MUSTAFA AL-TAMIMI
(Appellant)

v.

R.J. GRONDIN & SONS
(Appellee)

and

CROSS INSURANCE COMPANY, T.P.A.
(Insurer/T.P.A.)

Argument held: September 26, 2024
Decided: January 7, 2025

PANEL MEMBERS: Administrative Law Judges Smith, Hirtle, and Stovall
BY: Administrative Law Judge Hirtle

[¶1] Mustafa Al-Tamimi appeals from a decision of an administrative law judge of the Workers' Compensation Board (*Chabot, ALJ*) determining that by refusing to submit to a reasonable medical examination pursuant to 39-A M.R.S.A § 207, Mr. Al-Tamimi forfeited his right to compensation under the Act until he attends the examination. Mr. Al-Tamimi argues that the ALJ erred when determining that it was reasonable for him to attend the medical examination requested by R.J. Grondin. R.J. Grondin contends the appeal should be dismissed as interlocutory because the ALJ's decision did not grant, deny, or dismiss Mr. Al-Tamimi's Petition for Award. We dismiss the appeal, and remand for further proceedings.

I. BACKGROUND

[¶2] Mr. Al-Tamimi represents himself and did not file either a record on appeal or an appendix as required by Me. W.C.B. Rule, ch. 13, §§ 4 and 7. We therefore draw the background below from the ALJ's decision and from instances where the parties agree on the facts as stated in their briefs.

[¶3] Mr. Al-Tamimi filed a Petition for Award alleging a work-related injury incurred on June 6, 2001. The injury resulted in numerous back surgeries. R.J. Grondin voluntarily paid incapacity benefits and the costs of medical treatment until February 8, 2023, when it discontinued incapacity benefits pursuant to 39-A M.R.S.A. § 205(9).

[¶4] Leading up to the discontinuance of benefits, Mr. Al-Tamimi expressed interest in a type of back surgery only available in Europe. Pursuant to 39-A M.R.S.A § 207, R.J. Grondin scheduled Mr. Al-Tamimi for a medical examination with its chosen provider in Waterville, Maine. Section 207 provides, in relevant part:

> An employee being treated by a health care provider of the employee's own choice shall, after an injury and at all reasonable times during the continuance of disability if so requested by the employer, submit to an examination by a physician, surgeon or chiropractor authorized to practice as such under the laws of this State, to be selected and paid by the employer.
> . . . .
>
> If any employee refuses or neglects to submit to any reasonable examination provided for in this Act, or in any way obstructs any such examination, or if the employee declines a service that the employer is required to provide under this Act, then such employee's rights to

> compensation are forfeited during the period of the infractions if the board finds that there is adequate cause to do so.

[¶5] Mr. Al-Tamimi lives in Portland, Maine, and he refused to attend the examination in Waterville, stating he could not travel that far. Based on this refusal, R.J. Grondin discontinued weekly benefits. Mr. Al-Tamimi's Petition followed.

[¶6] Because Mr. Al-Tamimi was not represented by counsel, the ALJ held a conference with the parties as required by Me. W.C.B. Rule, ch. 12 § 6(1). In summarizing this conference, the ALJ wrote: "It was determined at conference that the Board would first hold a hearing to determine whether the employee had refused to submit to a reasonable examination pursuant to § 207." The ALJ then held a hearing with testimony from Mr. Al-Tamimi and Catherine MacDonald, the insurance adjuster familiar with the steps taken to schedule the section 207 examination.

[¶7] The ALJ placed the burden of persuasion on R.J. Grondin to establish that Mr. Tamimi refused to submit to a reasonable examination. After hearing the evidence, the ALJ found that the insurer could not locate a willing section 207 examiner closer to Portland than Waterville. The ALJ further found that the insurer had arranged for Mr. Al-Tamimi to travel to and from the examination by ambulance staffed by a medic with the return trip to occur on a separate day after an overnight stay paid for by the insurer.

[¶8] After considering conflicting medical opinions, the ALJ found that Mr. Al-Tamimi could tolerate travel to Waterville with the insurer's accommodations but had refused to do so. Thus, the ALJ determined that there was adequate cause to find that Mr. Al-Tamimi had forfeited his right to compensation under the Act because he refused to submit to a reasonable medical examination. The forfeiture would last until Mr. Al-Tamimi attends the section 207 examination. The ALJ's decision did not list an outcome for the pending petition but notified the parties of their appeal rights. Mr. Al-Tamimi requested that the ALJ reconsider the decision. The ALJ denied that request, and this appeal followed.

II. DISCUSSION

[¶9] Mr. Al-Tamimi contends the ALJ erred when finding that there is adequate cause to determine that he has forfeited his benefits under the Act. R.J Grondin contends the appeal should be dismissed as interlocutory because no final decision has been entered in this case. We agree with R.J. Grondin.

[¶10] The Appellate Division Rules provide for appeals from "Administrative Law Judge's decision[s]." Me. W.C.B. Rule, ch. 13, § 3. That rule further provides:

> For purposes of this chapter, "decision" means a final decision issued by an Administrative Law Judge that fully disposes of the matters pending before the Administrative Law Judge. "Decision" does not include interlocutory or non-final decisions including, but not limited to, provisional orders.

[¶11] This rule embodies the judicially created final judgment rule, which provides, generally, that an appeal may be taken only from a court or administrative action that fully decides and disposes of the matter before it. *State of Me. v. Me. State Employees Ass'n*, 482 A.2d 461, 464-65 (Me. 1984). The decision in this case does not constitute a final judgment because it does not grant, deny, or dismiss the pending petition for award, and as such, it does not fully dispose of matters pending before the ALJ.[1]

[¶12] Accordingly, at this time, we decline to address the merits of Mr. Al-Tamimi's contentions, and we dismiss the appeal. Mr. Al-Tamimi's petition, however, remains viable. We therefore remand the case for additional proceedings. On remand, the ALJ should determine if Mr. Al-Tamimi has attended the section 207 examination. If he has undergone the examination or agrees to do so, the ALJ should establish the date when the period of forfeiture ended, and the case should proceed to a final determination of properly presented issues in the ordinary course.

[1] An Appellate Division panel has construed Me. W.C.B. Rule, ch. 13, § 3 to allow for interlocutory appeals that fit within one of the recognized exceptions to the final judgment rule. *Estate of Boyle v. Lappin Brothers*, Me. W.C.B. No. 17-18, ¶ 9 (App. Div. 2018). Three well-established exceptions allowing for immediate review of interlocutory orders are (1) the death knell exception (where rights would be irreparably lost if review is delayed until final judgment); (2) the judicial or administrative economy exception (in which appellate review of a non-final order can establish a final, or practically final, disposition of the entire litigation); and (3) the collateral order exception (where there is a final determination of a claim separable from the gravamen of the litigation that presents a major unsettled question of law, and irreparable loss of the rights claimed would occur absent immediate review). *State of Me. v. Me. State Employees Ass'n*, 482 A.2d 461, 464-65 (Me. 1984). None of these exceptions apply in this case.

[¶13] If the ALJ finds that Mr. Al-Tamimi has not undergone the examination and continues to refuse to do so, (and R.J. Grondin remains willing to offer the same travel accommodations for the examination), the ALJ shall determine the appropriate sanction beyond forfeiture that would bring this case to a final resolution, either granting, denying, or dismissing the petition. After a final decision is entered, either party may pursue an appeal of any properly preserved issue in the case, including issues regarding the forfeiture.

The entry is:

> The appeal is dismissed, and the administrative law judge's decision is remanded for further proceedings consistent with this decision.

Any party in interest may request an appeal to the Maine Law Court by filing a copy of this decision with the clerk of the Law Court within twenty days of receipt of this decision and by filing a petition seeking appellate review within twenty days thereafter. 39-A M.R.S.A. § 322.

Pursuant to board Rule, chapter 12, § 19, all evidence and transcripts in this matter may be destroyed by the board 60 days after the expiration of the time for appeal set forth in 39-A M.R.S.A. § 322 unless (1) the board receives written notification that one or both parties wish to have their exhibits returned to them, or (2) a petition for appellate review is filed with the law court. Evidence and transcripts in cases that are appealed to the law court may be destroyed 60 days after the law court denies appellate review or issues an opinion.

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