

Commonwealth of Kentucky  
Workers' Compensation Board

OPINION ENTERED: October 2, 2020

CLAIM NO. 201886442

PERRY COUNTY BOARD OF EDUCATION

PETITIONER

VS.

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

MARK CAMPBELL  
HAZARD ARH  
DR. MUKUT SHARMA  
and HON. GRANT S. ROARK,  
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINON & ORDER  
DISMISSING

\* \* \* \* \*

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

**STIVERS, Member.** Perry County Board of Education (“Perry County”) has filed a Notice of Appeal in the above-styled claim which reads “Pursuant to K.R.S. 342.285, Perry County Board of Education, by counsel, gives notice of its appeal to the Board.” Although the Notice of Appeal does not identify the decision or order from which the appeal is taken, this appeal can only seek review of the August 17,

2020, Interlocutory Opinion and Order of Hon. Grant S. Roark, Administrative Law Judge (“ALJ”) finding in favor of Mark Campbell (“Campbell”) concerning the bifurcated issue of the work-relatedness/causation of Campbell’s total right knee replacement surgery performed by Dr. Mukut Sharma in December 2019. Apparently, Perry County also appeals from the September 16, 2020, Order ruling on its Petition for Reconsideration. We *sua sponte* dismiss the appeal and remand the claim to the ALJ.

### **BACKGROUND**

Perry County’s Notice of Appeal does not identify the Opinion, Award, and Order from which it is appealing. However, the last two orders entered in the record were the August 17, 2020, Interlocutory Opinion and Order finding the right knee replacement surgery compensable and the September 16, 2020, Order ruling on Perry County’s Petition for Reconsideration. Thus, we can only conclude that Perry County is appealing from those two orders. The ALJ’s brief statement of the case provided in his August 17, 2020, Interlocutory Opinion and Order reads as follows:

Mark Campbell claims he sustained injuries to his head, right knee and right shoulder in an incident at work on April 11, 2018. The defendant employer, Perry County Board of Education, accepted the claim and Campbell underwent right knee arthroplasty with partial meniscectomy with Dr. Darren Johnson on November 6, 2018. Campbell was later referred to Dr. Sharma for continued right knee pain who later performed a right total knee replacement.

The employer maintains the knee replacement surgery was not reasonable or necessary or causally related to the April 11, 2018 injury. This matter has been bifurcated to first decide the compensability of the right

total knee replacement surgery.

After summarizing the evidence, the ALJ identified the following contested issues: “1. Compensability of December, 2019 Right Total Knee Replacement Surgery Based on Causation/Work Relatedness and Reasonableness/Necessity; and 2. TTD Benefits.” Based on his review of the evidence, the ALJ was persuaded that “the total right knee replacement surgery was reasonable and necessary and causally related to the April 11, 2018 work injury. As such, the defendant employer shall be responsible for payment of that surgery.” The ALJ awarded temporary total disability (“TTD”) benefits commencing on the date of the December 2019 total right knee replacement surgery until Campbell attained maximum medical improvement (“MMI”) or returned to work. The ALJ’s interlocutory order reads, in relevant part, as follows:

1. The defendant employer shall be responsible for payment of plaintiff’s right total knee replacement surgery with Dr. Sharma in December, 2019.
2. The defendant employer shall also reinstate TTD benefits effective the date of Dr. Sharma’s surgery and continuing until plaintiff reaches maximum medical improvement or returns to work.
3. This matter is placed in abeyance pending plaintiff reaching maximum medical improvement, to be return to the active docket upon proper motion of any party.
4. The parties shall file status reports every 60 days.

Perry County sought reversal of the ALJ’s decision in its Petition for Reconsideration. In the last paragraph of its Petition for Reconsideration, Perry County alternatively requested as follows: “If for any reason that petition for reconsideration is denied, the interlocutory provision should be removed so that the

employer can exercise its appeal rights to the Board.” The ALJ’s September 16, 2020, Order declined to alter the interlocutory status of the August 17, 2020, Interlocutory Opinion and Order. Except for terminating Campbell’s TTD benefits on a date certain, the ALJ left his decision unaltered. No other order had been entered when Perry County filed the September 25, 2020, Notice of Appeal.

### ANALYSIS

We conclude, as a matter of law, the ALJ’s ruling of August 17, 2020, is interlocutory and does not represent a final and appealable order. 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 August 17, 2020, Interlocutory Opinion and Order and September 16, 2020, Order ruling on the Petition for Reconsideration meet none of these requirements. The ALJ's opinion 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 the parties so as to divest the ALJ once and for all of authority to decide the overall merits of the claim.

We note that in the April 14, 2020, Benefit Review Conference Order and Memorandum ("BRC Order"), the parties identified the contested issues as follows: "Work-relatedness/causation, unpaid or contested medical expenses, and TTD." Hand-written under "Other" is the following: "Compensability of knee surgery – MFD; Defendant's motion to dismiss MFD." Consistent with the BRC Order, the ALJ conducted a hearing relating solely to the issue of the compensability

of the surgery. Notably, the following discourse took place between the ALJ and all the attorneys for the parties at the June 18, 2020, hearing:

Judge Roark: All right. We had a benefit review conference, let's see, back on April 14, 2020, and at that time, we had listed all the contested issues. But it's my understanding that the hearing here today is only to decide the bifurcated issue of the compensability of knee surgery. That's the defendant's pending medical dispute. Is that everyone's understanding of the only issue to be decided as a result of the hearing here today?

Mr. Vanover: And Your Honor, I believe TTD should be decided as well in the event you find it compensable, Your Honor.

Judge Roark: Yes.

Ms. Davidson: That's my understanding, Judge.

Judge Roark: And part of the medical dispute is also based on causation, is that correct, Mr. Lewis?

Mr. Lewis: Yes, Judge.

Consistent with this discourse, the parties' briefs to the ALJ acknowledged the understanding that the ALJ would be entering an interlocutory order solely resolving the issue of the compensability of the right knee surgery and, if a decision was favorable to Campbell, his entitlement to TTD benefits. Thus, the ALJ has yet to decide several issues concerning Campbell's claim, including but not limited to his entitlement to income and medical benefits as a result of the work-related injury.

As previously noted, for purposes of Chapter 342, a final award, order or decision is determined according to CR 54.02 (1) and (2). 803 KAR 25:010 §22(2)(b). Pursuant to CR 54.02, an order is appealable only if it terminates the action itself, acts to decide all matters litigated by the parties, and 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).

The ALJ's August 17, 2020, Interlocutory Opinion and Order is not final and appealable because it only determined the compensability of Campbell's total right knee replacement surgery and his entitlement to TTD benefits. Consequently, Perry County cannot appeal from the August 17, 2020, Interlocutory Opinion and Order and the September 16, 2020, Order ruling on its Petition for Reconsideration. Its appeal must then be dismissed. In this instance, the ALJ's decision plainly does not address with finality "all" of the outstanding contested issues raised by the parties in the BRC Order. We also note the language required by CR 54.02 is not contained in the ALJ's decision. Further, the ALJ specifically stated in the August 17, 2020, decision the claim was placed in abeyance pending Campbell reaching MMI, to be returned to the active docket upon proper motion by either party. The parties were directed to file status reports every sixty (60) days. As a matter of law, therefore, Perry County's appeal from the August 17, 2020, Interlocutory Opinion and Order and the September 16, 2020, Order ruling on the Petition for Reconsideration, must be deemed interlocutory. Therefore, it is the ALJ, as fact-finder, not this Board, who retains jurisdiction of the claim. *See* KRS 342.275.

Accordingly, the appeal of Perry County is ordered **DISMISSED**. This claim is **REMANDED** to the ALJ for entry of a final decision on all issues. We point out our dismissal of this appeal does not in any manner affect the enforceability of the ALJ's August 17, 2020, Interlocutory Opinion and Order as amended by his

September 16, 2020, Order. The parties are required to comply with all terms and conditions of that order until amended or set aside by the ALJ.

ALL CONCUR.

**/s/ FRANKLIN STIVERS**

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FRANKLIN STIVERS, MEMBER  
WORKERS' COMPENSATION BOARD

**COUNSEL FOR PETITIONER/  
PERRY COUNTY BOARD OF EDUCATION:**

HON BARRY LEWIS **LMS**  
P O BOX 800  
HAZARD KY 41702

**COUNSEL FOR RESPONDENTS/  
DR MUKUT SHARMA AND HAZARD ARH:**

HON DENISE DAVIDSON **LMS**  
P O BOX 986  
HAZARD KY 41702

**COUNSEL FOR RESPONDENT/  
MARK CAMPBELL:**

HON MCKINNLEY MORGAN **LMS**  
921 S MAIN ST  
LONDON KY 40741

**ADMINISTRATIVE LAW JUDGE:**

HON GRANT S ROARK **LMS**  
MAYO-UNDERWOOD BUILDING  
500 MERO ST 3<sup>RD</sup> FLOOR  
FRANKFORT KY 40601