

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: June 18, 2021

CLAIM NO. 201801729

TOWNE PARK

PETITIONER

VS.

APPEAL FROM HON. JOHN B. COLEMAN,
ADMINISTRATIVE LAW JUDGE

BLAKE BYRNE;
ORTHOPEDICS & SPORTS MEDICINE/
DR. MATTHEW S. GRUNKEMEYER; and
HON. JOHN B. COLEMAN,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION AND ORDER
AFFIRMING AND REMANDING

* * * * *

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

ALVEY, Chairman. Towne Park appeals from the February 5, 2021 Opinion and Award and February 23, 2021 Order denying its Petition for Reconsideration rendered by Hon. John B. Coleman, Administrative Law Judge (“ALJ”). The ALJ determined the June 18, 2019 Opinion was interlocutory and therefore did not prevent him from subsequently determining Blake Byrne (“Byrne”) sustained a left

hip injury due to the June 14, 2018 work injury. The ALJ awarded temporary total disability (“TTD”) benefits, permanent partial disability (“PPD”) benefits, and medical benefits for injuries Byrne sustained to his low back, right wrist, right knee, and left hip in the June 14, 2018 fall while working as a valet for Towne Park.

On appeal, Towne Park argues the June 18, 2019 Opinion controls as to the specific injuries Byrne sustained due to the June 14, 2018 work injury, and prevented the ALJ from subsequently determining it is also responsible for Byrne’s left hip condition. We disagree and affirm. Byrne’s motion for sanctions pursuant to KRS 342.310(1) is denied to the extent this claim is remanded to the ALJ to determine whether the previously awarded medical and chiropractic bills have been paid. On remand, the ALJ may consider the imposition of sanctions pursuant to KRS 342.310(1).

Byrne filed a Form 101 on December 13, 2018. Byrne alleged he sustained injuries to “multiple body parts” on June 14, 2018 when he slipped on wet paint and fell while working as a valet for Towne Park. Four days later, on December 17, 2018, Byrne filed a “Motion to Bifurcate” for a determination on the issues of compensability of medical and chiropractic treatment, and eligibility for TTD benefits. Byrne asserted Towne Park denied his treating physician’s recommendation for physical therapy and was not paying him TTD benefits while he was unable to work.

In a January 11, 2019 Order, the ALJ granted Towne Park 14 days to respond to Byrne’s motion to bifurcate. Towne Park did not respond to Byrne’s motion. On February 1, 2019, the ALJ sustained Byrne’s motion to bifurcate. He

ordered, “The matter shall proceed through the regular proof schedule on threshold issues only. Additional issues regarding permanent benefits will be reserved for further proceedings, if necessary.”

Byrne testified by deposition February 21, 2019 and at a hearing held on April 29, 2019. At the hearing, the ALJ noted the claim was bifurcated on “occurrence of an injury and entitlement to TTD and medical benefits.” The parties also submitted medical evidence from Byrne Chiropractic Center, OrthoCincy, and the January 1, 2019 report by Dr. David Randolph.

Byrne began working as a valet for Towne Park in October 2014. He slipped and fell on wet paint on June 14, 2018, while walking onto a curb towards the garage to retrieve a car. At the hearing, Byrne testified:

When I slipped, my right knee twisted to the, my foot went to the left and my right knee twisted. When I fell, my right hand was extended and I slapped the ground real hard with it and jammed my thumb. And when I landed, I landed on my buttocks and my back got hurt as well.

The following day, Byrne sought chiropractic care with his father, Dr. Allen Byrne, who eventually referred him to an orthopedic surgeon. Byrne treated with two physicians affiliated with OrthoCincy. Dr. Timothy Burns ordered a right knee MRI, and X-rays of his low back and right wrist. Dr. Burns recommended Byrne continue chiropractic care and physical therapy, and referred him for a second opinion. Byrne next treated with Dr. Richard Hoblitzell, who restricted him to light duty, ordered right wrist and lumbar MRIs, prescribed anti-inflammatories, and ordered physical therapy. Byrne did not pursue the recommended physical therapy since the workers’ compensation insurer denied coverage for the treatment.

At the hearing, Byrne testified he continues to have pain and symptoms in his right knee and right wrist. He also experiences left-sided low back pain, and stated, “my left side hurts so much that it will go down my leg, from my groin down to my [left] leg . . . It feels like aching and almost like an electricity shot.” He did not treat after November or December 2018 since the workers’ compensation insurer denied the recommended physical therapy. Dr. Hoblitzell did not release him to full duty work. Byrne has not returned to work since the work injury and he has not received TTD benefits.

Dr. Byrne’s June 15, 2018 record reflects Byrne complained of pain and symptoms in his right knee, right ankle, right wrist, low back, left hip, and left thigh due to a slip and fall at work the previous day. Dr. Byrne rendered chiropractic treatment from June 15, 2018 through July 18, 2018, then referred his son to an orthopedic surgeon. Byrne next treated with Dr. Burns from August 21, 2018 through September 11, 2018. Dr. Burns ordered a right knee MRI and knee brace. He also ordered X-rays of the lumbar spine and right wrist. On September 11, 2018, Dr. Burns diagnosed posterolateral right knee pain status-post twisting injury, a lumbar strain, and a right wrist contusion due to a June 14, 2018 work event and released Byrne to full duty work. He opined no further diagnostic testing was warranted for Byrne’s low back and wrist complaints, prompting Byrne to request a second opinion. Byrne then began treating with Dr. Hoblitzell on September 25, 2018, who consistently documented right hand/wrist symptoms, right knee symptoms, and complaints to the low back/left iliolumbar region, left hip, and left thigh. He ordered MRIs of the low back and right wrist, and restricted Byrne from

lifting over 10 pounds, and walking or standing for more than four hours a day or more than 15 minutes at a time. He also ordered physical therapy. On October 23, 2018, Dr. Hoblitzell noted the lumbar MRI demonstrated minimal disc bulging at L5-S1 without significant nerve root impingement, and he noted the right wrist MRI showed no significant abnormalities. He diagnosed Byrne with a lumbar strain with mild disc bulge at L5-S1; right wrist strain; resolved right ankle sprain; and right knee contusion with post-traumatic chondromalacia patella. He ordered physical therapy for the knee, back, and right wrist, continued light duty restrictions, and prescribed Meloxicam. On both November 13, 2018 and December 4, 2018, Dr. Hoblitzell noted physical therapy had not been approved, and he continued Byrne's light duty restrictions.

Dr. Randolph evaluated Byrne on December 17, 2018 at Towne Park's request. In the January 1, 2019 report, Dr. Randolph noted Byrne complained of right knee, right hand, and right forearm symptoms. He also complained of left-sided low back pain, radiating into his left thigh and leg. Dr. Randolph noted his examination was devoid of objective abnormalities. Dr. Randolph opined Byrne has reached maximum medical improvement ("MMI"), and he is able to return to full duty work without restrictions. He likewise determined the objective medical findings do not support a finding of permanent functional impairment. Dr. Randolph opined the recommended physical therapy is not reasonable or necessary.

Byrne also filed an itemized billing statement from Byrne Chiropractic Center for treatment rendered June 15, 2018 through July 18, 2018 for a total of \$1,960.00.

A benefit review conference (“BRC”) was held on April 9, 2019. The parties stipulated to an alleged June 14, 2018 work injury, and that Towne Park had paid medical expenses in the amount of \$4,086.57. The parties identified the following contested issues: unpaid or contested medical expenses, injury as defined by the Act, and TTD. Under “other” it is noted, “Bifurcated on the occurrence of an injury, TTD and entitlement to medicals.”

The ALJ rendered an “Opinion and Award (Bifurcated Issues)” on June 18, 2019. The ALJ noted, “This claim has been bifurcated on the following issues: occurrence of an injury as defined by the Act; entitlement to medical expenses; and [TTD] benefits.” After summarizing the evidence noted above, the ALJ stated as follows, *verbatim*:

Injury as Defined by the Act?

As pointed out by the plaintiff in his brief, this is a simple case wherein the plaintiff suffered a traumatic fall in the course and scope of his employment with the defendant on June 14, 2018. The plaintiff credibly testified to the occurrence of the traumatic event and there is no evidence to suggest the event not occur. Further, the plaintiff initially sought treatment with his father, a practicing chiropractor, the following day. The records reflect a consistency in the complaints of pain in the right wrist, right knee, ankle and lower back from that point of treatment forward.

....

It appears that Dr. Burns, Dr. Byrne and Dr. Hoblitzell are in agreement that the diagnostic studies performed in the course of his treatment revealed a minimal disc bulge at L5-S1 and evidence of edema/contusion in the right knee as well as subtle focal depth central weight-bearing medial femoral condyle chondrosis without subchondral bone change was noted on MRI. Although criticized as being purely subjective by Dr. Randolph, initial

treatment also revealed swelling as well as the complaints of pain. Although not measured, a physician's notation of swelling is also an objective finding of a traumatic injury.

....

After reviewing the entirety of the evidence, not only as summarized above, but as contained in the entire file, I am convinced that the plaintiff sustained a work related traumatic event when he fell in the course and scope of his employment with the defendant on June 14, 2018. Based upon the medical opinion of Dr. Hoblitzell, I find that the plaintiff sustained a right ankle sprain, which resolved as well as a contusion to the right knee with post-traumatic chondromalacia patella, a right wrist strain and lumbar strain. These conditions were noted based upon the direct observation and standardized methods from that physician as well as Dr. Burns and Dr. Byrne. Therefore, the issue of whether the plaintiff sustained an injury as defined by the Act is resolved in favor of the plaintiff.

The ALJ determined the recommended short course of physical therapy by Dr. Hoblitzell was reasonable and necessary. The ALJ also determined the chiropractic care rendered by Dr. Byrne from June 15, 2018 through July 18, 2018 was reasonable and necessary. Relying upon Dr. Randolph's opinion, the ALJ determined Byrne could return to work on December 17, 2018 without restrictions.

The ALJ awarded medical expenses for Byrne's right knee, right wrist and low back, including the recommended physical therapy by Dr. Hoblitzell. He found Dr. Byrne's treatment compensable. The ALJ awarded TTD benefits from June 14, 2018 through December 17, 2018. The ALJ placed the claim in abeyance until Byrne attained MMI following the recommended course of physical therapy. The ALJ noted Byrne's "Claim for permanent income benefits is reserved for future proceedings."

Towne Park filed a medical dispute in May 2020 challenging the left hip surgery recommended by Dr. Matthew Grunkemeyer as unrelated to the work injury, not reasonable or necessary, and barred by the June 18, 2019 Opinion.

Towne Park filed the deposition transcripts of Byrne and Jack Monts de Oca in Blake Byrne v. The ABM Services, Inc., Case # 19-CI-00814. Byrne also testified at a final hearing held on December 15, 2020. His father, Dr. Byrne, also testified. Byrne testified he initially injured his right ankle in the June 14, 2018 fall, which has since resolved. He continues to experience right knee pain, grinding, and clicking, along with pain and symptoms in his right hand and wrist.

Byrne testified he had never sought treatment for his left hip prior to June 14, 2018, and experienced no pain or symptoms in his left hip prior to the fall. Byrne testified he continues to experience low back pain and left hip pain radiating down his thigh. Byrne testified he was initially worried about his low back and did not have an “understanding completely about the hip.” Byrne testified there was a gap in treatment between December 2018 and October 2019 since the workers’ compensation insurer denied the recommended treatment. Byrne agreed he still had hip pain in October 2019, and it worsened in October and November 2019. His treating physician ordered an MRI. Byrne underwent left hip surgery in May 2020 and post-operative physical therapy. To his knowledge, Dr. Grunkemeyer has not released him to return to his pre-injury duties. Byrne does not believe he can return to his prior job under the restrictions imposed by Dr. Steven Wunder. Byrne has not returned to any work since the June 14, 2018 fall.

Dr. Byrne testified he has practiced as a chiropractor for approximately 33 years. He has rendered wellness care to his son, Byrne, since he was ten years old, but did not maintain records of those visits. Dr. Byrne did not treat his son for left hip problems prior to June 14, 2018, and he is unaware of any congenital condition involving the left hip. He treated Byrne for injuries stemming from the June 14, 2018 slip and fall. He indicated he had initially assumed Byrne's left hip pain radiated from his lower back.

Dr. Byrne testified his bill totaling \$1,960.00 for services rendered from June 15, 2018 through July 18, 2018 remains unpaid despite the June 2019 Opinion and Order. Dr. Byrne testified he additionally treated Byrne on 22 more occasions up through November 2019 for a total of \$880.00, but he did not issue a bill to the workers' compensation carrier since the previous one was unpaid.

Byrne continued to treat at OrthoCincy for his multiple complaints following the June 2019 Opinion, and both parties filed additional treatment records. Dr. Hoblitzell continued to treat Byrne's low back and right knee, but referred him to Dr. Jonathan Slaughter for his right hand and wrist complaints. On November 26, 2019, Dr. Hoblitzell noted Byrne reported worsening left hip pain. His diagnoses included a left hip strain, and he ordered a left hip MRI. The January 25, 2020 left hip MRI demonstrated extensive tearing through the base of the left anterior and superior labrum; femoral acetabular impingement; developing high-grade chondral loss; and left hip joint effusion with synovitis superimposed. Dr. Hoblitzell referred Byrne to Dr. Grunkemeyer for his left hip, who began treating him on February 6, 2020. Dr. Grunkemeyer diagnosed a left hip acetabular labrum tear with

femoroacetabular impingement and hip capsular strain, and he recommended surgery. Dr. Grunkemeyer performed a left hip arthroscopy, labral repair, and a Pincer and CAM resection on May 15, 2020.

In the most recent note dated October 6, 2020, Dr. Hoblitzell noted Byrne had experienced left hip pain since the June 14, 2018 work injury. He further noted Byrne did not have left hip pain prior to the work injury. Consequently, Dr. Hoblitzell opined the current left hip pain and treatment is causally related to the work injury. He diagnosed a left hip strain status-post left hip arthroscopy for labral tearing; lumbar strain with mild disc bulging at L5-S1 with mild nerve root irritability; chronic right wrist strain with nonspecific right hand pain and numbness; right knee contusion with post-traumatic chondromalacia patella; and a resolved right ankle sprain.

Byrne filed Dr. Wunder's December 2, 2019 and August 4, 2020 reports. In the December 2019 report, Dr. Wunder noted Byrne had reproduction of symptoms in the left hip with internal rotation, and he was concerned there might be an internal derangement of the left hip. He recommended an MRI to rule out a labral tear from the fall. Dr. Wunder found Byrne had not reached MMI.

In the August 4, 2020 report, Dr. Wunder noted Byrne had undergone left hip surgery two months prior for a labral tear. Dr. Wunder diagnosed a left low back strain, a right knee contusion with post-traumatic chondromalacia, a right hand contusion with some irritability over the CMC joint and hook of the hamate, and a left hip labral tear and impingement due to the June 14, 2018 work incident. He found Byrne had attained MMI for his right hand and wrist, low back, and right

knee, and he anticipated MMI for the left hip six to twelve months after the surgery. Dr. Wunder assigned permanent restrictions and opined Byrne is unable to return to his pre-injury work. Pursuant to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment (“AMA Guides”), Dr. Wunder assessed an 8% impairment rating for the low back, 7% for the left hip, and 3% for the right hand and wrist. He opined the provided medical bills were reasonable and necessary for treatment of Byrne’s work-related injuries.

Towne Park filed Dr. Rick Lyon’s March 18, 2020 and November 30, 2020 reports. In the March 2020 report, Dr. Lyon diagnosed a resolved right ankle sprain, chondromalacia patella bilateral knees, a contusion/sprain right wrist, a lumbar sprain, and left hip femoroacetabular impingement with labral tear. Regarding the right ankle, Dr. Lyon found Byrne reached MMI by September 2018. He assessed a 0% impairment rating pursuant to the AMA Guides, and found no need for permanent restrictions or additional medical treatment. Regarding the right knee, Dr. Lyon opined the fall caused the underlying chondromalacia to become symptomatic. He found Byrne had reached MMI. Dr. Lyon assessed a 0% impairment rating pursuant to the AMA Guides, and found no need for permanent restrictions or additional medical treatment. Regarding the right hand/wrist, Dr. Lyon assessed a 1% impairment rating pursuant to the AMA Guides. He opined Byrne is at MMI and requires no additional medical treatment or permanent restrictions. Regarding the left hip, Dr. Lyon opined the condition is consistent with a chronic developmental condition and unrelated to the June 14, 2018 fall. He

determined the left hip surgery was reasonable and necessary, but unrelated to the work event.

In the November 30, 2020 report, Dr. Lyon's opinions remained unchanged. However, he amended his assessment of impairment for the right hand/wrist to 4% pursuant to the AMA Guides. He reiterated the left hip condition and treatment is due to a developmental/congenital condition and unrelated to the fall at work. He opined Byrne is at MMI for the left hip and assessed a 2% impairment rating pursuant to the AMA Guides. Regarding the low back, Dr. Lyon assessed a 0% impairment rating. He stated Byrne requires no permanent restrictions regarding the lumbar spine, right knee, or right upper extremity.

On October 29, 2020, Byrne submitted the records and bills from Dr. Byrne for additional care rendered from July 25, 2018 to November 13, 2019. The initial visits from June 15, 2018 through July 18, 2018 totaled \$1,960.00. The additional visits from July 25, 2018 through November 13, 2019 totaled \$880.00. Therefore, the outstanding balance equaled \$2,840.00. Byrne also filed the outstanding medical bills from OrthoCincy totaling \$11,706.12; OrthoCincy physical therapy totaling \$2,162.00; Anesthesia Group Practice Inc. totaling \$2,405.00; and Radiology Associates totaling \$233.00.

A BRC was held on November 5, 2020. The parties identified the following contested issues: benefits per KRS 342.730 and multipliers; work-relatedness and causation of the hip surgery; unpaid or contested medical expenses; injury as defined by the Act; credit for TTD and wages; TTD as to rate and duration;

impairments in conformity with AMA Guides; and “Issues before Interlocutory decision preserved.”

The ALJ issued an Opinion and Award on February 5, 2021.

Relevant to this appeal, the ALJ stated as follows, *verbatim*:

This is a case in which the ALJ issued an interlocutory decision on bifurcated issues on June 18, 2019. At that time, the defendant was denying the existence of permanent injuries and the need for any medical treatment. Based upon the evidence available at the time, the ALJ entered a decision finding the plaintiff had proven the occurrence of a work related injury to the right wrist, right knee and lower back. The ALJ determined the plaintiff to be entitled to a period of temporary total disability from June 15, 2018 through December 17, 2018. The award of temporary total disability benefits was terminated at that time based upon the medical opinion from Dr. Randolph who opined the plaintiff was at maximum medical improvement. However, the ALJ determined the plaintiff was entitled to the recommended course of physical therapy and additional medical treatment based upon the recommendations of the treating physicians. It is worthy to note that Dr. Randolph was, at the time, the most recent medical opinion in the record. Therefore, his determination on maximum medical improvement was accepted to terminate temporary total disability benefits. Because the ALJ did not make a specific finding of entitlement to treatment for the left hip, the defendant now argues the plaintiff is foreclosed from arguing the left hip condition is related to the work injury.

The ALJ notes the original decision was interlocutory in nature and based upon the evidence at the time wherein the treating physicians felt the plaintiff’s low back and left lower extremity symptoms were coming from the lumbar injury. However, since that time, Dr. Wunder, Dr. Hoblitzell and Dr. Grunkemeyer have each opined the plaintiff also sustained a left hip injury in the work related slip and fall. Since the prior decision was interlocutory in nature and bifurcated on the need for requested medical treatment, the plaintiff is not

prevented from alleging a left hip injury by issue preclusion or res judicata because the claim was not fully litigated on the merits. See Woodbridge Inoac, Inc. v. Downs, 864 SW2d 306 (Ky., App., 1993).

The plaintiff has now presented persuasive medical evidence as noted above from Dr. Wunder, Dr. Hoblitzell and Dr. Grunkemeyer that he also injured his left hip in the work related injury. He is therefore entitled to income and medical benefits for that work related injury including the surgery performed by Dr. Grunkemeyer, which I find reasonable and necessary based upon the opinions of these same physicians. I further note that even Dr. Lyon found the surgery reasonable and necessary although he disagreed on the work relatedness of the condition.

The ALJ next determined Byrne is entitled to TTD benefits from June 15, 2018 through November 30, 2020. He noted that at the time of the interlocutory opinion, the medical proof established Byrne had attained MMI by December 17, 2018 based upon Dr. Randolph's opinion, and he awarded TTD benefits through this date. However, the ALJ noted the true source of Byrne's disability had not been uncovered at the time of the interlocutory opinion. Only after the interlocutory opinion and the attainment of recommended medical treatment was it discovered that Byrne sustained low back and left hip injuries requiring surgical repair. The ALJ determined Byrne attained MMI from all of his conditions on November 30, 2020 based upon Dr. Lyon's opinion.

The ALJ determined Byrne's lumbar spine condition warrants an 8% impairment rating, his right wrist condition warrants a 3% impairment rating, and his hip condition warrants a 2% impairment rating, for a combined 13% impairment rating pursuant to the AMA Guides. The ALJ determined the three-multiplier is not applicable.

The ALJ resolved the medical dispute filed by Towne Park in Byrne's favor, finding the left hip condition and treatment reasonable, necessary, and related to the work injury relying upon the opinions of Dr. Wunder, Dr. Hoblitzell, and Dr. Grunkemeyer. He also noted Byrne presented unpaid medical bills for chiropractic treatment, which he previously found compensable. He also found Byrne is entitled to future medical care for his lumbar spine, right wrist, right knee, and left hip injuries.

Towne Park filed a Petition for Reconsideration, arguing the February 5, 2021 Opinion is contrary to the June 18, 2019 Opinion. Towne Park alleged there was no specific finding of a left hip injury in the June 2019 Opinion. Towne Park argued the earlier proceedings fully litigated the specific injuries, which did not include a left hip injury. Towne Park alleged the analysis would undermine the joinder provision.

The ALJ denied Towne Park's Petition for Reconsideration. The ALJ reviewed both the interlocutory and final decisions, and noted the request for a left hip surgery came after the bifurcated decision. Therefore, that issue was not fully litigated on the merits.

On appeal, Towne Park argues the June 18, 2019 Opinion controls. Towne Park argues Byrne was required to file a motion for interlocutory relief pursuant to 803 KAR 25:010 section 12, and he failed to show entitlement or irreparable harm. Next, Towne Park argues Byrne's left hip complaints were well documented prior to the April 2019 hearing and June 2019 decision. Towne Park argues interlocutory relief was ordered when it was not requested, and without the

required evidentiary showing. Therefore, the interlocutory award was in excess of the ALJ's powers, not in conformity with the Act, arbitrary, and an abuse of discretion.

Towne Park argues the June 18, 2019 Opinion and Award was final and failed to find a specific hip injury. Towne Park argues the June 2019 Opinion is "interlocutory" relative to only the resolved right ankle sprain, right knee contusion with post-traumatic chondromalacia patella, right wrist sprain, and lumbar strain. Towne Park asserts the ALJ abused his discretion by later determining Byrne's left hip condition is compensable. Towne Park argues such a result is contrary to the spirit of the statute by forcing a never-ending litigation and that it was too late to saddle it with Byrne's entire hip condition despite the 2019 determination proposition there was no hip injury. Towne Park also asserts, "that the absence of a defined regulatory mechanism for appealing interlocutory orders is unconstitutional."

We begin by noting the June 18, 2019 Opinion was interlocutory and did not represent a final and appealable order.

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 June 18, 2019 Opinion was clearly interlocutory, and not final and appealable as it did not operate to terminate the action or finally decide all outstanding issues. Likewise, it did 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. The claim was bifurcated on the issues occurrence of an injury, TTD, and entitlement to medicals. The ALJ found in Byrne's favor, and placed the claim in abeyance while he underwent the recommended treatment. The ALJ noted Byrne's "Claim for permanent income benefits is reserved for future proceedings." Voluminous evidence was introduced by both parties subsequent to the June 18, 2019 Opinion.

We determine the June 18, 2019 Interlocutory Opinion did not foreclose the ALJ from later finding Byrne sustained a left hip injury due to the June 14, 2018 fall. Towne Park essentially argues the ALJ was precluded from finding a compensable left hip injury since he previously found Byrne sustained injuries to his right ankle, right knee, right wrist, and lumbar spine due to his accident in the June 2019 Interlocutory Opinion. Towne Park emphasizes the ALJ did not find Byrne sustained a left hip injury despite documented complaints in the records prior to the June 2019 Opinion.

In Bowerman v. Black Equipment Co., 297 S.W.3d 858 (Ky. App. 2009), the Court of Appeals held the reversal of prior dispositive factual findings rendered by an ALJ in an interlocutory opinion, absent introduction of new evidence, fraud, or mistake, is arbitrary, unreasonable, unfair, and unsupported by sound legal principles. In the June 2019 Interlocutory Opinion, the ALJ determined Byrne sustained a work-related traumatic event on June 14, 2018. Based upon Dr. Hoblitzell's treatment records, he found Byrne specifically sustained a right ankle sprain, which resolved, as well as a contusion to the right knee with post-traumatic chondromalacia patella, a right wrist strain, and lumbar strain. In the February 2021

Opinion, the ALJ determined Byrne additionally sustained a left hip injury due to the June 2018 work injury.

This case is distinguishable from Bowerman. Here, the parties introduced new evidence after the interlocutory opinion. Only after the interlocutory opinion did Byrne's treating physicians render a diagnosis relative to the left hip and order a left hip MRI in November 2019, and eventually performed surgery in May 2020. On October 6, 2020, Dr. Hoblitzell opined the current left hip pain and treatment is related to the work injury. Likewise, in the December 2019 report, Dr. Wunder noted Byrne had reproduction of symptoms in the left hip with internal rotation, and he recommended an MRI to rule out a labral tear from the fall. He subsequently diagnosed a left hip labral tear and impingement due to the June 14, 2018 work incident, and he assessed a 7% impairment rating pursuant to the AMA Guides. Dr. Lyon also found the left hip surgery reasonable and necessary, but unrelated to the June 2018 work injury. The new medical information filed subsequent to the interlocutory opinion constitutes substantial evidence confirming Byrne suffered a compensable left hip injury.

We further note that this Board, as an administrative tribunal, has no jurisdiction to determine the constitutionality of a statute. Blue Diamond Coal Company v. Cornett, 300 Ky. 647, 189 S.W.2d 963 (1945). Consequently, we are without authority to render a decision regarding Towne Park's argument "that the absence of a defined regulatory mechanism for appealing interlocutory orders is unconstitutional."

While this claim was pending on appeal, Byrne filed a motion for sanctions pursuant to KRS 342.310(1). Byrne asserts Towne Park engaged in sanctionable behavior by continuing to make an argument unsupported by law, i.e., that the June 2019 Opinion controls, while ignoring Civil Rule 54.02 and the fact the claim was bifurcated on threshold issues. He also argues Towne Park engaged in sanctionable behavior by failing to pay the submitted bills of Dr. Byrne, which were found compensable in the June 2019 Opinion, particularly when it failed to appeal this issue. Towne Park responded, asserting again the June 2019 Opinion is final relative to the specific injuries sustained due to the slip and fall, and points to Dr. Lyons' opinion. It then informed this Board that Dr. Byrne emailed HCFA forms on February 4, 2021 to counsel. It asserts a paralegal failed to submit the documentation to the workers' compensation carrier. On April 30, 2021, Towne Park filed the following status report stating, "At this time, our information is Dr. Byrne should have been paid on 4/22/21 and the scanning vendor advised on 4/23/21 there remains missing or invalid information, which information is being secured to bring resolution." It remains unclear whether the chiropractic bills have in fact been paid.

Since a factual determination is required regarding whether the bills have been paid, which is beyond the scope of this Board's authority, Byrne's motion for sanctions pursuant to KRS 342.310(1) is denied. However, we remand this claim to the ALJ for a determination of whether Dr. Byrne's bills remain unpaid. The ALJ may consider the imposition of sanctions pursuant to KRS 342.310(1).

Accordingly, the February 5, 2021 Opinion and Award and February 23, 2021 Order on Petition for Reconsideration rendered by Hon. John B. Coleman, Administrative Law Judge, are hereby **AFFIRMED**. **IT IS HERBY ORDERED AND ADJUDGED** Byrne's Motion for the Imposition of Sanctions is **DENIED**. This claim is **REMANDED** to the ALJ for a determination of whether the above bills have been paid, and for consideration of the imposition of sanctions pursuant to KRS 342.310(1).

ALL CONCUR.

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

DISTRIBUTION:

COUNSEL FOR PETITIONER: **LMS**

HON JAMES B COMPTON
2452 SIR BARTON WAY, STE 300
LEXINGTON, KY 40509

COUNSEL FOR RESPONDENT: **LMS**

HON PETER A TRIPP
2500 CHAMBER CENTER DR, STE 300
FT. MITCHELL, KY 41017

RESPONDENT: **USPS**

ORTHOPEDICS & SPORTS MEDICINE/
DR MATTHEW S GRUNKEMEYER
560 SOUTH LOOP ROAD
EDGEWOOD, KY 41017

ADMINISTRATIVE LAW JUDGE: **LMS**

HON JOHN B COLEMAN
MAYO-UNDERWOOD BLDG
500 MERO STREET, 3rd FLOOR
FRANKFORT, KY 40601