Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: November 26, 2013

CLAIM NO. 201300153

NALLY & HAMILTON ENTERPRISES PETITIONER

VS. **APPEAL FROM HON. J. LANDON OVERFIELD, CHIEF ADMINISTRATIVE LAW JUDGE**

LANDY MILLS
and HON. J. LANDON OVERFIELD,
CHIEF ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION AND ORDER
DISMISSING

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

RECHTER, Member. Petitioner, Nally and Hamilton Enterprises, Inc. ("Nally") appeals from the September 26, 2013 Order of Hon. J. Landon Overfield, Chief Administrative Law Judge ("CALJ"), granting Respondent, Landy Mills' motion to "set aside proposed settlement". Mills now moves this Board to dismiss the appeal as being from an interlocutory order. For the reasons set forth herein, the motion is granted.

Mills initiated this claim following an October 27, 2012 injury to his back, right leg and right foot, and the claim was assigned to Hon. Allison Emerson Jones, Administrative Law Judge ("ALJ"). During the pendency of the claim, Mills underwent a discectomy. The matter was set for formal hearing on June 26, 2013. At the formal hearing, the parties negotiated a settlement for a complete and total dismissal with prejudice. A hearing order was issued and approved by the ALJ. On August 27, 2013, the CALJ approved the settlement agreement.

However, on September 6, 2013, Mills filed a motion styled "Motion to Set Aside Proposed Settlement" and stated "it appears that [he] will have to have surgery again." On September 23, 2013, Nally responded. It not only objected to any reopening, but also challenged Mills' characterization of the agreement as a "proposed" settlement. Nally pointed out the settlement agreement had been reduced to writing in a Form 110, which had been approved by the CALJ and filed with the Commissioner. By Order dated September 26, 2013, the CALJ granted Mills' motion, stating "the above-styled Workers' Compensation claim is hereby reopened for further proceedings."

It is unclear if the CALJ considered Nally's objection to the motion. In the September 26, 2013 Order, the CALJ noted "there have been no objections or other responses to the motion to set aside the settlement agreement." However, despite this

inconsistency, Nally did not petition the CALJ for reconsideration of the Order. Instead, it filed a notice of appeal to this Board.

Though styled as a motion to set aside a "proposed settlement", Mills essentially moved the CALJ to reopen his claim. By the language used in the Order, it appears the CALJ also considered the pleading as a motion to reopen. An order granting reopening pursuant to KRS 342.125 is not final and appealable. 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. 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 vs. Logsdon, 677 S.W.2d 897 (Ky. App. 1984).

The CALJ's Order is not final and appealable because it determined only that Mills had made a *prima facie* showing he *may* prevail under the evidence put forth upon reopening. It does not determine whether Mills has actually suffered a change of disability or worsening of condition caused by the injury. Accordingly, there has been no final award, order, or decision as defined by 803 KAR 25:010 Section 21(2)(b) resolving Mills' claim.

Therefore, the appeal is hereby **DISMISSED.**

ALL CONCUR.

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REBEKKAH RECHTER, MEMBER
WORKERS' COMPENSATION BOARD

COUNSEL FOR PETITIONER:

HON BARRY LEWIS
PO BOX 800
HAZARD, KY 41702

COUNSEL FOR RESPONDENT:

HON MCKINNLEY MORGAN
921 S MAIN ST
LONDON, KY 40741

CHIEF ADMINISTRATIVE LAW JUDGE

HON J. LANDON OVERFIELD
PREVENTION PARK
657 CHAMBERLIN AVENUE
FRANKFORT, KY 40601