

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: January 3, 2020

CLAIM NO. 201800101

HATTIE KING

PETITIONER/
CROSS-RESPONDENT

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

JBS SWIFT & CO.
and
HON. JONATHAN R. WEATHERBY,
ADMINISTRATIVE LAW JUDGE

RESPONDENT/
CROSS-PETITIONER

RESPONDENT

**OPINION AND ORDER
DISMISSING**

* * * * *

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

ALVEY, Chairman. Hattie King (“King”) seeks review of the Order rendered October 16, 2019 by Hon. Jonathan R. Weatherby, Administrative Law Judge (“ALJ”) setting a briefing schedule, and dismissing that part of her claim pertaining to alleged shoulder injuries. King also appeals from the order on reconsideration

issued by the ALJ on November 7, 2019, amending the October 16, 2019 order to reflect the dismissal of the shoulder claims was without prejudice.

King filed a Form 101 on January 18, 2018 alleging she sustained injuries to multiple body parts on May 29, 2016 due to cumulative trauma sustained while working for JBS Swift & Co. (“JBS Swift”). A scheduling order was issued on February 19, 2018 assigning the claim to the ALJ.

A Benefit Review Conference (“BRC”) was held on June 14, 2018. The parties agreed the issues to be decided included benefits per KRS 342.730, and unpaid medical expenses.

On August 10, 2018, King moved to amend the Form 101 to include an alleged left shoulder injury. The ALJ issued an order amending the claim on September 5, 2018. A BRC was scheduled for May 7, 2019 by order issued March 5, 2019. The order from that BRC reflects the issues included benefits per KRS 342.730, unpaid or contested medical bills, notice, and average weekly wage. A hearing was held on May 23, 2019, and the parties were provided a briefing schedule.

On June 20, 2019, King moved to remove the claim from submission. This motion was granted by the ALJ on June 28, 2019. On August 1, 2019, King moved for an extension of time. The ALJ granted the extension of time by order issued August 12, 2019.

On October 9, 2019, JBS Swift moved to submit the claim for decision, set a briefing schedule, and to dismiss the shoulder claims. It alleged King had failed to file a physician’s report establishing an impairment rating for the alleged shoulder

injuries. King responded to the motion. The ALJ issued an order on October 16, 2019, setting a briefing schedule, and dismissing the claim for shoulder injuries. King filed a petition for reconsideration of the order on October 21, 2019. On November 7, 2019, the ALJ amended his previous order to note the dismissal of the shoulder claims was without prejudice. This appeal followed, despite the ALJ not having rendered a decision on the remaining portions of King's claim.

Because we conclude the ALJ's orders issued on October 16, 2019 and November 7, 2019 do not resolve all pending issues, and do not constitute a final determination that is appealable, we therefore dismiss this appeal, and remand this claim for additional determinations.

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 ALJ, in his order, only resolved the allegation of shoulder injuries, and did not address the remaining undecided issues. After reviewing the ALJ's October 16, 2019 and November 7, 2019 orders, it is readily apparent they do not operate to terminate the action or finally decide all outstanding issues. Likewise, these orders do not operate to determine all the rights of the parties divesting the ALJ once and for all of the authority to decide the merits of the claim.

That said, we hereby dismiss this appeal, and remand this claim to the ALJ to conduct all proceedings necessary for final adjudication of all of the outstanding issues. Once the ALJ has rendered a decision on all outstanding issues,

any aggrieved party may file an appeal on any issues decided by the ALJ, including those resolved in the orders issued October 16, 2019 and November 7, 2019.

Accordingly, the appeal seeking review of the orders issued October 16, 2019 and November 7, 2019 by Hon. Jonathan R. Weatherby, Administrative Law Judge, is hereby **DISMISSED**. This claim is **REMANDED** for additional determination as set forth above.

ALL CONCUR.

MICHAEL W. ALVEY, CHAIRMAN
WORKERS' COMPENSATION BOARD

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