

RENDERED: December 23, 2004; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2004-CA-000781-WC

INDUSTRIAL POWDER COATING

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-00-93851

RICHARD BAKER; HON. IRENE STEEN,
ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION AND ORDER

DISMISSING

** ** * * *

BEFORE: GUIDUGLI, TACKETT AND VANMETER, JUDGES.

GUIDUGLI, JUDGE: Industrial Powder Coating appeals from an opinion of the Workers' Compensation Board reversing and remanding a decision of the Administrative Law Judge awarding total occupational disability benefits for a work-related knee injury. Baker argued before the Board that the ALJ erred in

failing to award medical benefits for a low back condition, and erred in failing to begin the award of total occupational disability benefits as of the date of the motion to reopen. For the reasons stated herein, we dismiss the appeal.

On September 8, 1997, Baker injured his right knee in the course of his employment with Industrial Powder Coating. He filed a claim for benefits, which resulted in a settlement assessing an 11% functional impairment rating. The settlement was approved on September 14, 1999.

The following year, Baker moved to reopen the claim and filed a second claim alleging that he sustained additional injuries on November 2, 1999 and February 23, 2000. The matter went before the ALJ, who rendered an opinion on January 29, 2001, denying the claim for additional benefits. The ALJ opined that the new claim for benefits arising from the November 2, 1999, and February 23, 2000, incidents was not sustained by objective medical evidence. Rather, the ALJ concluded that the two incidents resulted in a temporary exacerbation of the September, 1997 right knee injury.

Baker's employment with Industrial ended in early 2002. Later that year he briefly worked for Parts Unlimited making automobile door panels, but quit because his knee injury apparently prevented him from working.

On June 1, 2001, Baker filed a motion to reopen in which he again claimed a worsening of his physical condition and resultant increase in occupational disability. He tendered additional proof indicating that his condition required right knee replacement surgery. He also argued that he now suffered from low back pain and numbness in both legs, which he attributed to his unnatural gait caused by his knee injury.

Upon considering the motion, the ALJ rendered an order and award on December 17, 2001, finding that the surgery was medically necessary and awarding total disability benefits commencing January 25, 2001. She went on to find that Baker had not met the burden of proof necessary to prevail on the back pain issue, and noted that no impairment rating had been given for the back condition. The knee surgery was performed on January 25, 2002.

Baker and Industrial each filed petitions for reconsideration from the December 17, 2001, order and award. Baker contended that the ALJ erred in dismissing the back injury claim, and Industrial argued that the total occupational disability benefits should commence on the date of the knee replacement surgery rather on January 25, 2001 as ordered by the ALJ. On November 14, 2003, the ALJ rendered an order denying Baker's claim for additional back injury benefits, and correcting a typographical error as Industrial had requested.

Baker appealed to the Board, arguing that the ALJ erred in not awarding medical treatment for his back condition and for not ordering the benefits to commence as of the date of the motion to reopen. Upon taking proof, the Board rendered an opinion on March 17, 2004, which forms the basis of the instant appeal. The Board found that because the evidence was conflicting as to the work-relatedness of the back injury, and because the temporary nature of the injury does not render the condition non-work-related, the ALJ should have explained her findings in light of the medical evidence. Alternatively, it ruled that if the ALJ finds on remand that the back condition was work-related, then Baker would be entitled to medical benefits related to the back problem.

On the issue of whether the ALJ erred in failing to order the award of benefits to commence on May 25, 2001 (the date of the motion to reopen) rather on January 25, 2002 (the date of the knee surgery), the Board found that the evidence was so overwhelming as to compel a finding in Baker's favor. It noted that Baker's condition improved following knee surgery and that the only logical conclusion to be drawn from the evidence was that his condition was worse prior to surgery.

The Board reversed the ALJ's opinion and award, and remanded it for further findings on the issue of work-relatedness of the back injury, and for an award of benefits

commencing as of the date of the motion to reopen. This appeal followed.

Industrial now argues that the Board erred in finding the totality of the medical evidence so compelling as to require a reversal of the ALJ regarding the award commencement date. Citing KRS 342.285(2)(d)(e), it maintains that there is nothing in the record to indicate that the ALJ's decision on this issue was erroneous based on the reliable and probative material evidence submitted in this case. Industrial contends that the Board did not point to any evidence that would compel a contrary finding, and argues that it is entitled to a reversal on this issue.

Having closely examined the record and the law, we must conclude that the Board's opinion is not final and appealable. "A final or appealable judgment is a final order adjudicating all the rights of all the parties in an action or proceeding, or a judgment made final under Rule 54.02."¹

The judgment 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

¹ CR 54.01.

claims and the rights and liabilities of all the parties.²

Furthermore, we stated in King Coal Company v. King, Ky. App., 940 S.W.2d 510 (1997) that,

Pursuant to SCR 1.030(5) and 803 KAR 25:012 § 14, a final decision of the Board may be appealed to this court. An order of the Board is appealable only if it terminates the action itself, acts to decide the matter litigated by the parties, or operates to determine some rights in such a manner as to divest the Board of power.

In the matter at bar, the Board's action to reverse and remand for further findings on the issue of the work-relatedness of the back injury did not terminate the action itself, decide the matter litigated by the parties, or divest the Board of power. While the Board ruled in favor on Baker on the commencement date issue, the remanded back injury issue remains to be resolved. As the Board still has or will have jurisdiction over not only the remanded issue but the entire claim for benefits, its March 17, 2004, opinion is not final and appealable.

For the foregoing reasons, Industrial's appeal of the Workers' Compensation Board's March 17, 2004, opinion is ORDERED DISMISSED.

ALL CONCUR.

² Id.

ENTERED: December 23, 2004

/s/ DANIEL T. GUIDUGLI
JUDGE, COURT OF APPEALS

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