

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: April 11, 2022

CLAIM NO. 202082723

TERRY HOPE

PETITIONER

VS.

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

PARAQUET SPRING CONFERENCE CENTRE and
HON. DOUGLAS W. GOTT,
CHIEF ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
DISMISSING

* * * * *

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

ALVEY, Chairman. Terry Hope (“Hope”) seeks review of the February 10, 2022 Order rendered by Hon. Douglass W. Gott, Chief Administrative Law Judge (“CALJ”), denying Paraquet Springs Conference Centre’s (“Paraquet Springs”) Motion to Reopen to Reduce a Permanent Total Disability Award, and the Order on the Petition for Reconsideration entered February 24, 2022.

In the February 24, 2022 Order, the CALJ determined Paroquet Springs had made a *prima facie* case for reopening, and he referred this claim for assignment to an Administrative Law Judge for a determination on the merits. The claim was assigned to Hon. Grant S. Roark, Administrative Law Judge (“ALJ”), by Order from Hon. Robert Walker, Commissioner of the Kentucky Department of Workers’ Claims, on March 16, 2022. Hope filed his Notice of Appeal on March 17, 2022. We dismiss the appeal because the Orders appealed from are not final.

Hope filed a Form 101, Application for Resolution of Injury Claim, on October 8, 2020, alleging he injured his low back while working for Paroquet Springs on November 1, 2019. The claim was assigned to Hon. Monica Rice-Smith, Administrative Law Judge (“ALJ Rice-Smith”). ALJ Rice-Smith issued an Opinion, Order, and Award on May 28, 2021, finding Hope permanently totally disabled as a result of his work injury. Both Hope and Paroquet Springs filed Petitions for Reconsideration. On June 29, 2021, ALJ Rice-Smith denied Paroquet Springs’ Petition for Reconsideration, and sustained Hope’s Petition for Reconsideration. Paroquet Springs appealed from ALJ Rice Smith’s decision and the Order on Reconsideration. This Board affirmed ALJ Rice-Smith’s determinations in an Opinion entered October 1, 2021.

On January 6, 2022, Paroquet Springs filed a Motion to Reopen asserting Hope has returned to work and is no longer permanently totally disabled. The CALJ denied the Motion to Reopen in an Order dated February 10, 2022. Paroquet Springs filed a Petition for Reconsideration, to which Hope responded. The CALJ entered an Order on February 24, 2022. He cited to the holding in LKLP

CAC Inc. v. Fleming, 520 S.W.3d 382 (Ky. 2017), that he had held Paroquet Springs to an incorrect standard. He found that based upon his review and additional understanding, Paroquet Springs had in fact established a *prima facie* case for reopening, and he referred the claim for assignment to an ALJ for resolution. The claim was assigned to the ALJ, a Scheduling Order was issued, and a Hearing was scheduled for July 13, 2022.

Because we conclude the CALJ's February 24, 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 February 24, 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 the ALJ of authority. Therefore, it is interlocutory, and not final and appealable. This is further evidenced by assignment to the ALJ, along with the Scheduling Order, and setting the Hearing in July 2022.

Hope'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 February 10, 2022 and the February 24, 2022 Orders entered by Hon. Douglass W. Gott, Chief Administrative Law Judge, is hereby **DISMISSED**.

STIVERS, MEMBER, CONCURS.

MILLER, MEMBER, NOT SITTING.

DISTRIBUTION:

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