

Commonwealth of Kentucky
Court of Appeals

NO. 2006-CA-001690-WC

DORSEY MCWILLIAMS

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-05-01912

A1 SANITATION SERVICES; HON. MARCEL SMITH,
ADMINISTRATIVE LAW JUDGE; AND WORKERS'
COMPENSATION BOARD

APPELLEES

OPINION
DISMISSING

** ** *

BEFORE: NICKELL AND TAYLOR, JUDGES; PAISLEY,¹ SENIOR JUDGE.

PAISLEY, SENIOR JUDGE: This is an appeal from an order of the Workers' Compensation Board, entered on July 13, 2006, which dismissed an appeal by Dorsey McWilliams. Because we agree with the Board that the ALJ's order from which Williams was appealing was interlocutory, we grant the motion to dismiss of the appellee, A1 Sanitation Services.

¹ Senior Judge Lewis G. Paisley sitting as Special Judge by assignment of the Chief Justice pursuant to section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

On December 19, 2005, McWilliams filed an application for resolution of injury claim against his erstwhile employer, A1 Sanitation Services. On January 4, 2006, the Office of Workers' Claims issued an acknowledgement that the application had been filed. A copy of the acknowledgment was served on McWilliams's employer and the employer's purported insurance carrier, Employers Mutual Casualty Company. On January 18, 2006, a Scheduling Order was issued which advised the parties that the employer had 45 days to file a "Notice of Claim Denial or Acceptance" (Form 111), or "all allegations of the application shall be deemed admitted." The terms of this order were in compliance with KRS 342.270(2), which provides that:

Within forty-five (45) days of the date of issuance of the notice required by this section, the employer or carrier shall file notice of claim denial or acceptance, setting forth specifically those material matters which are admitted, those which are denied, and the basis of any denial of the claim.

Additionally, 803 Kentucky Administrative Regulations (KAR) 25:010, § 5(2)(b) provides that if a Form 111 is not filed, all allegations of the application shall be deemed admitted. "These provisions are mandatory. Their purpose is to facilitate the prompt and orderly resolution of workers' compensation claims." *See Gray v. Trimmer*, 173 S.W.3d 236, 240 (Ky. 2005).

Employers Mutual Casualty moved to be dismissed as a party because its coverage of A1 Sanitation had been cancelled on April 12, 2004. Employers Mutual Casualty also later submitted records from the Office of Workers' Claims indicating that A1 Sanitation's current insurance carrier was the Kentucky Association of General

Contractors, Kentucky AGC/SIF. McWilliams moved the ALJ to add Kentucky AGC/SIF as the insurance carrier. On May 12, 2006, counsel for Kentucky AGC/SIF entered an appearance on behalf of A1 Sanitation and moved to be given leave to file a Form 111, and to reopen proof time, even though the 45-day deadline long since had passed. As grounds for the motion, Kentucky AGC/SIF stated that the wrong insurance carrier had been named on the acknowledgement form and that Kentucky AGC/SIF had not received notice of the filing of a claim until May 2006. McWilliams objected, arguing that the notice had been adequate because the employer, A1 Sanitation, had been timely served with the scheduling order. On May 30, 2006, the ALJ entered an order sustaining the motion to reopen proof time, and allowing the late filing of the Form 111 by Kentucky AGC/SIF and A1 Sanitation. McWilliams filed a notice of appeal to the Board. In an order entered on July 13, 2006, the Board granted A1 Sanitation's motion to dismiss McWilliams's appeal on the ground that the appeal had been taken from an interlocutory order.

The standard under our rules of civil procedure for determining whether an order is final for purposes of appeal is also applicable in workers' compensation cases. *See Reisinger v. Grayhawk*, 860 S.W.2d 788, 790 (Ky. 1993). KRS 342.285, the statute which governs workers' compensation appeals, provides in pertinent part as follows:

An award or order of the administrative law judge as provided in KRS 342.275, if petition for reconsideration is not filed as provided for in KRS 342.281, shall be conclusive and binding as to all questions of fact, but either party may in accordance with administrative regulations promulgated by

the board appeal to the Workers' Compensation Board for the review of such order or award.

KRS 342.285(1).

803 KAR 25:010 § 21(2)(a) and (b) provide that

Within 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.

...

As used in this section, a final award, order or decision shall be determined in accordance with Civil Rule 54.02(1) and (2).

CR 54.02 has been held to require dismissal of an appeal where the record showed that the order did not adjudicate the rights of all the parties in the action and other matters remained to be adjudicated. *Reisinger*, 860 S.W.2d at 790. The finality of an order is determined by whether it grants or denies the ultimate relief sought in the action. *State Farm Mutual Automobile Insurance Co. v. Caudill*, 136 S.W.3d 781, 783 (Ky.App. 2003).

In the case before us, the order of the ALJ was interlocutory because other matters remained to be adjudicated. Even if the allegations of McWilliams's application were deemed admitted, matters such as the amount of benefits had still to be determined by the ALJ. Furthermore, at the time of entry of the order, Employers Mutual Casualty Company remained a party in the action; the Board in its order dismissing the appeal remanded the case to the ALJ for consideration of the pending motion by Employers Mutual to be dismissed as a party. The order of the ALJ simply did not adjudicate finally

the rights of the parties and therefore did not meet the test of CR 54.02 to be deemed final as required by the Board's regulations. "Ergo, the Board had no jurisdiction to hear this appeal. Likewise, this court has no jurisdiction to entertain this appeal for the same reason." *Reisinger*, 860 S.W.2d at 790. "As there is no final order or judgment from which to appeal, the Court of Appeals [is] without jurisdiction. And it has long been a fundamental maxim that a court will not assume jurisdiction where it does not exist." *Wilson v. Russell*, 162 S.W.3d 911, 913-14 (Ky. 2005).

For the foregoing reasons, the appellee's motion to dismiss is granted.

ALL CONCUR.

BRIEF FOR APPELLANT:

McKinnley Morgan
London, Kentucky

BRIEF FOR APPELLEE A1 SANITATION
SERVICES:

James B. Cooper
Lexington, Kentucky