

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: April 18, 2022

CLAIM NO. 201801479

AMERICAN ROOFING

PETITIONER

VS. APPEAL FROM HON. JONATHAN R. WEATHERBY ,
ADMINISTRATIVE LAW JUDGE

MARTIN OROZCO GOMEZ;
JUAN GOMEZ;
MALDONADO ROOFING;
BIN INSURANCE HOLDINGS;
UNINSURED EMPLOYERS' FUND;
AMERICAN CASUALTY CO OF READING PA; and
HON. JONATHAN R. WEATHERBY
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION & ORDER
DISMISSING**

* * * * *

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

MILLER, Member. American Roofing (“American”) filed a Notice of Appeal on March 23, 2022 from the February 14, 2022 Opinion and Order and the March 9,

2022 Order overruling American's Petition for Reconsideration, rendered by Hon. Jonathan R. Weatherby, Administrative Law Judge.

Martin Orozco Gomez ("Gomez") filed a claim against American for alleged injuries sustained from falling from the roof of a residential home on June 29, 2018. Gomez was hired as a roofer by Juan Gomez ("Juan"). Juan drove Gomez to job sites and paid him weekly in cash. Gomez believed he worked for American, as he had seen their signs and trucks at job sites. He stated Juan got information about jobs from a contractor, Mr. Ray.

Greg Guilford, the CFO for American, submitted an affidavit stating Juan and Gomez had never been employees of American. He further stated that the job in which Gomez allegedly sustained injuries was subcontracted to Maldonado Roofing. On March 11, 2019, the ALJ entered an Order granting Motions to Join Maldonado Roofing and to Bifurcate the claim upon threshold issues.

A Formal Hearing was held on December 16, 2021. The ALJ explicitly stated at the final hearing and then again in his Opinion and Award and Order, dated February 14, 2022, the claim was "bifurcated upon the threshold issues of coverage under the Act, employment relationship, up-the-ladder employment, and work-relatedness and causation." The ALJ held Gomez's injuries were work-related, and American was responsible per KRS 342.610. The ALJ placed the claim in abeyance pending maximum medical improvement ("MMI"). In addition, the ALJ awarded TTD benefits pending MMI following the injury and reasonable and necessary medical expenses. American filed a Petition for Reconsideration, which was overruled. This appeal follows.

American is aware that interlocutory appeals are not permissible but believes extenuating circumstances differentiate this claim. It argues the amounts paid for temporary total disability (“TTD”) benefits and medical payments are significant and may not be recoverable if it is ultimately determined American is not liable for these benefits. Because we conclude the ALJ’s February 14, 2022 Order is interlocutory and is not final and appealable, we must dismiss this appeal.

803 KAR 25:010 Sec. 22 (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. 22 (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 to divest the ALJ of authority. KI USA Corp. v. Hall, 3 S.W.3d 355 (Ky. 1999), Ramada Inn v. Thomas, 892 S.W.2d 593 (Ky. 1995).

The Order rendered February 14, 2022 does not terminate the action, decide all matters litigated by the parties, and does not determine all the rights of the parties so as to divest the ALJ of authority. There is no language that it is a final and appealable Order. The fact monies will be paid by American which it believes will not be recoverable if ultimately a different result is obtained does not negate the obligation of dismissing an Interlocutory Order which is not final and appealable. This argument has been addressed in prior Supreme Court decisions. See Hall, supra. Further, the Board has consistently dismissed interlocutory appeals which do not fully adjudicate the rights of the parties and terminate the action at the ALJ level.

American's appeal is hereby dismissed, and this claim is remanded to the ALJ to conduct all proceedings necessary for final adjudication of the claim.

We acknowledge both parties have now filed Motions to Dismiss the appeal. However the Board dismissed this appeal because it is not taken from a final appealable Order and therefore will not file separate Orders on the Motions.

Accordingly, it is ordered the appeal seeking review of the February 14, 2022 and March 9, 2022 Orders entered by Hon. Jonathan R. Weatherby,

Administrative Law Judge, is hereby **DISMISSED**. This claim is **REMANDED** to the ALJ.

ALL CONCUR.

/s/ Scott M. Miller
SCOTT M. MILLER, MEMBER
WORKERS' COMPENSATION BOARD

DISTRIBUTION:

COUNSEL FOR PETITIONER: **LMS**

HON F. ALLON BAILEY
3151 BEAUMONT CENTRE CIRCLE
STE 200
LEXINGTON, KY 40513

COUNSEL FOR RESPONDENT: **LMS**

HON TAMARA TODD COTTON
640 S FOURTH ST, STE 400
LOUISVILLE, KY 40202

HON. ALLISON A. ZOELLER **LMS**
600 E MAIN ST, STE 100
LOUISVILLE, KY 40202

HON. KEVIN NORRIS **LMS**
200 S. FIFTH ST, STE 400
LOUISVILLE, KY 40202

HON. WILLIAM H. JONES **LMS**
ASSISTANT ATTORNEY GENERAL
1024 CAPITAL CENTER DRIVE, STE 200
FRANKFORT, KY 40601

RESPONDENTS:

MR. JUAN GOMEZ
216 ERIC COURT
LOUISVILLE, KY 40219

USPS

MALDONADO ROOFING
4200 BARKSDALE COURT
DALLAS, TX 75211

USPS

AMERICAN CASUALTY CO. OF READING PA
PO BOX 8317
CHICAGO, IL 60680

USPS

ADMINISTRATIVE LAW JUDGE:

LMS

HON JONATHAN R WEATHERBY
MAYO-UNDERWOOD BLDG
500 MERO ST, 3rd FLOOR
FRANKFORT, KY 40601