

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: June 8, 2022

CLAIM NO. 200470506

SODEXHO/BEREA COLLEGE FOOD SERVICES and
GALLAGHER BASSETT

PETITIONERS

VS.

**APPEAL FROM HON. DOUGLAS W. GOTT,
CHIEF ADMINISTRATIVE LAW JUDGE**

MARLA HIMES, DECEASED
JEFFERY HIMES, WIDOWER and
HON. DOUGLAS W. GOTT,
CHIEF ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION & ORDER
DISMISSING**

* * * * *

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

ALVEY, Chairman. Sodexho/Berea College Food Services (“Sodexho”) seeks review of the May 4, 2022 Order rendered by Hon. Douglas W. Gott, Chief Administrative Law Judge (“CALJ Gott”) sustaining Jeffrey Himes’ (“Jeffrey”) Motion to Substitute as a party in place of his deceased wife, Marla J. Himes (“Marla”).

Marla sustained a work-related low back injury while working for Sodexho on November 1, 2004. Hon. Andrew Manno, Administrative Law Judge, awarded permanent total disability benefits for Marla's injury in an Opinion issued on December 22, 2005.

After the decision, the parties twice attempted to settle the claim. A settlement agreement signed by the parties was tendered on June 4, 2012. On August 27, 2012, Hon. J. Landon Overfield, Chief Administrative Law Judge, entered an Order disapproving the settlement. The parties again tendered a signed settlement agreement on May 4, 2015. On July 9, 2015, Hon. Robert L. Swisher, Chief Administrative Law Judge, entered an Order disapproving the settlement.

On April 5, 2022, Jeffrey filed a Motion to Substitute as a party in place of Marla. In the May 4, 2022 Order, CALJ Gott sustained Jeffrey's Motion to substitute for Marla who passed away on March 2, 2022. In the Order, CALJ Gott noted Sodexho's statement regarding the overpayment of benefits. CALJ Gott ordered Sodexho to respond within 15 days explaining the basis for its assertion of overpayments. CALJ Gott specifically stated as follows:

The CALJ is puzzled by Sodexho's statement in footnote three on page three of its Response, where it indicates that "overpayments" have been made and "continuing payments have currently been suspended through at least October 2022." To the extent the full award continued to be paid before Sodexho became aware of Marla's death, such a credit is appropriate; but it is unclear what credit Sodexho may be claiming beyond that. Within 15 days of this Order, Sodexho shall file a pleading that confirms payment to Marla under the 2004 award through her death, and explains any "overpayments" for which it claims credit against the continuation ordered above.

Sodexo filed a response to CALJ Gott's Order on May 19, 2022. Himes in turn filed a pleading showing her calculation of any overpayment benefits received. Rather than waiting for CALJ Gott to issue an order concerning the two pleadings filed regarding the May 4, 2022 Order, Sodexo filed a Notice of Appeal on June 1, 2022, and an Amended Notice of Appeal on June 2, 2022.

Because we conclude CALJ Gott's May 4, 2022 Order is interlocutory and is 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 Order rendered May 4, 2022 does not terminate the action, decide all matters litigated by the parties, and does not determine all the rights of the parties so as to divest CALJ Gott of authority. Therefore, it is interlocutory, and not final and appealable. This is evidenced by CALJ Gott granting Sodexho 15 days to respond to the Order, indicating additional action was required, and a further determination would be issued. Rather than doing so, Sodexho filed a Notice of Appeal.

Sodexho's appeal is hereby dismissed, and this claim is remanded to CALJ Gott to conduct all proceedings necessary for final adjudication of the pending issues.

Accordingly, the appeal seeking review of the May 4, 2022 Order entered by Hon. Douglass W. Gott, Chief Administrative Law Judge, is hereby ordered **DISMISSED**.

ALL CONCUR.

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

DISTRIBUTION:

COUNSEL FOR PETITIONER:

LMS

HON JEREMY N FAULK
400 WEST MARKET STREET, SUITE 2300
LOUISVILLE, KY 40202

COUNSEL FOR RESPONDENT:

LMS

HON MICHAEL F EUBANKS
225 WEST IRVINE STREET
PO BOX 157
RICHMOND, KY 40476

CHIEF ADMINISTRATIVE LAW JUDGE:

LMS

HON DOUGLAS W GOTT
MAYO-UNDERWOOD BLDG
500 MERO STREET, 3rd FLOOR
FRANKFORT, KY 40601