be decided, the ALJ's opinion does not operate to terminate the action itself. Additionally, 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, for the reasons enumerated above, **IT IS HEREBY ORDERED** Mayrand's motion to dismiss is **SUSTAINED** and the appeal seeking review of the decision rendered November 14, 2012, and the order ruling on the petition for reconsideration rendered January 4, 2013, by Hon. Edward D. Hays, Administrative law Judge, is **DISMISSED**.

ALL CONCUR.

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LAWRENCE F. SMITH, MEMBER
WORKERS' COMPENSATION BOARD

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