

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: June 18, 2021

CLAIM NO. 201961161

JEANNE BRANNON

PETITIONER

VS.

APPEAL FROM HON. GRANT S. ROARK,
ADMINISTRATIVE LAW JUDGE

TNT SAWING, INC.;
HON. GRANT S. ROARK,
ADMINISTRATIVE LAW JUDGE; and
WORKERS' COMPENSATION BOARD

RESPONDENTS

OPINION AND ORDER
DISMISSING AND REMANDING

* * * * *

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

ALVEY, Chairman. Jeanne Brannon (“Brannon”) seeks review of the Opinion and Order rendered April 13, 2021 by Hon. Grant S. Roark, Administrative Law Judge (“ALJ”). The ALJ denied Brannon’s request for interlocutory relief, and referred the claim back to the Commissioner of the Department of Workers’ Claims for assignment to an Administrative Law Judge for further determination. Brannon also

appeals from the April 29, 2021 Order denying her Petition for Reconsideration. We note TNT Sawing, Inc. (“TNT”), Brannon’s employer, filed a Motion to Dismiss to which Brannon has not responded.

Because Brannon has appealed from an interlocutory decision, we find it is not final and appealable. This appeal is therefore dismissed, and we remand for entry of a scheduling order, and a determination on the merits.

Brannon filed a Form 101, Application for Resolution of Injury Claim, on July 28, 2020, alleging injuries to her jaw and spine in a motor vehicle accident on July 19, 2019 while working for TNT.

The claim was assigned to Hon. Paul L. Whalen, Administrative Law Judge (“ALJ Whalen”), for resolution. Brannon subsequently filed a Motion for Interlocutory Relief pursuant to 803 KAR 25:010 §12. ALJ Whalen referred the claim to the Commissioner of the Department of Workers’ Claims for referral to an Administrative Law Judge for determination of the request for interlocutory relief. The claim was assigned to the ALJ for the interlocutory relief determination. The ALJ denied the motion by Opinion and Order issued on April 13, 2021. Brannon filed a Petition for Reconsideration, essentially rearguing the merits of the claim. The ALJ denied the Petition for Reconsideration by Order dated April 29, 2021, and referred this claim to the Commissioner of the Department of Workers’ Claims for reassignment to an ALJ for further proceedings. Brannon filed an appeal with this Board on May 17, 2021.

Because we conclude the ALJ's April 13, 2021 Opinion and Order, and the April 29, 2021 Order on Petition for Reconsideration are interlocutory, and therefore 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 Opinion and Order rendered April 13, 2021, and the April 29, 2021 Order on Petition for Reconsideration 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.

Brannon's appeal is hereby dismissed. This claim is remanded to the ALJ for referral to the Commissioner of the Department of Workers' Claims for assignment to an ALJ 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 Motion to Dismiss this appeal seeking review of the April 13, 2021 Opinion and Order, and the April 29, 2021 Order on Petition for Reconsideration entered by Hon. Grant S. Roark, Administrative Law Judge is hereby **GRANTED**. **IT IS HEREBY ORDERED AND ADJUDGED** this appeal is **DISMISSED**, and this claim is **REMANDED** to the ALJ for further proceedings.

ALL CONCUR.

/s/ Michael W. Alvey
MICHAEL W. ALVEY, CHAIRMAN
WORKERS' COMPENSATION BOARD

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