OPINION ENTERED: JANUARY 3, 2013

CLAIM NO. 200785050

TERESA FINKE PETITIONER

VS. **APPEAL FROM HON. GRANT S. ROARK, ADMINISTRATIVE LAW JUDGE**

COMAIR, INC.
and HON. GRANT S. ROARK,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION & ORDER
DISMISSING

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

ALVEY, Chairman. Teresa Finke ("Finke") seeks review of an order entered October 16, 2012 by Hon. Grant Roark, Administrative law Judge ("ALJ") placing her claim against Comair, Inc. ("Comair") in abeyance, with no benefits accruing for violation of KRS 342.205(3). Finke also

appeals from the November 16, 2012 order denying her petition for reconsideration.

Finke filed a Form 101, Application for Resolution of Injury Claim, on June 10, 2009. Finke filed a previous appeal from an interlocutory order which was dismissed by this Board on March 1, 2010. On March 19, 2012, the ALJ entered an order placing the claim in abeyance until Finke reaches maximum medical improvement and ordered status reports to be filed every sixty days. On July 6, 2012, the ALJ entered an order granting Comair's motion to compel Finke's attendance at an independent medical examination ("IME"), but denied a motion to suspend her benefits. On August 2, 2012, the ALJ entered an order denying Finke's petition for reconsideration. On October 16, 2012, the ALJ entered an order placing the claim in abeyance, with no benefits accruing, for violation of KRS 342.205(3) due to Finke's refusal to attend an IME. On November 16, 2012, the ALJ denied Finke's petition for reconsideration. Finke filed this appeal on November 21, 2012.

Because we conclude the ALJ's ruling is interlocutory and does not represent a final and appealable order, we dismiss Finke'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 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).

In this instance, the ALJ's order merely places the claim in abeyance, without making a determination on the merits. Clearly, the orders entered by the ALJ on October 16, 2012 and November 16, 2012, although suspending benefits for a willful violation of KRS 342.205(3), are not final and appealable. The ALJ's orders do not operate to terminate the action or to 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.

Accordingly, the appeal seeking review of the orders entered October 16, 2012 and November 16, 2012, entered by Hon. Grant Roark, Administrative law Judge, is hereby **DISMISSED**.

ALL CONCUR.

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MICHAEL W. ALVEY, CHAIRMAN
WORKERS' COMPENSATION BOARD

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