OPINION ENTERED: December 21, 2012

CLAIM NO. 201183504

PERRY REAL ESTATE & APPRAISING, INC. PETITIONER

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

JOY ROUTT
and HON. WILLIAM J. RUDLOFF
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION AND ORDER
DISMISSING APPEAL
* * * * * *

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

STIVERS, Member. Perry Real Estate & Appraising, Inc. ("Perry") seeks review of the July 25, 2012, opinion and order of Hon. William J. Rudloff, Administrative Law Judge ("ALJ") finding Joy Routt ("Routt") to be totally occupationally disabled and awarding total permanent disability benefits and medical benefits. Perry also appeals from the August 24, 2012, opinion and order on

reconsideration overruling its petition for reconsideration.

On appeal, Perry asserts the ALJ may have violated its due process rights by prejudging the claim. It asserts this potential violation depends on when the ALJ "wrote the opinion and order."

Routt's Form 101 alleges on March 2, 2011, she injured her neck, upper back, right arm, and right shoulder when she stepped on a pool cover and fell.

Perry's Form 111 asserts Routt's "symptoms of abnormal/involuntary movement appear to have begun on or about 4/14/11 when she experienced an adverse drug interaction or reaction to her Zoloft and Celexa." It stated Routt had been on Zoloft for many years and had "just changed" to Celexa when her symptoms began. Therefore, it asserted Routt's current symptoms were not related to the March 2, 2011, work incident.

Subsequently, Perry filed a medical fee dispute contesting the treatment of Drs. Craig Knox and Kimberly Dixon and a motion to join the physicians as parties in order to give them the opportunity to submit evidence in support of their ongoing treatment. By order dated May 14, 2012, the ALJ sustained the motion to join Drs. Knox and

Dixon and ordered their proof time would be governed by the scheduling order.

Routt's April 17, 2012, deposition was introduced. At the time of her injury, Routt was the office manager for Perry and also prepared real estate appraisals. On March 2, 2011, Routt was with Perry's owners, George and Patty Perry, in Frankfort working on an appraisal at a Frankfort home. Routt had finished measuring the dimensions of an "in ground" swimming pool and was walking toward the Perrys when she fell on the pool cover. Routt immediately experienced pain in her right knee, arms, wrists, shoulder, and neck. She did not seek medical treatment. Routt testified because her pain steadily worsened she saw Dr. Dixon on April 15, 2011.[1] Dr. Dixon ordered x-rays and discontinued the Zoloft Routt had been taking and prescribed Celexa.

A few days after she saw Dr. Dixon, Routt went to the emergency room at St. Joseph Hospital because she was having "very severe involuntary muscle movements." She explained she was "sweating really bad" and had significant pain in her neck, shoulder, and right arm. St. Joseph Hospital gave her "Lorazepam and another medication" and

[1] Dr. Dixon's records reflect she was seen on April 14, 2011.

referred her to Dr. Knox. Dr. Knox put her on medication and ordered an MRI of the brain and referred her to Dr. John T. Slevin, a professor at the Department of Neurology, at the University of Kentucky for an evaluation.[2]

At the time of deposition, Routt had involuntary muscle movements in her face, neck, shoulder, arms, and legs. She began using a cane in August 2011. She takes Cogentin for the muscle movement which decreases the pain but not the strength and frequency of her spasms. Routt sought an evaluation at the Cleveland Clinic at her own expense. She no longer does household chores except for light cooking and some laundry. She wears braces on her wrists because of arm pain which extends from her elbows to her hands. Routt started wearing a collar in April 2011 because of neck and shoulder pain. She developed facial contortions in September 2011. Because she has had trouble swallowing she lost sixty pounds. Routt believed her condition has worsened. Routt performed her regular job until she stopped working on April 16, 2011.

The benefit review conference ("BRC") order reflects the following contested issues: "'Injury' as

[2] Routt was unable to remember the medications prescribed by Dr. Knox.

defined by Act. Extent and duration. Medical treatment." A hearing was set for July 25, 2012.

Perry introduced the medical records of Dr. Knox, Dr. Dixon, and St. Joseph Hospital, as well as the report of the MRI of the brain performed on April 21, 2011, the report of the MRI of the cervical spine performed on June 21, 2011, and the report concerning the EMG/NCV studies conducted on July 19, 2011. In addition, Perry introduced the April 17, 2012, report concerning the MRI of the brain conducted on April 16, 2012. Perry also introduced Dr. Henry Tutt's August 5, 2011, independent medical evaluation ("IME") report, and Dr. Joseph Zerga's May 2, 2012, IME report and his June 18, 2012, letter. Dr. Zerga's May 29, 2012, deposition was also introduced.

Routt relied upon the February 9, 2012, IME report of Dr. Frank A. Burke and Dr. Slevin's medical records.

At the July 25, 2012, hearing Routt testified that since her deposition was taken her condition has worsened. She is currently being treated by Dr. Timothy Caudill and Dr. Slevin at the University of Kentucky, who have prescribed Neurontin and Cogentin. Because it is difficult for her to walk over fifty or sixty feet, Routt began using a wheelchair in May 2012. She explained she

has balance problems when walking and "it just physically wears me out."

Following Routt's testimony the parties argued their respective positions. It appears the parties gave the ALJ a copy of their position statement.[3] Routt's position statement argues the medical evidence conclusively establishes her present condition is due to the March 2, 2011, work incident. She contended Dr. Dixon's notes and Dr. Slevin's report establish a history of Routt having problems after tripping over the pool cover. Dr. Slevin's records reflect he believed Routt "suffered from abnormal dystonic-like movements in her neck and right upper extremity suggestive of segmental dystonia somewhat more expected than expected for atypical corticolis." Dr. Slevin believed some of her abnormal movement is due to pain and tenderness in the neck and shoulder.

Routt also relied upon Dr. Burke's opinions contained in his IME report. Dr. Burke stated Dr. Slevin, the Director of the Movement Disorder Clinic at the University of Kentucky, believed Routt had secondary

[3] Apparently the parties provided a copy of their position statement to the ALJ at the hearing. The record contains the position statement of each party bearing no notation when they were filed. They appear in the file before the hearing order and the opinion and order. The same position statements with a notation reflecting a date of filing appears in the file after the July 25, 2012, opinion and order.

segmental dystonia which is a movement disorder affecting two adjoining body parts, in this case the neck and right upper extremity. Dr. Burke stated the trauma of March 2, 2011, was the "inciting factor." He assessed a 35% impairment based on the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment ("AMA Guides"). Dr. Burke "would consider further evaluation" and suggested a second opinion at the Mayo Clinic or Vanderbilt. Dr. Burke did not believe Routt was capable of working.

Routt argued Dr. Dixon's April 14, 2011, record, Dr. Slevin's records, and Dr. Burke's opinions support the conclusion her current condition is related to the March 2, 2011, work injury and she is totally disabled. Routt also emphasized Dr. Zerga stated he had witnessed her involuntary movements during his evaluation and they were consistent and frequent throughout the examination. He believed the movements were genuine.

Conversely, in its position statement, Perry argued Routt's fall did not cause her abnormal movements which developed after a medication change on April 14, 2011. It maintained Routt did not miss any work until she saw Dr. Dixon for a "'follow up of her medication.'" Perry asserted on the date Routt saw Dr. Dixon, she told Dr.

Dixon her wrists were better but she was having some neck soreness. Perry stated Dr. Dixon noted Routt had a prior history of neck complaints and diagnosed a cervical strain. At that time, Dr. Dixon also made the decision to change Routt's long-standing anti-depressant prescription of Zoloft to Celexa. It argued the result of this change was "sudden and unpleasant" and after suffering severe spasms on the weekend, Routt went to the emergency room of St. Joseph Hospital. Perry maintained on April 19, 2011, the day after visiting the emergency room, Routt's symptoms worsened when Dr. Knox prescribed Buspar and she received the wrong dosage.

Perry argued Drs. Zerga and Tutt agreed Routt's present complaints were not caused by her fall at work. Dr. Zerga testified Routt's movement disorder is not related to the work injury but is related to her medication. Dr. Zerga believed Routt's disorder is likely secondary to a "serotonin receptor dysfunction caused by selective serotonin reuptake inhibitors (SSRIs), Zoloft/Celexa, with aggravation of this by other medications including her asthma medications." Perry argued Dr. Zerga ruled out other causes for Routt's abnormal movements and concluded there was no reason to suspect the trauma caused the movements Routt experiences.

Dr. Tutt concluded Routt suffered no permanent injuries to her neck or brain as a result of the fall. Rather, he observed Routt sustained transient myofascial injuries which resolved.

Noting Dr. Burke is an orthopedic surgeon, Perry took issue with his 35% impairment rating. In cases of complex neurological disorders, it asserted Dr. Burke is not very helpful or knowledgeable. Dr. Zerga and Tutt, a neurologist and neurosurgeon, respectively, are more knowledgeable in cases such as this. Accordingly, Perry asserted Routt failed in her burden to prove her movement disorder is work-related. Perry conceded Routt's disorder kept her from working.

In the opinion and order, the ALJ noted a formal hearing was conducted on July 25, 2012, and listed the stipulations, one of which was the parties' stipulation at the hearing of Routt's average weekly wage ("AWW"). In the "Findings of Facts and Conclusions of Law," the ALJ concluded, in part, as follows:

> **1. Did the plaintiff sustain an injury as defined by the Act?** The plaintiff argues that she sustained a permanent injury as a result of the work accident. The defendant argues that the plaintiff's non-work-related psychiatric medication caused side effects resulting in permanent injury unrelated to her job.

> . . .
>
> In the present case the ALJ finds more persuasive the opinion of Dr. Burke, as supported by treatment records. The plaintiff had no symptoms or difficulties prior to falling at work. Dr. Burke's opinion explains to the satisfaction of this ALJ how the fall resulted in the objective evidence of permanent injury. I therefore find that the plaintiff did sustain an injury as defined by the Act.

The ALJ found Dr. Burke's opinion more persuasive and determined Routt had a 35% whole person impairment. In finding Routt to be totally occupationally disabled, the ALJ stated:

> In the present case, the ALJ considers the severity of the sequelae of the plaintiff's injuries; her age; her work history; her testimony; and Dr. Burke's specific opinion that she is disabled. Based on these factors the ALJ finds that the plaintiff cannot find work consistently under regular circumstances and work dependably. I therefore find her permanently and totally disabled.

The ALJ also resolved the medical fee dispute in favor of Routt, Dr. Knox, and Dr. Dixon stating since KRS 342.020 requires the employer to pay for the cure and relief from the effects of an injury and he found Routt sustained a work-related injury, Perry "is responsible for [Routt's] medical care for the effects of her work injury."

As noted earlier, the ALJ awarded permanent total disability benefits and medical benefits.

Perry filed a petition for reconsideration maintaining, in part, the award should commence on April 17, 2011, the day after Routt ceased work instead of March 2, 2011. Perry then stated:

> 2. The final hearing in this matter was conducted on July 25, 2012, and was scheduled to begin at 11:30 a.m. at the Lexington hearing site. The Opinion and Order was issued by the Administrative on the same date. As part of the Order on this petition, Defendant would respectfully request that the Administrative Law Judge advise when his Opinion was prepared, and where said preparation was performed.

Citing to the ALJ's determination Dr. Burke's opinion was more persuasive, Perry also requested additional findings regarding what portion of his opinion provided such satisfactory explanation to the ALJ. Perry requested the ALJ make additional findings of fact concerning the gap in time between the date of injury and when Routt was first treated by Dr. Dixon on April 14, 2011. Perry also requested additional findings of fact regarding the consequences of the medication change on that date and for the ALJ to state any and all inferences drawn from this evidence.

In the August 24, 2012, "Opinion and Order on Reconsideration," the ALJ stated, in relevant part, as follows:

> 4. The final hearing was held in Lexington, Kentucky on the morning of July 25, 2012. Thereafter, the Administrative Law Judge finalized the Opinion and Order and rendered same, mailing a copy to counsel on July 25, 2012.
>
> . . .
>
> 6. The Opinion and Order dated July 25, 2012 reviews the lay and medical evidence in this case. I saw and heard Joy Routt testify at the final hearing. She was a credible and convincing witness. She attended both the hearing and the Benefit Review Conference in a wheelchair. I made the factual determination that Dr. Burke's medical report and the medical records of Dr. Slevin, her treating physician, were credible, convincing and persuasive, entitling the plaintiff Routt to an award of permanent total disability benefits and payment of her work-related medical bills and expenses.
>
> In light of the above findings of fact and conclusions of law, the defendant's Petition for Reconsideration challenging the permanent total disability award contained in the Opinion and Order dated July 25, 2012 is hereby overruled and denied.

On appeal, Perry does not take issue with the ALJ's determination Routt sustained a work-related injury,

and is totally occupationally disabled. In the "Introduction" section of its brief, Perry asserts that in its petition for reconsideration it asked the ALJ to state when he wrote the opinion and order and the ALJ did not provide that information but only stated he put the opinion and order in the mail later that day after the hearing. Perry maintains the ALJ appears to have prejudged the merits of the claim prior to the hearing, and if that occurred, such is a violation of its right to due process of law and the claim should be remanded to the ALJ, "with the recusal of the current ALJ." Perry states it is requesting the Board to remand this claim to the ALJ for a single finding of fact; "when did the ALJ draft the opinion and order that is dated July 25, 2012."

In its "Statement of the Case," Perry summarizes Routt's testimony and medical evidence it relies on. It states a hearing was held on July 25, 2012, at which time Routt testified and counsel presented their arguments. Perry maintains its primary argument was the event of March 2, 2011, did not cause Routt's abnormal movement disorder which developed as a result of her non-work-related medication change on April 14, 2012. After referencing the ALJ's award and discussing a portion of its petition for reconsideration, Perry states as follows:

> Finally, we noted that the Hearing was held in the middle of the ALJ's Hearing docket on July 25, 2012, and that the Opinion and Order was dated July 25, 2012. We asked the ALJ to identify the date when he wrote the Opinion and Order.
>
> In that Order on Reconsideration, the ALJ corrected the date for payment of the award, but did not provide the requested additional findings of fact or information as to the date he wrote the Opinion and Order.
>
> Perry's argument is as follows:
>
> **THE ALJ IS REQUIRED TO PROVIDE SUFFICIENT INFORMATION TO ALLOW FOR MEANINGFUL REVIEW.**
>
> Perry Real Estate & Appraising, Inc. believes that the ALJ may have violated its rights to due process of law by pre-judging the claim. Whether there was a violation of the employer's due process rights depends upon when the ALJ wrote the Opinion and Order. Neither the Board nor the appellate courts can conduct meaningful appellate review of this issue until the ALJ makes the requested finding of fact.
>
> The parties are entitled to have every claim decided upon the basis of correct findings of basic facts. Cook v. Paducah Recapping Service, 694 S.W.2d 684 (Ky. 1985).

(Emphasis added.)

Without further argument, Perry concluded with citations to certain language in Shields v. Pittsburgh and

Midway Coal Mining Co., 634 S.W.2d 440 (Ky. App. 1982) and Eaton Axle Corp. v. Nally, 688 S.W.2d 334 (Ky. 1985).

Perry's conclusion is as follows:

> Perry Real Estate & Appraising, Inc. respectfully requests that the Workers' Compensation Board remand this claim to the ALJ to make a finding of fact as to when he wrote the Opinion and Order. We [sic] don't want to know the date it was signed or mailed, but rather the date that the drafting of the Opinion and Order was completed, but for the filing in of the date and the signature.

Routt's brief contains a "Motion to Dismiss/Brief on Behalf of the Respondent/Joy Routt." In "Argument I", Routt asserts none of the bases for an appeal set forth in KRS 342.285(2)(a) through (e) are asserted in Perry's brief. Routt argues Perry is not requesting a finding of fact because that would require "there was an issue of fact for the ALJ to determine at the time of the decision." Routt maintains Perry's request "goes beyond any issue of law or fact raised by this case" and asserts the Board "does not have jurisdiction or [sic] an issue for which it can provide relief."

KRS 342.285 reads, in relevant part, as follows:

> (2) No new or additional evidence may be introduced before the board except as to the fraud or misconduct of some person engaged in the administration of this chapter and affecting the order,

> ruling, or award, but the board shall otherwise hear the appeal upon the record as certified by the administrative law judge and shall dispose of the appeal in summary manner. The board shall not substitute its judgment for that of the administrative law judge as to the weight of evidence on questions of fact, its review being limited to determining whether or not:
>
> (a) The administrative law judge acted without or in excess of his powers;
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> (b) The order, decision, or award was procured by fraud;
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> (c) The order, decision, or award is not in conformity to the provisions of this chapter;
>
> (d) The order, decision, or award is clearly erroneous on the basis of the reliable, probative, and material evidence contained in the whole record; or
>
> (e) The order, decision, or award is arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

On appeal, Perry does not assert any of the grounds set forth in KRS 342.285(2)(a) through (e). Perry does not assert the contents of the opinion and order and the opinion and order on reconsideration are legally or factually deficient. Because a request for remand for a finding of fact as to when the ALJ's decision was drafted

is not a ground for appeal and does not raise a justiciable issue, we dismiss the appeal.

At the hearing, the parties stated they had “a stipulation as to average weekly wage.” Routt’s testimony was limited to her current physical condition and the initial treatment of Drs. Knox and Dixon. The parties were given an opportunity to argue their position and the ALJ stated he was taking the matter under submission. Since the ALJ did not announce his decision at the hearing, the better practice would have been to wait until a copy of the transcript was filed before rendering his decision. However, nothing in the statute or regulations prohibits the ALJ from rendering a written decision on the day of the final hearing.

803 KAR 25:010 Section 18 (2)(3) and (4) read as follows:

> Section 18. Hearings. (1) At the hearing, the parties shall present proof concerning contested issues. If the plaintiff or plaintiff's counsel fails to appear, the administrative law judge may dismiss the case for want of prosecution, or if good cause is shown, the hearing may be continued.
>
> (2) At the conclusion of the hearing, the claim shall be taken under submission immediately or briefs may be ordered.

> (3) Briefs shall not exceed fifteen (15) pages in length. Reply briefs shall be limited to five (5) pages. Permission to increase the length of a brief shall be sought by motion.
>
> (4) The administrative law judge may announce his decision at the conclusion of the hearing or shall defer decision until rendering a written opinion.

The above regulation permits the ALJ to render a decision immediately upon the conclusion of the hearing. In this case, the ALJ chose not to announce his decision at the conclusion of the hearing, but to mail his written decision sometime after the hearing. The fact the ALJ rendered the opinion on the same date as the hearing does not, in any manner, cause the opinion to be deficient nor does it violate Perry's right to due process. Further, Perry does not cite to any evidence or information which causes it to believe the ALJ drafted the opinion prior to the hearing. Thus, Perry cannot affirmatively state its right to due process was violated.

Certainly, the ALJ is not prohibited from drafting a preliminary opinion prior to the hearing based upon the evidence in the record. Since Perry conceded Routt's physical condition prevented her from working, we believe causation and entitlement to medical benefits were the only issues before the ALJ. As the ALJ resolved

causation based on Dr. Burke's opinions, Routt's hearing testimony was not germane to causation but would only relate to whether she was permanently totally disabled which was not in dispute.

The fact the ALJ chose to mail the opinion and order after receiving very limited hearing testimony does not constitute a violation of Perry's right to due process or a violation of KRS 342.285. In fact, the rendering of a written opinion and order on the same day is expressly permitted by 803 KAR 25:010 Section 18 (2) and (4).

Moreover, the ALJ is not required to provide to the parties the manner in which he prepares his opinions. As previously noted, prior to the hearing, the ALJ may have prepared a draft of the opinion based on the proof in the record and supplemented the opinion based on any additional stipulations and the hearing testimony.

Assuming, *arguendo*, the ALJ was required to state when he drafted the opinion and order as requested in Perry's petition for reconsideration, we believe the ALJ complied with that request in his August 24, 2012, opinion and order on reconsideration by stating after the hearing he finalized the opinion and order, rendered it, and mailed a copy to counsel on the date of the hearing.

The holdings in Shields v. Pittsburgh and Midway Coal Mining Co., supra, and Eaton Axle Corp. v. Nally, supra, are not relevant here. Both cases concern the requirement that the Board and now the ALJs must support their conclusions with the facts drawn from the evidence in each case so that the parties may be dealt with fairly and properly apprised of the basis for the decision. Eaton Axle Corp. v. Nally, supra, also held that from the date of the Supreme Court's decision no award, order, or decision of the Workers' Compensation Board and now the ALJs may be reversed or remanded on appeal because of the failure of the Board and now the ALJs to make findings of an essential fact unless that failure is raised in a petition for reconsideration. Here, there is no allegation the ALJ did not cite the evidence from which he concluded Routt sustained a work-related injury and is totally permanently disabled.

In addition, we point out the ALJ resolved a medical fee dispute in favor of Routt and Drs. Knox and Dixon. In its notice of appeal, Perry failed to name Drs. Knox and Dixon as parties to the appeal. Drs. Knox and Dixon are indispensible parties to this appeal. The failure to name an indispensible party is a jurisdictional defect fatal to an appeal. Commonwealth of Kentucky,

Department of Finance, Division of Printing v. Drury, 846 S.W.2d 702 (Ky. 1993).

In the opinion and award, the ALJ determined Drs. Knox and Dixon provided treatment for a work injury and, thus, were entitled to be compensated. Therefore, any decision by this Board which could potentially affect the physicians' right to be compensated causes them to be an indispensible party. If Perry was successful on appeal and this matter remanded to the ALJ, the right of Drs. Knox and Dixon to be compensated for the treatment rendered to Routt may be affected. Thus, they were necessary parties to this appeal. Consequently, we are without jurisdiction to rule on the merits of the arguments raised by Perry on appeal. An indispensable party to an appeal is one whose absence prevents the tribunal from granting complete relief among those already listed as parties. *See* CR 19.01; CR 19.02; Braden v. Republic-Vanguard Life Ins. Co., 657 S.W.2d 241 (Ky. 1983); Milligan v. Schenley Distillers, Inc., 584 S.W.2d 751 (Ky. App. 1979). As a matter of law, the failure to name an indispensable party is a jurisdictional defect fatal to an appeal — even one to this Board. Id. Since Perry seeks a remand of a decision which, in part, resolved a medical fee dispute in favor of Routt and Drs. Knox and Dixon, the physicians should have been named as

parties to the appeal. All parties potentially adversely affected by a remand should have been named as a party to the appeal.

803 KAR 25:010 § 21 of the administrative regulations governing appeals to the Workers' Compensation Board expressly mandates:

> Review of Administrative Law Judge Decisions.
>
> (1) General.
>
> (a) Pursuant to KRS 342.285(1), decisions of administrative law judges shall be subject to review by the Workers' Compensation Board in accordance with the procedures set out in this administrative regulation.
>
> (b) Parties shall insert the language 'Appeals Branch' or 'Workers' Compensation Board' on the outside of an envelope containing documents filed in an appeal to the board.
>
> (2) **Time and format of notice of appeal.**
>
> (a) **Within 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.**
>
> (b) As used in this section, a final award, order or decision shall be determined in accordance with Civil Rule 54.02(1) and (2).

> (c) **The notice of appeal shall**:
>
> 1. Denote the appealing party as the petitioner;
>
> 2. **Denote all parties against whom the appeal is taken as respondents**;
>
> 3. Name the administrative law judge who rendered the award, order, or decision appealed from as a respondent;
>
> 4. If appropriate pursuant to KRS 342.120 or KRS 342.1242, name the director of the Division of Workers' Compensation Funds as a respondent; and
>
> 5. Include the claim number.

(Emphasis added.)

The notice of appeal, when properly filed, transfers jurisdiction of a case from the ALJ to the Board and places all parties named therein under the Board's jurisdiction. Both this Board and the Kentucky appellate courts have repeatedly held that failure to name a party in the notice of appeal to the Board is a jurisdictional defect fatal to the appeal. Comm. of Kentucky, Dept. of Finance, Div. of Printing v. Drury, supra; Peabody Coal Co. v. Goforth, 857 S.W.2d 167 (Ky. 1993); *Cf.* City of Murray v. Billington, No. 2003-SC-0840-WC, 2004 WL 2128722 (Ky. 2004). The case law clearly establishes strict, not substantial compliance is required with regard to naming all dispensable parties. Johnson v. Smith, 885 S.W.2d 944,

950 (Ky. 1994); City of Devondale v. Stallings, 795 S.W.2d 954 (Ky. 1990); Stewart v. Kentucky Lottery Corp., 986 S.W.2d 918, 921 (Ky. App. 1998), ("[t]he substantial compliance doctrine simply does not apply to notices of appeal.") As the case law plainly states, dismissal is the result mandated for failure to name an indispensable party. City of Devondale v. Stallings, supra.

Without question, Drs. Knox and Dixon are indispensable parties to this appeal. Thus, the absence of Drs. Knox and Dixon as parties to this appeal prevents the Board from granting complete relief. Consequently, we are also obligated to dismiss the appeal for failure to name indispensable parties.

Since Perry does not raise a justiciable issue and has failed to name indispensible parties to this appeal;

IT IS HEREBY ORDERED AND ADJUDGED that Routt's motion is **SUSTAINED** and Perry's appeal is **DISMISSED**.

ALL CONCUR.

_____
FRANKLIN A. STIVERS, MEMBER
WORKERS' COMPENSATION BOARD

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