

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: June 8, 2022

CLAIM NO. 202090644

SPENCER COUNTY FISCAL COURT

PETITIONER

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

GARY DAY and
HON. JONATHAN R. WEATHERBY,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION & ORDER
DISMISSING

* * * * *

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

ALVEY, Chairman. Spencer County Fiscal Court (“Spencer County”) seeks review of the March 16, 2022 Interlocutory Opinion and Order rendered by Hon. Jonathan R. Weatherby, Administrative Law Judge (“ALJ”). The ALJ awarded Interlocutory Relief to Gary Day (“Day”) for injuries to his shoulders he allegedly sustained while removing an ambulance tire on December 16, 2019 while working for Spencer

County. Spencer County also appeals from the April 20, 2022 and May 12, 2022 Orders denying its Petitions for Reconsideration.

In the March 16, 2022 Interlocutory Opinion and Order, the ALJ determined Day sustained shoulder injuries while working for Spencer County, but he had not yet reached maximum medical improvement (“MMI”). The ALJ awarded temporary total disability (“TTD”) benefits until Day either reaches MMI or returns to work. The ALJ also awarded medical benefits pursuant to KRS 342.020. We dismiss the appeal because the Orders appealed from are not final.

Day filed a Form 101 on March 19, 2021 alleging he injured both shoulders while changing an ambulance tire on December 16, 2019 in the course of his employment with Spencer County. On April 19, 2021 the claim was assigned to the ALJ by Order from the Commissioner of the Kentucky Department of Workers’ Claims.

The ALJ issued an Interlocutory Opinion and Order on March 16, 2022 awarding Interlocutory Relief in the form of TTD and medical benefits because he determined Day had not yet reached MMI. Spencer County filed a Petition for Reconsideration on March 27, 2022 alleging numerous errors by the ALJ. It argued the ALJ erred by *sua sponte* awarding Interlocutory Relief. It also argued the ALJ failed to make necessary findings, specifically regarding potential irreparable harm. It additionally argued the ALJ misinterpreted Dr. Frank Bonnarens’ opinions, and he misinterpreted the evidence. It also argued the ALJ failed to perform a complete analysis. Spencer County also alleged the opinion contained numerous patent

errors. It additionally argued the ALJ erred by placing the claim in abeyance. The ALJ denied the Petition for Reconsideration in an Order entered April 20, 2022.

Spencer County filed a second Petition for Reconsideration on May 4, 2022 again requesting the ALJ to reconsider patent errors contained in his decision. It also requested the ALJ to determine his decision is final and appealable. The ALJ denied the Petition for Reconsideration in an Order entered May 12, 2022.

Spencer County filed a Notice of Appeal on May 19, 2022. It listed the ALJ's March 16, 2022 Interlocutory Opinion and Order (although it omitted the word Interlocutory in the pleading). It also listed the Orders on the Petitions for Reconsideration issued on April 20, 2022 and May 12, 2022. Because we conclude the ALJ's Opinion 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 divesting 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 Interlocutory Opinion and Order rendered March 16, 2022 does not terminate the action, decide all matters litigated by the parties, and does not determine all the rights of the parties divesting the ALJ of authority. The ALJ specifically found Day has not reached MMI and has not returned to work in awarding TTD benefits. We find that since Day has not reached MMI, the ALJ's decision, as it states on its face, is interlocutory, and therefore not final and appealable. We likewise find no error in the ALJ placing this appeal in abeyance until it is ripe for a final adjudication.

Spencer County's appeal is hereby dismissed, and this claim is remanded to the 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 appeal seeking review of the March 16, 2022 Interlocutory Opinion and Order, and April 20, 2022 and May 13, 2022 Orders on Petitions for Reconsideration entered by Hon. Jonathan R. Weatherby, Administrative Law Judge, is hereby ordered **DISMISSED**.

ALL CONCUR.

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

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