Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: April 18, 2014

CLAIM NO. 201262592

OMNISOURCE INTEGRATED SUPPLY PETITIONER

VS. **APPEAL FROM HON. WILLIAM J. RUDLOFF, ADMINISTRATIVE LAW JUDGE**

ELENA RODRIGUEZ CORBIN
and HON. WILLIAM J. RUDLOFF,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
DISMISSING

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

ALVEY, Chairman. Omnisource Integrated Supply ("Omnisource") seeks review of an Interlocutory Opinion and Order rendered January 15, 2014 by Hon. William J. Rudloff, Administrative Law Judge ("ALJ") awarding temporary total disability ("TTD") benefits, and medical benefits to Elena Rodriguez Corbin ("Corbin"). The ALJ's decision

specifically notes it is interlocutory, and is not final and appealable. Omnisource also appeals from the February 17, 2014, and March 14, 2014 orders denying its petition for reconsideration.

Corbin filed a Form 101, Application for Resolution of Injury Claim, on May 10, 2013 alleging injuries to her neck, right shoulder and knees on November 13, 2012, when she tripped while placing a box. A Benefit Review Conference ("BRC") was held on October 8, 2013. The BRC order and memorandum indicates the issues preserved for decision included benefits per KRS 342.730, unpaid or contested medical expenses, TTD benefits, work-relatedness/ causation, average weekly wage, and whether Corbin had reached MMI. A hearing was held on December 17, 2013.

In the opinion rendered January 15, 2014, the ALJ determined Corbin had not yet reached maximum medical improvement ("MMI"), and had not reached a level of improvement permitting her return to employment, and was therefore entitled to recover TTD benefits. Omnisource filed two petitions for reconsideration, both of which were denied by the ALJ. In the first petition for reconsideration, Omnisource argued the ALJ erred in determining Corbin had not reached MMI, and requested a reconsideration of his determination. In the second

petition for reconsideration, Omnisource again argued the ALJ erred in determining Corbin had not reached MMI, and utilized an incorrect standard in arriving at his determination. Because we conclude the ALJ's January 15, 2014 ruling is interlocutory and does not represent a final and appealable order, we dismiss this appeal.

803 KAR 25:010 Sec. 21 (2)(a) provides as follows:

> [w]ithin thirty (30) days of the date 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.
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> (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. 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 vs. Sailing, 774 S.W.2d 468 (Ky. App. 1980); *see also* Ramada Inn vs. Thomas, 892 S.W.2d 593 (Ky. 1995).

Omnisource argues the ALJ erred in awarding interlocutory relief because she had reached MMI. The ALJ in arriving at his decision stated he relied upon the

opinions of Dr. Jules Barefoot. In his July 17, 2013 report, Dr. Barefoot stated, “It is apparent she will need ongoing treatment for this painful condition.” He also noted Corbin continues to be “markedly symptomatic”. Although Dr. Barefoot assessed an impairment rating, he did not state Corbin had reached MMI. Therefore the ALJ could reasonably determine from the record, especially based upon Dr. Barefoot’s opinion additional treatment is required, that Corbin has not reached MMI.

After reviewing the file, it is clear the opinion rendered January 15, 2014, and the orders on reconsideration are interlocutory, and as such are not final and appealable as they do not operate to terminate the action or finally decide all outstanding issues. Likewise, they do not 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 merits of the claim.

That said, the appeal filed by Omnisource is hereby dismissed, and the claim is remanded to the ALJ to conduct all proceedings necessary for final adjudication of the claim, including a BRC and Hearing if required. Although the ALJ’s orders are unclear, it is presumed his intent was for the claim to remain in abeyance until Corbin reaches MMI. While not required to do so, the ALJ should

consider requiring status reports filed on a periodic basis to advise the status of Corbin's recovery. Nothing in this decision shall abridge the right of either party to appeal the final decision.

Accordingly, the appeal seeking review of the opinion rendered January 15, 2014 and the orders on reconsideration issued February 17, 2014 and March 14, 2014 by Hon. William J. Rudloff, Administrative Law Judge, is hereby **DISMISSED**.

ALL CONCUR.

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MICHAEL W. ALVEY, CHAIRMAN
WORKERS' COMPENSATION BOARD

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