

Commonwealth of Kentucky  
Workers' Compensation Board

OPINION ENTERED: January 3, 2020

CLAIM NO. 201800068 & 201800067

FORD MOTOR CO. (LAP)

PETITIONER

VS.

APPEAL FROM HON. CHRIS DAVIS,  
ADMINISTRATIVE LAW JUDGE

CHELSEA RIDDELL  
and HON. CHRIS DAVIS,  
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION & ORDER  
DISMISSING

\* \* \* \* \*

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

**STIVERS, Member.** Ford Motor Co. (LAP) (“Ford”) has appealed from the October 17, 2019, Opinion and Order of Hon. Chris Davis, Administrative Law Judge (“ALJ”) ordering a Form 110 Settlement Agreement will not be enforced and is set aside. Ford also appeals from the November 13, 2019, Order overruling its petition for reconsideration relating to the October 17, 2019, decision.

Because we *sua sponte* determine that Ford has appealed from an interlocutory order, we dismiss its appeal and remand to the ALJ for a decision on the merits in the above-styled claims.

### **BACKGROUND**

It appears Chelsea Riddell (“Riddell”) filed two right shoulder injury claims against Ford in January 2018. The ALJ consolidated the claims by Order dated February 1, 2018. In accordance with the regulations, the parties proceeded to introduce medical evidence. Ford also filed a Form 112 medical fee dispute on February 28, 2018, contesting all medical care of Riddell’s right shoulder and a motion to join Drs. Brennan McClure and Thomas Johnson as parties. By Order dated March 12, 2018, the ALJ joined Drs. McClure and Johnson as parties to the proceedings. Thereafter, the parties continued to submit medical proof and Riddell was deposed.

On July 23, 2019, Ford filed a Motion to Enforce Settlement Agreement. In its motion, Ford concluded by stating:

In light of the settlement agreements being reduced to writing between the parties by e-mail; Form 110 Settlement Agreements for the July 9, 2017 and the May 24, 2016 claims, have been prepared; the Defendant-Employer is filing a motion to enforce the settlement(s). The Defendant-Employer respectfully requests the settlement be enforced.

Ford attached various documents in support of this motion including e-mails between Ford’s counsel and Riddell’s counsel and a Form 110 Agreement as to Compensation which it prepared in accordance with what it contended is the agreement of the parties.

A number of motions were filed and orders entered concerning the scope of the hearing and the witnesses to testify at the hearing pertaining to Ford's Motion to Enforce Settlement Agreement. A hearing was held regarding Ford's motion to enforce the settlement on August 28, 2019. At the hearing, only Riddell testified. The parties also submitted briefs to the ALJ.

On October 17, 2019, the ALJ entered the Opinion and Order containing the following findings of fact and conclusions of law:

2. As fact finder, the ALJ has the authority to determine the quality, character and substance of the evidence. *Square D Company v. Tipton*, 862 S.W.2d 308 (Ky. 1993). Similarly, the ALJ has the sole authority to judge the weight and inferences to be drawn from the evidence. *Luttrell v. Cardinal Aluminum Co.*, 909 S.W.2d 334 (Ky. App. 1995). In weighing the evidence, the ALJ must consider the totality of the evidence. *Paramount Foods Inc., v. Burkhardt*, 695 S.W. 2d 418 (Ky., 1985).

Chelsea Riddell testified she gave attorney Udell Levy the authority to settle her claim but the terms were not mentioned. They never discussed a range for settling or waiving any benefits. She received a letter dated June 14, 2019 from Mr. Levy with settlement papers enclosed. At this point, Riddell contacted Mr. Levy and stated she would not waive her medical rights. She later meet [sic] with Mr. Levy and expressed the same issues. She never gave Mr. Levy the authorization to waive her medical benefits and was not informed of the amount of the settlement prior to receiving a copy of the settlement papers in the mail. In May of 2019, Riddell found out additional right shoulder treatment was necessary. Surgery has not been scheduled but has been discussed.

The testimony of Ms. Riddell is uncontradicted. She testified she did not, and would not; give authority to settle her medical benefits. She testified that she believes she still needs surgery. A disinclination to settle medical benefits is not unreasonable. Medical benefits is one of the Act's primary purposes and to many injured workers the paramount purpose of their claims.

The law is clear that for a settlement agreement to be enforceable the actual Plaintiff, not just her attorney, must understand the terms of the agreement. I cannot make that finding herein.

The Form 110, Settlement Agreement will not be enforced.

The ALJ ordered:

1. The proposed Form 110, Settlement Agreement is not enforced and is set aside.
2. A Benefit Review Conference/Hearing on any remaining issues is set for November 12, 2019 at 12:45 P.M. at the Louisville, Kentucky hearing site.

On October 25, 2019, Ford filed a petition for reconsideration which reads as follows:

1. The ALJ, on page 2 of his Opinion, indicates that the Plaintiff's testimony is uncontradicted. The ALJ overruled Defendant-Employer's Motion for *in camera* review of the communication between Plaintiff and her counsel and also overruled Defendant-Employer's request for subpoenas for attorney Dell Levy. The Defendant-Employer respectfully requests the ALJ reconsider his finding of uncontradicted testimony when the Administrative Law Judge would not allow testimony from her counsel or even *in camera* review of communication between her counsel or *in camera* interview of her counsel.
2. The Defendant-Employer further requests the ALJ render specific findings and analysis as to why the e-mails between defense counsel and Plaintiff's counsel do not constitute a meeting of the minds and settlement of the claims.
3. The Defendant-Employer, Ford Motor Company, respectfully requests the Administrative Law Judge address the authority of an attorney to bind the client.

Riddell filed an objection to Ford's petition for reconsideration.

On November 11, 2019, Ford filed its Witness List relating to the merits of Riddell's claims. On that same date, Ford filed a Notice of Proposed Stipulations setting forth the matters to which it would stipulate and the contested issues. Ford also filed a Form AWW-1 on that date.

A Benefit Review Conference ("BRC") was conducted on November 12, 2019, resulting in an order setting forth the stipulations of the parties and contested issues. The parties stipulated to certain facts and listed the contested issues as "benefits per KRS 342.730, work-relatedness/causation, notice, unpaid or contested medical expenses, injury as defined by the Act, exclusion for pre-existing disability/impairment and TTD."

On November 12, 2019, the ALJ also entered a hearing order setting forth the proof introduced by each party and the witness that testified at the hearing held on that same date.

On November 13, 2019, the ALJ entered the Order overruling Ford's petition for reconsideration regarding his October 17, 2019, Opinion and Order declining to enforce the settlement agreement.

On November 25, 2019, the hearing transcript containing Riddell's testimony addressing the merits of her injury claims was filed in the record.

On December 2, 2019, Ford filed a motion to file a brief in excess of fifteen pages addressing the merits of Riddell's claim along with the brief which exceeded the page limit.

On December 3, 2019, Ford filed a supplement to its brief concerning the rate of interest to be paid on any benefits the ALJ may award Riddell.

On December 12, 2019, the ALJ entered an Order sustaining Ford's motion to submit a brief in excess of fifteen pages.

On December 12, 2019, Ford filed a Notice of Appeal. Consequently, the ALJ was not availed the opportunity to render a decision on the merits of Riddell's injury claims.

### **ANALYSIS**

Because we conclude the ALJ's October 17, 2019, Opinion and Order declining to enforce the settlement agreement and the November 13, 2019, Order ruling on Ford's petition for reconsideration are interlocutory in nature and not final and appealable orders, we dismiss Ford's appeal and remand this claim to the ALJ.

Significantly, we note that after the ALJ entered his Order declining to enforce the settlement agreement, the parties continued to litigate the merits of Riddell's claim. A hearing pertaining to Riddell's injury claims was held. Ford's brief in excess of fifteen pages and supplemental brief addressing the merits of Riddell's claims were filed. Thus, there are numerous issues which the ALJ still has to resolve before either party can avail itself on appeal. This is born out in the October 17 2019, Opinion and Order as the ALJ set a BRC/Hearing "on any remaining issues" for November 12, 2019.

803 KAR 25:010, § 22(2)(a), provides as follows: "[w]ithin thirty (30) days of the date of 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, § 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) state 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 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. *Cf. KI USA Corp. v. Hall*, 3 S.W.3d 355 (Ky. 1999); *Ramada Inn v. Thomas*, 892 S.W.2d 593 (Ky. 1995); *Transit Authority of River City v. Saling*, 774 S.W.2d 468 (Ky. App. 1980).

The ALJ’s October 17, 2019, Opinion and Order and the November 13, 2019, Order ruling on the petition for reconsideration meet none of these requirements. Without question, the ALJ’s October 17, 2019, Opinion and Order does not operate to terminate the action. Moreover, the ALJ’s ruling does not act to finally decide all

outstanding issues, nor does it operate to determine all rights of Riddell and Ford so as to divest the ALJ once and for all of authority to decide the overall merits of the claims. Instead, the ALJ has yet to decide all contested issues identified in the November 12, 2019, BRC Order relating to Riddell's injury claims. As a matter of law, therefore, the October 17, 2019, decision and November 13, 2019, Order ruling on the petition for reconsideration, must be deemed interlocutory. Thus, it is the ALJ as fact-finder, not this Board, who retains jurisdiction. *See* KRS 342.275.

Accordingly, the appeal by Ford is ordered **DISMISSED**.

ALL CONCUR.

---

FRANKLIN A. STIVERS, MEMBER  
WORKERS' COMPENSATION BOARD

**COUNSEL FOR PETITIONER:**

HON GEORGE TT KITCHEN III  
HON JAYME L HART  
730 W MAIN ST STE 300  
LOUISVILLE KY 40202

**LMS**  
**LMS**

**COUNSEL FOR RESPONDENT:**

HON CHED JENNINGS  
401 W MAIN ST STE 1910  
LOUISVILLE KY 40202

**LMS**

**RESPONDENTS:**

DR BRENNAN MCCLURE  
2400 EASTPOINT PARKWAY STE 470  
LOUISVILLE KY 40223

**USPS**

DR THOMAS JOHNSON  
532 N BARDSTOWN RD  
MT WASHINGTON KY 40047

**USPS**

**ADMINISTRATIVE LAW JUDGE:**

HON CHRIS DAVIS  
MAYO-UNDERWOOD BUILDING  
500 MERO ST 3<sup>RD</sup> FLOOR  
FRANKFORT KY 40601

**LMS**