

RENDERED: December 24, 1997; 2:00 p.m.
NOT TO BE PUBLISHED

NO. 97-CA-643-WC

FORD MOTOR COMPANY

APPELLANT

V. PETITION FOR REVIEW OF A DECISION OF
THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-89-4372

WILLIAM GUEST; ROBERT E. SPURLIN,
Director of SPECIAL FUND; ROGER D.
RIGGS, Administrative Law Judge;
and WORKERS' COMPENSATION BOARD

APPELLEES

OPINION AND ORDER DISMISSING

* * * * *

BEFORE: GUDGEL, Chief Judge; GUIDUGLI and SCHRODER, Judges.

GUDGEL, CHIEF JUDGE: This matter is before us on a petition for review of an opinion of the Workers' Compensation Board (board), which reversed and remanded an opinion and award of an Administrative Law Judge (ALJ) with directions to make further findings. For the reasons stated hereafter, we dismiss the petition as having been taken from a nonfinal, nonappealable order.

In 1988, appellee William Guest sustained a work-related back injury. On November 22, 1989, an ALJ approved a settlement of Guest's claim for disability benefits on the

basis that Guest suffered from a 15% occupational disability as a result of the injury.

On June 28, 1995, Guest filed a motion to reopen the claim. After a hearing, the ALJ rendered an opinion and award finding that Guest failed to meet his burden of establishing that his worsened condition was work related. On appeal, the board stated in relevant part as follows:

Here, there certainly is substantial evidence for the ALJ to have made a finding that the surgery performed by Dr. Cowles in 1991 may not have been causally related to his work activities. Thus, the ALJ could conclude that necessary elements of work-relatedness, in order to recover for a claim made at that time, had not been sufficiently provided by plaintiff.

However, Guest points out that he believes the ALJ was confused as to additional contested issues preserved for adjudication. Was there a worsening of Guest's physical condition and/or his occupational disability causally related to his August 1988 injury and subsequent disc surgery at the L5-S1 disc level on the left? That question was simply not addressed by the ALJ in his Opinion. Further, the ALJ's determination fails to address whether he was dismissing the reopened claim, and if so, the reasoning for such a dismissal.

. . . .

While it is true that the ALJ, pursuant to KRS 342.125, may look at all of the elements of a claim in connection with Guest's 1988 injury, we are simply unable to conclude that the ALJ's finding on reopening was related to a determination of nonwork-relatedness as to the August 1988 injury. While the ALJ may have made a determination relevant as to whether or not there was

a work-related injury necessitating the subsequent 1991 surgery to Guest's back, we are unable to provide meaningful appellate review on conjecture and, most certainly, cannot substitute our judgment for that of the ALJ. KRS 342.285.

Thus, the board reversed the order and remanded the claim to the ALJ for further findings consistent with its opinion.

Clearly, the board's opinion herein did not serve either to terminate this litigation, or to finally resolve the issue of whether appellee was entitled to an additional award of benefits on reopening. Moreover, the opinion did not operate to determine the parties' rights in a manner divesting the board of power. Rather, the board's opinion merely remands this matter for further findings. Subsequently, either party may choose to seek additional review by the board and this court. That being so, we are constrained to conclude that the board's decision herein is neither final nor appealable. King Coal Co. v. King, Ky. App., 940 S.W.2d 510 (1997).

For the reasons stated, this appeal is hereby ORDERED dismissed.

ALL CONCUR.

ENTERED: December 24, 1997

s/s Paul D. Gudgel
CHIEF JUDGE, COURT OF APPEALS

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