# Commonwealth of Kentucky
# Workers' Compensation Board

**OPINION ENTERED: April 11, 2014**

CLAIM NO. 200992695

WILLETT HEALTHCARE MANAGEMENT, INC.
and KEMI PETITIONER

VS. **APPEAL FROM HON. JANE RICE WILLIAMS, ADMINISTRATIVE LAW JUDGE**

TIFFANY SMITH, CARDINAL HILL HOSPITAL,
UNIVERSITY OF KENTUCKY CHANDLER MEDICAL CENTER,
and HON. JANE RICE WILLIAMS,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

**OPINION AND ORDER**
**DISMISSING AND REMANDING**

* * * * * *

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

**ALVEY, Chairman.** Willett Healthcare Management, Inc. ("Willett") and Kentucky Employers' Mutual Insurance Company ("KEMI") seek review of the opinion and order rendered November 21, 2013 by Hon. Jane Rice Williams, Administrative Law Judge ("ALJ") finding the Defendants had not satisfied

their burden of proving Tiffany Smith ("Smith") was voluntarily intoxicated which was the proximate cause of her March 20, 2009 work accident and injuries. Willett and KEMI also seek review of the January 3, 2014 order overruling their petition for reconsideration. Because the ALJ's November 21, 2013 opinion and order on reconsideration was not final and appealable, this appeal is dismissed.

On March 20, 2009, Smith was involved in a motor vehicle accident ("MVA") while working for Willett. At the time, Smith was working as a nurses' aide and was en route to visit a patient. Willett's workers' compensation insurer at the time of the MVA was KEMI. Smith sustained severe injuries as a result of the MVA rendering her a quadriplegic.

Our analysis begins with the procedural history of this claim, which is voluminous and complex. For the sake of brevity, we will only review the events and filings relevant to this appeal. This claim originated when Willett, the employer, filed a Form 101 on December 28, 2009 seeking a declaration of rights of the parties, and an order relieving it of liability asserting Smith's claim for benefits is entirely barred pursuant to her voluntary intoxication under KRS 342.610(3). The claim was assigned to Hon. Caroline Pitt Clark, Administrative Law Judge ("ALJ

Clark”). On May 6, 2010, ALJ Clark sustained Willett’s motion to voluntarily dismiss its claim which was dismissed without prejudice.

Subsequent to the dismissal, on December 13, 2010, Willett filed a medical fee dispute and motion to join medical providers. In the dispute, Willett contested the compensability of Smith’s claim including all medical care due to her voluntary intoxication. Willett also disputed specific bills submitted by Cardinal Hill Rehabilitation Hospital and the University of Kentucky Chandler Medical Center. In an order dated January 26, 2011, ALJ Clark stated since the medical fee dispute was filed after the dismissal, it would be treated as a motion to reopen. She ordered the claim reopened to the extent the medical fee dispute would be adjudicated and she joined both medical providers as parties.

On August 4, 2011, Willett filed a motion “to make an assessment of unreasonable costs associated with the defense of this claim against KEMI.” A benefit review conference (“BRC”) was held on August 2, 2011. The BRC order and memorandum reflect the following contested issues: “MFD – as set out in 1/26/11 order; Employer’s motion to assess unreasonable costs associated with the defense of this claim.” The ALJ scheduled a telephonic status

conference and set a schedule for taking proof. ALJ Clark also joined the Uninsured Employers' Fund. The UEF was later dismissed.

Subsequently, on October 21, 2011, Smith filed a Form 101 alleging on March 20, 2009, she was "en route to Hazard ARH to sit with a patient, she fell asleep, went into a ditch, came out and struck another vehicle." Smith alleged the following injuries:

> spinal column (C4-C5 fracture resulting in quadriplegia), liver, lungs, closed head injury, chest, abdominal trauma, neuropathic pain, neurogenic bowel and bladder, spasticity, headaches, chronic neck and back pain, recurrent urinary tract infection, respiratory insufficiency, and sleep disturbance with associated anxiety & depression.

ALJ Clark consolidated the medical fee dispute and Smith's Form 101 by order dated November 4, 2011. Willett timely filed a Form 111 and special answer asserting Smith's voluntary intoxication completely barred her claim pursuant to KRS 342.610(3).

The claim was reassigned to the ALJ on July 16, 2012. A telephonic status conference was held on January 15, 2013. The resulting order and memorandum stated "the claim is bifurcated on the sole issue of volunteer intoxication." Another telephonic status conference was held on April 18, 2013. The corresponding order reflects

the following: "[Willett] as insured by KEMI and Plaintiff are the necessary parties on the bifurcated issue of compensability. . . . This claim is BIFURCATED on the issue of compensability." On August 1, 2013, KEMI filed a Witness List and "Statement of Proposed Stipulations and Notice of Contested Issues." KEMI identified the following contested issues: voluntary intoxication, extent and duration of permanent disability, entitlement to medical benefits, and the medical fee dispute contesting compensability of all benefits pursuant to VI defense, including the Cardinal Hill and UK invoices and all ongoing and future medical treatment.

A second BRC was held on August 13, 2013. The parties stipulated to jurisdiction, the existence of an employment relationship and Smith sustained work-related injuries on March 20, 2009. They also stipulated temporary total disability benefits were paid at a rate of $185.60 per week from March 21, 2009 to the present, but no medical expenses had been paid on behalf of Smith by the employer. They agreed Smith does not retain the capacity to return to her former work and is currently not working. The following was noted under contested issues: "Bifurcated issue of compensability- whether DE's defense of voluntary intoxication is valid."

Smith, Willett, KEMI and the ALJ later signed an "Agreed Order of Submission on the Record" dated September 24, 2013, stating in pertinent as follows:

> IT IS HEREBY AGREED BY THE PARTIES and ORDERED by the [ALJ] that this claim shall be considered submitted on the record for a decision as of the date of this Order, with the parties as evidenced by signature of their counsel below, **agreeing to waiver of a Final Hearing on the bifurcated contested issue of whether Plaintiff's claim to benefits is barred based upon voluntary intoxication pursuant to KRS 342.610(3) with all other issues reserved pending resolution of the bifurcated issue.** (Emphasis Added)

The order then identified the evidence of record to be considered by the ALJ.

In an opinion and order rendered November 21, 2013, the ALJ first reviewed the procedural history of the claim and noted "the parties entered into an agreed order listing the evidence of record to be considered by the ALJ on the sole bifurcated issue of voluntary intoxication and on September 24, 2013 the issue was submitted for a decision." The ALJ also cited the stipulations and contested issues identified at the August 13, 2013 BRC stating "[t]he sole issue preserved for a decision by the [ALJ] at this time is compensability, whether Defendant Employer's defense of voluntary intoxication is valid."

After summarizing the extensive evidence submitted by the parties, the ALJ determined Willett had not met its burden of proof and therefore resolved the issue of voluntary intoxication in Smith's favor. Willett filed a petition for reconsideration, which was joined by KEMI. The petition for reconsideration was denied by order dated January 3, 2014. It is from this November 21, 2013 opinion and order and January 3, 2014 order on reconsideration which Willett and KEMI now appeal.

Based upon our review of the claim history and the November 21, 2013 opinion and order, we conclude as a matter of law the ALJ's decision does not represent a final and appealable order and hereby dismiss the 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 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 November 21, 2013 opinion and order, and the subsequent order ruling on the petition for reconsideration meet none of these requirements. The ALJ's opinion does not operate to terminate the action itself. Moreover, the ALJ's ruling does not act to finally decide all outstanding issues, nor does it operate to determine all rights of Smith, Willett and KEMI as to divest the ALJ once and for all of authority to decide the overall merits of the case.

Clearly, the ALJ was only to consider "the sole bifurcated issue of voluntary intoxication." This represented a threshold issue to be determined by the ALJ. The ALJ determined Willett had not met its burden of proving Smith's injuries were proximately caused primarily by voluntary intoxication at the time of her MVA under KRS 342.610(3). Since the ALJ resolved the threshold issue in Smith's favor, several potential issues regarding her claim remain undecided, including but not limited to her entitlement to an award of income and medical benefits. In addition, the ALJ did not resolve the outstanding medical fee dispute originally filed by Willett contesting several

bills for services rendered by Cardinal Hill Rehabilitation Hospital and the University of Kentucky Chandler Medical Center. It is also unclear from the record whether Willett's August 4, 2011 motion to assess unreasonable costs against KEMI associated with the defense of this claim was resolved. Even KEMI identified extent and duration of permanent disability, entitlement to medical benefits, and the medical fee dispute as contested issues in its "Statement of Proposed Stipulations and Notice of Contested Issues" – none of which have been resolved by the ALJ.

In summary, the ALJ's November 21, 2013 opinion and order does not address with finality "all" of the outstanding contested issues in Smith's claim. Further, it is clear from the record the claim was bifurcated on the sole issue of Smith's voluntary intoxication as evidenced in the January 15, 2013 and April 18, 2013 telephonic status conference memorandums, and the August 13, 2013 BRC order and memorandum. On September 24, 2013, the parties agreed "to waiver of a Final Hearing on the bifurcated contested issue of whether Plaintiff's claim to benefits is barred based upon voluntary intoxication pursuant to KRS 342.610(3) with all other issues reserved pending resolution of the bifurcated issue." This language is reflected in the ALJ's November 21, 2013 opinion and order. Although the ALJ did

not clearly state the opinion was interlocutory in nature, many issues remain unresolved and need to be addressed and decided. Clearly, this was not a final and appealable order or award, and Willett and KEMI cannot appeal from the order.

As a matter of law, therefore, the November 21, 2013 opinion and order and the subsequent order ruling on the petition for reconsideration must be deemed interlocutory. This appeal must therefore be dismissed and returned to the ALJ for a determination of the remaining outstanding issues.

**ACCORDINGLY, IT IS ORDERED AND ADJUDGED** the appeal of Willett and KEMI is **DISMISSED** and this claim is **REMANDED** to the ALJ for further proceedings and a final decision on all remaining issues.

ALL CONCUR.

_____
MICHAEL W. ALVEY, CHAIRMAN
WORKERS' COMPENSATION BOARD

**COUNSEL FOR PETITIONER WILLETT HEALTHCARE:**

HON JAMES HERALD III
PO BOX 1350
PRESTONSBURG, KY 41653

**COUNSEL FOR PETITIONER KEMI:**

HON JOANNA F ELLISON
300 EAST MAIN ST, STE 400
LEXINGTON, KY 40507

**COUNSEL FOR RESPONDENT TIFFANY SMITH:**

HON RONNIE SLONE
PO BOX 909
PRESTONSBURG, KY 41653

**COUNSEL FOR RESPONDENT CARDINAL HILL HOSPITAL:**

HON JO ALICE VAN NAGELL
3151 BEAUMONT CTR CRL, STE 200
LEXINGTON, KY 40513

**COUNSEL FOR RESPONDENT UNIV OF KY CHANDLER MEDICAL CENTER:**

HON HARRY L DADDS
317 WETHINGTON BLDG
LEXINGTON, KY 40536

**ADMINISTRATIVE LAW JUDGE:**

HON JANE RICE WILLIAMS
217 S MAIN ST, STE 10
LONDON, KY 40741