



Claimant filed the underlying claim petition naming Perry Construction as his employer and stating that he had suffered a laceration to his left arm in November 2003 while cutting down trees for Perry Construction, and that injury caused the loss of use of his left arm. Perry Construction answered and denied that Claimant was its employee when he was injured.<sup>1</sup> The parties agreed to bifurcate the case to first decide the issue of employment.

After hearings were held, the WCJ concluded that Claimant was an employee of Perry Construction and awarded him workers' compensation benefits. Perry Construction filed an appeal to the Board contending that Claimant had not proven by substantial evidence that he was an employee. Claimant also appealed because the WCJ's decision failed to state the rate of compensation payable or the period of disability.

On appeal, the Board denied Perry Construction's appeal and affirmed the WCJ's decision that Claimant had met his burden of proving that Perry Construction was his employer at the time of the injury. As to Claimant's appeal, it remanded the matter to the WCJ to make additional findings concerning the period of

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<sup>1</sup> A claimant seeking workers' compensation benefits has the burden of proving that an employment relationship exists. *Sarver Towing (Wassau Insurance Co.) v. Workmen's Compensation Appeal Board (Bowser)*, 736 A.2d 61 (Pa. Cmwlth. 1999). Whether a claimant is an independent contractor or an employee is a question of law fully reviewable by this court. *Lynch v. Workmen's Compensation Appeal Board (Connellsville Area School District)*, 554 A.2d 159 (Pa. Cmwlth. 1998).

Claimant's disability and the rate of compensation.<sup>2</sup> Perry Construction then appealed to this Court.<sup>3</sup>

Pursuant to Section 763(a)(1) of the Judicial Code, 42 Pa. C.S. §763(a)(1), this court has jurisdiction over appeals from final orders of government agencies. A final order is one that disposes of all claims or parties or is defined as such by order or statute. Pa. R.A.P. 341(b). A court remanding a case to the local agency for further hearings is generally interlocutory and not a final order. *City of Philadelphia v. Workers' Compensation Appeal Board (Mellon)*, 885 A.2d 640 (Pa. Cmwlth. 2005). While interlocutory appeals may be taken in limited circumstances, if a local agency must engage in factfinding to determine an award calculation, administrative discretion is involved, the order is not final, and, thus, the appellate court must quash the appeal. *P.R. Hoffman Materials v. Workmen's Compensation Appeal Board (Zeigler)*, 694 A.2d 358 (Pa. Cmwlth. 1997).

Here, the Board remanded to the WCJ for findings and conclusions regarding Claimant's compensation rate and time of disability and instructed the WCJ to "open the record and take relevant evidence" on remand. (Board's October 25,

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<sup>2</sup> The Board stated: "Since the WCJ agreed to bifurcate the case, and resolve only the issue of Claimant's employment status, on remand he may open the record and take relevant evidence concerning [the issues of compensation rate and period of disability]." (Board's October 25, 2007 Opinion at 9.)

<sup>3</sup> Our scope of review in workers' compensation cases is to determine whether constitutional rights have been violated, whether an error of law has been committed, or whether any findings of fact necessary to support the adjudication are not supported by substantial evidence. *Bethenergy Mines, Inc. v. Workmen's Compensation Appeal Board (Skirpan)*, 531 Pa. 287, 612 A.2d 434 (1992).

2007 Opinion at 9.) Thus, this is not a mere computation of wages but, instead, the WCJ will have to engage in factfinding to determine the extent of Claimant's disability, a task that involves administrative discretion.

Because the Board's order is not final and it is not an appealable administrative remand, it is an impermissible interlocutory appeal. Accordingly, we must quash the appeal.

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DAN PELLEGRINI, JUDGE

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Perry County Construction Company,	:
Petitioner	:
	:
v.	: No. 2126 C.D. 2007
	:
Workers' Compensation Appeal	:
Board (Cless),	:
Respondent	:

**ORDER**

AND NOW, this 22<sup>nd</sup> day of May, 2008, the appeal of Perry Construction Company in the above-captioned matter is hereby quashed.

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DAN PELLEGRINI, JUDGE