

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: July 17, 2020

CLAIM NO. 201797601

GERRI CRUME

PETITIONER

VS. APPEAL FROM HON. RICHARD E. NEAL,
ADMINISTRATIVE LAW JUDGE

AMERICAN FUJI SEAL AND
RICHARD E. NEAL,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION AND ORDER
DISMISSING & REMANDING

* * * * *

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

BORDERS, Member. American Fuji Seal (“Fuji Seal”) appeals from the March 19, 2020 Opinion, Award, and Order and the April 21, 2020 Order, rendered by the Hon. Richard Neal, Administrative Law Judge (“ALJ”). This claim involves two work-related injuries to different body parts occurring on different dates. Claim number 2017-97601 concerns an alleged low back injury, occurring on November 12,

2017, and was consolidated with claim number 2016-82795, concerning alleged bilateral shoulder injuries occurring on May 13, 2016.

In the Opinion, Award, and Order of March 19, 2020, the ALJ determined Gerri Crume (“Crume”) suffered two distinct work-related injuries. The first injury occurred on May 13, 2016 to her bilateral shoulders (claim number 2016-82795). The ALJ awarded Crume temporary total disability benefits (“TTD”), permanent partial (“PPD”) disability benefits based upon a 9% impairment rating for her shoulder injuries, and medical benefits. The second injury occurred on November 12, 2017 and was to her lumbar spine (claim number 2017-97061). This claim was bifurcated by the ALJ to address whether Crume’s low back condition was causally related to the work incident of November 12, 2017, compensability of past and future medical treatment including surgery, TTD benefits, and travel expenses. The ALJ determined Crume’s low back condition was work-related, and the proposed lumbar fusion surgery is reasonable and necessary. Accordingly, the ALJ directed Fuji Seal to pay for the proposed lumbar surgery and to initiate TTD benefits until Crume reaches maximum medical improvement (“MMI”) and returns to customary work, or an ALJ otherwise releases Fuji Seal from the obligatory payment of TTD benefits.

Fuji Seal filed a Petition for Reconsideration arguing The ALJ’s reliance on Dr. Barefoot in assessing an impairment rating in the shoulder claim was in error. Fuji Seal also argued the ALJ’s findings regarding the compensability of the low back claim and proposed surgery was likewise in error. The ALJ overruled the Petition for Reconsideration. Thereafter, Fuji Seal appealed to the Board from the

ALJ's determinations on both the consolidated bilateral shoulder claim and low back claim.

On June 29, 2020, the Board entered an Order placing the appeal in abeyance and partially remanding the consolidated claims to the ALJ for an Order deconsolidating these two claims reasoning the bilateral shoulder claim (2016-82795) was final and appealable, and the low back claim (2017-97061) appeared to be interlocutory and non- appealable.

On June 29, 2020, the ALJ entered an Order deconsolidating the claims. Thereafter, the Board entered an Order removing the claim from abeyance, placing it on the active docket, and submitting the claim for a decision. Because we conclude the ALJ's opinion rendered March 19, 2020 in claim number 2017-97061 does not resolve all pending issues, the decision does not represent a final and appealable order. Therefore, this appeal is dismissed, and the claim is remanded for additional determination.

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 v. 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 v. Sailing, 774 S.W.2d 468 (Ky. App. 1980); *see also* Ramada Inn v. Thomas, 892 S.W.2d 593 (Ky. 1995).

The ALJ, in arriving at his decision, only made a determination regarding the work-relatedness of Crume's low back condition and the compensability of proposed surgery and entitlement to TTD benefits. He made no determination regarding Crume's entitlement to income benefits or any other

remaining issues. After reviewing the ALJ's March 19, 2020 decision, it is readily apparent it does not operate to terminate the action or finally decide all outstanding issues. Likewise, the decision does 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, Fuji Seal's appeal is hereby dismissed, and the claim is remanded to the ALJ to conduct all proceedings necessary for final adjudication of this claim. Once the ALJ has issued a final determination regarding all issues, any aggrieved party may file an appeal, including those resolved in the decision rendered March, 19, 2020.

Accordingly, the appeal in claim 201797601, relating to the low back injury, seeking review of the decision rendered March 19, 2020 in the Opinion, Award, and Order and Order on Reconsideration rendered April 21, 2020 by Hon. Richard Neal, Administrative Law Judge is hereby **DISMISSED**. This claim is **REMANDED** for an additional determination as set forth above.

/s/ R. Scott Borders
R. SCOTT BORDERS, MEMBER
WORKERS' COMPENSATION BOARD

ALL CONCUR.

DISTRIBUTION:

COUNSEL FOR PETITIONER:

LMS

HON FELICIA SNYDER
333 E SHORT ST 110
LEXINGTON, KY 40507

COUNSEL FOR RESPONDENT:

LMS

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

ADMINISTRATIVE LAW JUDGE:

LMS

HON RICHARD E. NEAL
MAYO-UNDERWOOD BLDG
500 MERO ST, 3rd FLOOR
FRANKFORT, KY 40601