

Commonwealth of Kentucky  
Workers' Compensation Board

OPINION ENTERED: November 13, 2015

CLAIM NO. 201500091

ZINGER, LLC D/B/A BEEF O'BRADY'S

PETITIONER

VS.

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

WILLIAM MARSHALL,  
DR. ERNEST EGGERS,  
BAPTIST HOSPITAL EAST, 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.** Zinger LLC D/B/A Beef O'Bradys ("Zinger") seeks review of an Interlocutory Order rendered August 31, 2015 by Hon. William J. Rudloff, Administrative Law Judge ("ALJ") finding William Marshall's claim was timely filed, and awarding temporary total disability ("TTD") benefits

and medical benefits. The ALJ's decision specifically notes it is interlocutory, and is not final and appealable. Zinger also appeals from the September 28, 2015 order denying its petition for reconsideration.

Marshall filed a Form 101, Application for Resolution of Injury Claim, on January 26, 2015 alleging he injured his hip and right lower extremity when he slipped and fell on a wet floor on September 22, 2012. Zinger filed a motion to bifurcate the claim on March 26, 2015 for a decision regarding the statute of limitations and notice defenses. On April 8, 2015, the ALJ entered an order placing the claim in abeyance, and bifurcating for a decision regarding the statute of limitation and notice defenses. A benefit review conference was held on June 10, 2015, at which time it was acknowledged the claim had been bifurcated regarding those defenses.

On August 31, 2015, the ALJ rendered an Interlocutory Opinion and Order, finding Marshall provided due and timely notice, and his claim was not barred by the applicable statute of limitations. The ALJ also found surgery performed June 11, 2013 was compensable, and ordered Zinger to pay TTD benefits for seventeen days following that surgery date. The decision did not remove

the claim from abeyance, did not set a proof schedule, and did not address the permanency of Marshall's claim.

Zinger filed a petition for reconsideration from the ALJ's interlocutory decision. It also filed a motion to vacate and set aside the ALJ's factual findings over issues unrelated to those to be decided on bifurcation, and requested the ALJ disqualify and remove himself from the claim. The ALJ denied this petition, and declined to rule on the motions. Again, the ALJ failed to set a proof schedule for the remaining issues in the claim.

Because we conclude the ALJ's August 31, 2015 ruling is interlocutory and does not represent a final and appealable order, we dismiss this 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).

After reviewing the file, it is clear the opinion rendered August 31, 2015, and the September 28, 2015 order on reconsideration 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 Zinger is hereby dismissed, and the claim is remanded to the ALJ to conduct all proceedings necessary for final adjudication of the claim, including removing the claim from abeyance, setting a proof schedule, and scheduling a BRC and Hearing if necessary. Likewise, the ALJ must rule on any outstanding pending motions.

Accordingly, **IT IS HEREBY ORDERED AND ADJUDGED** the appeal seeking review of the interlocutory decision rendered August 31, 2015; the order denying the petition

for reconsideration issued September 28, 2015 by Hon.  
William J. Rudloff, Administrative Law Judge, is **DISMISSED**.

ALL CONCUR.

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MICHAEL W. ALVEY, CHAIRMAN  
WORKERS' COMPENSATION BOARD

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