

Commonwealth of Kentucky  
Workers' Compensation Board

OPINION ENTERED: March 1, 2019

CLAIM NO. 201896086

KEN LASHLEY

PETITIONER

VS.                   **APPEAL FROM HON. JEFF V. LAYSON, III,  
ADMINISTRATIVE LAW JUDGE**

KY VOLUNTEER FIRE DEPARTMENT and  
HON. JEFF V. LAYSON, III,  
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION & ORDER  
DISMISSING**

\* \* \* \* \*

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

**ALVEY, Chairman.** Ken Lashley (“Lashley”) seeks review of an Interlocutory Opinion and Order rendered December 22, 2018 by Hon. Jeff V. Layson, III, Administrative Law Judge (“ALJ”). The ALJ found Lashley was injured in the course of his duties as a volunteer firefighter for KY Volunteer Fire Department (“KYVFD”). He awarded temporary total disability (“TTD”) based upon the state minimum benefit in effect for the date of injury, medical benefits, and placed the

claim in abeyance until Lashley reaches maximum medical improvement (“MMI”). The ALJ noted Lashley has not yet reached MMI. Lashley also appeals from the January 25, 2019 order denying his petition for reconsideration.

Lashley filed a Form 101, on July 13, 2018 alleging he injured his left leg and knee when he slipped on ice and snow on January 18, 2018. KYVFD filed a Form 111 on July 27, 2018 admitting Lashley sustained a work-related injury, but indicated there is a dispute as to the benefits owed. A Benefit Review Conference (“BRC”) was held on November 14, 2018. The BRC order and memorandum indicates the claim was bifurcated for a determination of Lashley’s pre-injury average weekly wage (“AWW”). The Hearing Order dated November 28, 2018 notes, “Per previous order, claim is bifurcated for decision regarding correct pre-injury average weekly wage. **All other issues are preserved for further proceedings.** (Emphasis added).

In the “Interlocutory Opinion and Order” rendered December 22, 2018, the ALJ determined Lashley’s pre-injury AWW pursuant to KRS 342.140(3) was “zero”. The ALJ determined Lashley is entitled to TTD benefits at the rate of \$169.97, the minimum for 2018. The ALJ additionally determined the claim would remain in abeyance until Lashley reaches MMI.

On January 5, 2019, Lashley filed a petition for reconsideration. He argued the ALJ erred in determining the earnings from his self-employment as a construction contractor should not be considered for calculating his AWW. The ALJ denied the petition by order entered January 25, 2019.

Because we conclude the ALJ's December 22, 2018 opinion, and the order on reconsideration issued January 25, 2019 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. (Emphasis added).

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 placed Lashley's claim in abeyance and awarded TTD benefits until he reaches MMI. In his decision, the ALJ specifically stated, "The only disputed issue in this case at this time is the Plaintiff's pre-injury average weekly wage. That issue has been bifurcated for an initial determination before proceeding to a resolution of any other issues in this case." (Emphasis added).

After reviewing the file, it is clear the opinion rendered December 22, 2018, and the January 25, 2019 order on reconsideration are interlocutory, and as such are not final and appealable as they do not operate to terminate the action or finally decide all outstanding issues. Likewise, they 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, the appeal filed by Lashley must be dismissed, and the claim remanded to the ALJ to conduct all proceedings necessary for final adjudication of the claim, including a BRC and Hearing if required.

Accordingly, **IT IS HEREBY ORDERED AND ADJUDGED** the appeal seeking review of the interlocutory decision rendered December 22, 2018, and

the order denying the petition for reconsideration issued January 25, 2019 by Hon. Jeff V. Layson, III, Administrative Law Judge, is hereby **DISMISSED**.

ALL CONCUR.

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MICHAEL W. ALVEY, CHAIRMAN  
WORKERS' COMPENSATION BOARD

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