Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: March 27, 2015

CLAIM NO. 2014-01503

WAYNE WEST PETITIONER

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

HECTOR FLORES,
UNINSURED EMPLOYERS' FUND, and
HON. WILLIAM J. RUDLOFF,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION & ORDER
DISMISSING

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

ALVEY, Chairman. Wayne West ("West"), filed a Notice of Appeal on March 4, 2013 from the Interlocutory Opinion and Order rendered by Hon. William J. Rudloff, Administrative Law Judge ("ALJ"), on December 29, 2014, and from the February 2, 2015 Interlocutory Opinion and Order on Reconsideration. The ALJ found West was the employer of

Hector Flores ("Flores") at the time of the injury, and awarded medical benefits and temporary total disability ("TTD") benefits, "until the plaintiff reaches maximum medical improvement ("MMI") and reaches a level of improvement that would permit a return to his customary work or the work he was performing at the time of his injuries."

A brief recitation of the history of the claim is necessary. On July 28, 2014, Flores filed a claim against West and BRW Builders, LLC ("BRW") for alleged right foot and jaw injuries occurring on January 21, 2014 in Paris, Kentucky. On August 12, 2014, the Kentucky Department of Worker's Claims issued a scheduling order, and assigned the claim to the ALJ. On August 12, 2014, West/BRW filed a motion to bifurcate for a determination of whether Flores was an employee or an independent contractor. On August 14, 2014, Flores filed a motion for interlocutory relief, requested TTD and medical benefits. West/BRW filed an objection and response to the request for interlocutory relief. On August 25, 2014, the ALJ entered an order bifurcating the claim.

On November 14, 2014, Flores filed a motion to amend the Form 101 to list West individually as a party. On December 21, 2014, the ALJ entered an order amending the

Form 101. On December 21, 2014, a benefit review conference ("BRC") was held, and the memorandum of the conference reflects the only issue to be determined on bifurcation was whether Flores was an employee or an independent contractor. A Hearing was held on December 9, 2014.

On December 29, 2014, the ALJ entered an Interlocutory Opinion and Order. The ALJ determined Flores was working for West on January 31, 2014, as an employee. The ALJ awarded medical benefits pursuant to KRS 342.020, and TTD benefits at the rate of $300.00 per week until he reaches MMI, or reaches a level of improvement allowing him to return to his customary work, or the work he performed on the date of injury. West filed a petition for reconsideration alleging the ALJ exceeded the scope of the issue to be determined on bifurcation. The ALJ issued an Interlocutory Opinion and Order on Reconsideration on January 9, 2015, denying West's petition.

Because we conclude this appeal is not from a final and appealable order, we dismiss.

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).

West argues the ALJ improperly exceeded the scope of the bifurcated issue. In the BRC Order and Memorandum, along with the ALJ's decision and the order on reconsideration, it is acknowledged the decision was rendered on a bifurcated issue. The ALJ's decision clearly awarded TTD benefits to Flores until he reaches MMI, or can return to his usual employment or the work he was performing on the date of injury. The ALJ made no determination regarding any permanency of Flores' condition. After reviewing the file, it is clear the opinion rendered December 29, 2014, and the order on reconsideration issued February 2, 2015 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 West must be dismissed, and the claim remanded to the ALJ to conduct all proceedings necessary for final adjudication of the claim, including a BRC and Hearing if required. Nothing in this decision shall abridge the right of either party to appeal the final decision.

Accordingly, **IT IS HEREBY ORDERD AND ADJUDGED** the appeal seeking review of the opinion rendered December 29, 2014 and the order on reconsideration issued February 2, 2015 by Hon. William J. Rudloff, Administrative Law Judge, is **DISMISSED**, and the claim is **REMANDED** for further proceedings as outlined above.

ALL CONCUR.

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MICHAEL W. ALVEY, CHAIRMAN
WORKERS' COMPENSATION BOARD

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