

Commonwealth of Kentucky

Court of Appeals

NO. 2015-CA-001130-WC

KENTUCKY FUEL CORPORATION

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-13-01747

NORMAN HOWARD; HON. WILLIAM J. RUDLOFF,
ADMINISTRATIVE LAW JUDGE; AND WORKERS'
COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * * **

BEFORE: CHIEF JUDGE KRAMER; TAYLOR AND THOMPSON, JUDGES.

TAYLOR, JUDGE: Kentucky Fuel Corporation (Kentucky Fuel) petitions this Court to review an Opinion of the Workers' Compensation Board dismissing Kentucky Fuel's appeal from an award of temporary total disability (TTD) benefits. We affirm the Board's dismissal.

Norman Howard was an employee of Kentucky Fuel and alleged to have suffered a cumulative trauma injury to his cervical and lumber spine during the course of employment. On November 14, 2013, Howard filed a claim for workers' compensation benefits based upon the cumulative trauma injury to his spine. By Opinion and Order entered May 19, 2014, the administrative law judge (ALJ) assigned a 5 percent permanent partial impairment caused by a work-related injury to his lumbar spine. The ALJ also concluded that Howard lacked the physical capacity to perform the same type of work he performed at the time of his injury and awarded the 3 multiplier pursuant to Kentucky Revised Statutes (KRS) 342.730(1)(c)(1). Thereupon, Kentucky Fuel sought review with the Board. By Opinion and Order entered November 14, 2014, the Board vacated and remanded the ALJ's May 19, 2014, Opinion and Order. The Board remanded the matter to the ALJ for more detailed explanation of its reasoning and for a more detailed findings of fact upon myriad issues.

Upon remand, the ALJ rendered an Interlocutory Amended Opinion and Order on January 8, 2015. In this Amended Opinion and Order, the ALJ found that Howard had not reached maximum medical improvement and awarded TTD benefits. Kentucky Fuel again sought review with the Board from the January 8, 2015, Amended Opinion and Order. Kentucky Fuel argued the ALJ failed to follow the mandates of the November 14, 2014, Opinion and Order rendered by the Board and instead granted Howard an open-ended award of TTD benefits. By Opinion and Order entered June 25, 2015, the Board concluded that the award of

TTD benefits was interlocutory and non-appealable. Consequently, the Board determined that it was without jurisdiction to consider the merits of the appeal and dismissed same. The appeal and our review follow.

Kentucky Fuel contends that the Board committed error by concluding that it lacked jurisdiction to review the January 8, 2015, Amended Opinion and Order awarding TTD benefits. Kentucky Fuel argues that the ALJ abused its discretion and did not possess authority to award TTD benefits.

Kentucky Fuel particularly maintains:

This is a case where the Workers' Compensation Board vacated the ALJ's initial Opinion and Award and remanded the claim back to him for additional findings of fact and analysis on the causation and pre-existing active issues. The ALJ, however, instead of performing the required fact finding and analysis of those specific issues, simply decided to reverse his own prior finding on TTD benefits, which was not previously appealed by either party or addressed by the Board, and enter an interlocutory award of TTD benefits. It is [Kentucky Fuel's] position that the ALJ's Interlocutory Amended Opinion and Order on Remand is clearly an abuse of discretion as the ALJ completely ignored and circumvented the Opinion issued by the Board on November 14, 2014. Such an action cannot be allowed to stand as it completely negates and undermines the previous Board Opinion. . . .

Kentucky Fuel's Brief at 8. Kentucky Fuel recognizes that an order awarding TTD benefits is interlocutory and non-appealable but essentially argues that an exception should be recognized in this case considering the unique facts involved.

In this Commonwealth, it is well-established that workers' compensation "is a creature of statute, and the remedies and procedures described

therein are exclusive.” *Williams v. Eastern Coal Corp.*, 952 S.W.2d 696, 698 (Ky. 1997) (citation omitted). Under our statutory and procedural framework, an award of TTD benefits represents an interlocutory order and is not appealable. *KI USA Corp. v. Hall*, 3 S.W.3d 355 (Ky. 1999); *Transit Auth. of River City v. Saling*, 774 S.W.2d 468 (Ky. 1989). And, the order entered by the ALJ on January 8, 2015, clearly states that it is “interlocutory” notwithstanding that it failed to address the directions of the Board set out in its November 14, 2014, opinion. The law in Kentucky is well-settled as to the interlocutory nature regarding an order of TTD benefits and Kentucky Fuel has cited no legal authority to this Court holding otherwise.¹

Accordingly, we cannot say that the Board has “overlooked or misconstrued controlling statutes or precedent.” *W. Baptist Hospital v. Kelly*, [827 S.W.2d 685, 687-88 \(Ky. 1992\)](#). Thus, we conclude that the Board properly dismissed Kentucky Fuel’s appeal as interlocutory.

For the foregoing reasons, the Opinion of the Workers’ Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Greg Richmond
Lexington, Kentucky

BRIEF FOR APPELLEE:

McKinnley Morgan
London, Kentucky

¹ The Administrative Law Judge’s failure to follow the Workers’ Compensation Board’s mandates from an earlier opinion is not properly before this Court in this appeal, but the issue may be revisited when a final order is entered below.