

OPINION ENTERED: November 28, 2012

CLAIM NO. 201188825

RK TRAILER REPAIR

PETITIONER

VS. APPEAL FROM HON. OTTO DANIEL WOLFF, IV,
ADMINISTRATIVE LAW JUDGE

DAVID P. LAWALIN
and HON. OTTO DANIEL WOLFF, IV,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION AND ORDER
DISMISSING

* * * * *

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

ALVEY, Chairman. RK Trailer Repair ("RK Trailer") seeks review of the Interlocutory Opinion and Order rendered June 25, 2012, by Hon. Otto Daniel Wolff, IV, Administrative Law Judge ("ALJ"), placing the claim in abeyance, awarding temporary total disability ("TTD") benefits and finding requested medical treatment reasonable and necessary for

work-related injuries sustained by David Lawalin ("Lawalin") on April 7, 2011. RK Trailer also appeals from the order overruling, in part, its petition for reconsideration issued August 19, 2012. Lawalin filed a motion to dismiss on November 9, 2012 asserting this is an impermissible appeal of an interlocutory order which was not final and appealable.

On November 16, 2011, Lawalin filed a Form 101-Application for Resolution of Injury Claim, alleging a work-related injury to his back, occurring on April 7, 2011. In the opinion rendered June 25, 2012, the ALJ determined Lawalin suffered a back injury, and had not yet reached maximum medical improvement ("MMI"). Consistent with the medical opinions of Dr. Bilkey, the ALJ also awarded TTD benefits. In his order ruling on the petition for reconsideration, the ALJ corrected the rate and duration of TTD benefits paid, and determined RK Trailer would be provided a credit for payments made. The ALJ also determined RK Trailer was entitled to credit for unemployment benefits paid against any overlapping period of TTD benefits awarded. All other points for which RK Trailer filed the petition were overruled.

In the opinion rendered June 25, 2012, the ALJ ordered as follows:

Based upon Plaintiff's testimony and the doctors' notes, Plaintiff has presented persuasive evidence he is entitled to receive weekly TTD benefits from April 8, 2011 to April 28, 2011 and from June 6, 2011 and continuing.

ABEYANCE

This claim is placed in abeyance until such time as Plaintiff attains MMI from the effects of his April 7, 2011 work injury, and an order is rendered by the undersigned removing this claim from abeyance. Forty five (45) days from the date of this Opinion and Order, and every forty five (45) days thereafter, Plaintiff shall file a status report. Such status report shall contain information regarding Plaintiff's medical status, proposed treatment for Plaintiff's work injury, and the anticipated date of when he will attain MMI status.

All remaining and unaddressed issues in this claim will be determined after this claim is removed from abeyance.

ORDER

1. This claim is placed in abeyance until such time as Plaintiff attains MMI status and an order is rendered by the undersigned removing this claim from abeyance. While this claim is in abeyance Plaintiff shall submit status reports as above directed.

On appeal, RK Trailer argues the ALJ exceeded his authority in awarding surgery which has not been proposed. RK Trailer also argues the ALJ failed to make sufficient

findings of fact to apprise of the specific surgery awarded. RK Trailer acknowledged the ALJ awarded injection therapy, but failed to acknowledge the claim was placed in abeyance, or that status reports were ordered to be filed every forty-five days.

Because we conclude the ALJ's June 13, 2012 ruling is interlocutory and does not represent a final and appealable order, we dismiss RK Trailer's 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.

(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 June 25, 2012 opinion specifically acknowledges the claim was placed in abeyance

pending the outcome of additional medical treatment. Additionally, 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** Lawalin's motion to dismiss is **SUSTAINED** and the appeal seeking review of the decision rendered June 25, 2012, and the order ruling on the petition for reconsideration rendered August 19, 2012, by Hon. Otto Daniel Wolff, IV, Administrative law Judge, is **DISMISSED**.

ALL CONCUR.

MICHAEL W. ALVEY, CHAIRMAN
WORKERS' COMPENSATION BOARD

COUNSEL FOR PETITIONER:

HON JOHN SPIES
333 GUTHRIE GREEN, STE 203
LOUISVILLE, KY 40202

COUNSEL FOR RESPONDENT:

HON SCOTT JUSTICE
455 SOUTH 4TH ST, STE 1450
LOUISVILLE, KY 40202

ADMINISTRATIVE LAW JUDGE:

HON OTTO D WOLFF, IV
8120 DREAM STREET
FLORENCE, KY 41042