

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: June 4, 2021

CLAIM NO. 202064608

BILLY G. HUNT

PETITIONER

VS.

APPEAL FROM HON. DOUGLAS W. GOTT,
CHIEF ADMINISTRATIVE LAW JUDGE

BG HARDWOOD DIRECT;
KEMI;
BILLY HUNT d/b/a H&H FLOORING; and
HON. DOUGLAS W. GOTT,
CHIEF ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
DISMISSING

* * * * *

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

ALVEY, Chairman. Billy G. Hunt (“Hunt”) seeks review of the March 22, 2021 Order rendered by Hon. Paul L. Whalen, Administrative Law Judge (“ALJ”) regarding Petitions for Reconsideration filed by BG Hardwood Direct, LLC (“BG Hardwood”). Hunt notes he filed the appeal to preserve the issue of whether the ALJ erred by dismissing Kentucky Employers’ Mutual Insurance (“KEMI”) as a

party to this claim. Hunt also appeals from the April 13, 2021 Order issued by Hon. Douglas W. Gott, Chief Administrative Law Judge (“CALJ”) denying his Petition for Reconsideration, and requesting the Commissioner of the Kentucky Department of Workers’ Claims to certify insurance coverage for BG Hardwood.

While we note the Order does not specifically note it is interlocutory, we find it is not final and appealable.

Hunt filed a Form 101, Application for Resolution of Injury Claim, on November 30, 2020, alleging injuries to multiple body parts when he was struck in the head with heavy carpet on July 7, 2020 while working for BG Hardwood. The Form 101 lists The Hartford as BG Hardwood’s insurer. Hunt also listed KEMI as an additional defendant.

The claim was assigned to the ALJ for resolution. KEMI filed a Motion to Dismiss, asserting it did not provide workers’ compensation insurance coverage to BG Hardwood on the date of Hunt’s alleged injury. Hunt filed a Motion for Leave to File an Amended 101 on January 25, 2021, to join Billy Hunt d/b/a H&H Flooring as a defendant. KEMI filed a Supplemental Motion to Dismiss on February 1, 2021.

On February 17, 2021, the ALJ entered an Order permitting the joinder of Billy Hunt d/b/a H&H Flooring as a defendant. On the same date, the ALJ denied KEMI’s Motion to Dismiss. KEMI filed Petitions for Reconsideration of the Orders on March 1, 2021 requesting additional findings. On March 22, 2021, the ALJ entered an Order on the Petitions for Reconsideration dismissing KEMI and Billy Hunt d/b/a H&H Flooring as defendants. Hunt filed a Petition for

Reconsideration on April 5, 2020, arguing it was premature for the ALJ to dismiss KEMI and H&H Flooring. In his April 13, 2020 Order, the CALJ denied the Petition for Reconsideration.

Because we conclude the ALJ's March 22, 2021 Order and the CALJ's April 13, 2021 Order are interlocutory and are not final and appealable, we 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 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).

The orders rendered March 21, 2021 and April 13, 2021 do not terminate the action, decide all matters litigated by the parties, and do not determine all the rights of the parties so as to divest the ALJ of authority. Therefore, they are interlocutory, and not final and appealable.

Hunt's appeal is hereby dismissed, and this claim is remanded to Hon. Amanda Perkins, Administrative Law Judge, to conduct all proceedings necessary for final adjudication of the claim, including entering a scheduling order permitting the introduction of evidence, holding a Benefit Review Conference, and conducting a Hearing.

Accordingly, the appeal seeking review of the March 22, 2021 Order entered by Hon. Paul L. Whalen, Administrative Law Judge, and the April 13, 2021 Order rendered by Hon. Douglas W. Gott, Chief Administrative Law Judge, is hereby **DISMISSED**.

ALL CONCUR.

DISTRIBUTION:

COUNSEL FOR PETITIONER BILLY G HUNT:

LMS

HON MICHAEL A STEIDL
941 LEHMAN AVE, STE 201
BOWLING GREEN, KY 42101

**COUNSEL FOR RESPONDENT KEMI &
BILLY HUNT d/b/a H&H FLOORING:**

LMS

HON JEFF V LAYSON, III
1830 DESTINY LANE, SUITE 104
BOWLING GREEN, KY 42104

COUNSEL FOR RESPONDENT BG HARDWOOD DIRECT:

LMS

HON STEVEN GOODRUM
771 CORPORATE DRIVE, SUITE 101
LEXINGTON, KY 40503

ADMINISTRATIVE LAW JUDGE:

LMS

HON AMANDA PERKINS
MAYO-UNDERWOOD BLDG
500 MERO STREET, 3rd FLOOR
FRANKFORT, KY 40601