

OPINION ENTERED: July 5, 2012

CLAIM NO. 200684222

LEXMARK INTERNATIONAL

PETITIONER

VS.

APPEAL FROM HON. JEANIE OWEN MILLER,
ADMINISTRATIVE LAW JUDGE

STAN J. ROBERTS
and HON. JEANIE OWEN MILLER,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
DISMISSING

* * * * *

BEFORE: ALVEY, Chairman; STIVERS and SMITH, Members.

ALVEY, Chairman. Lexmark International ("Lexmark") seeks review of the opinion and order rendered February 17, 2012, by Hon. Jeanie Owen Miller, Administrative Law Judge ("ALJ"), ordering it to reimburse Stan J. Roberts ("Roberts") for medical expenses, mileage, and out of pocket expenses, as well as finding Dr. Wan's treatment

reasonable and necessary. Lexmark also appeals from the order denying its petition for reconsideration entered March 21, 2012.

Roberts sustained low back injuries on August 7, 2005 and November 10, 2005. On August 22, 2008, ALJ Lawrence F. Smith awarded Roberts temporary total disability ("TTD") benefits, permanent partial disability ("PPD") benefits based upon a 13% impairment rating, enhanced by KRS 342.730 (1)(c)1, and medical benefits. On March 25, 2011, Lexmark filed a motion to reopen to challenge treatment rendered by Dr. Richard T. C. Wan. It also filed a Form 112 medical fee dispute, and a motion to join Dr. Wan as a party.

On April 8, 2011, Chief Administrative Law Judge ("CALJ"), J. Landon Overfield entered an order joining Dr. Wan as a party, and sustained the motion to reopen. The CALJ also granted Roberts and Dr. Wan thirty days to respond to the motion. Roberts filed a response on April 11, 2011. On May 5, 2011, the CALJ issued an order sustaining the motion to reopen and ordering the claim be assigned to an ALJ. The Department of Workers' Claims issued a scheduling order on May 19, 2011, assigning the claim to the ALJ, and scheduling a benefit review conference ("BRC") for September 8, 2011.

The BRC was subsequently rescheduled upon agreement of the parties. On November 17, 2011, Lexmark filed an additional Form 112, and also filed a motion to join Richard T. C. Wan, M.D.; Howell Allen Clinic; St. Thomas OP Neurological Center; Neurosurgical Anesthesiologists; Elswick Chiropractic & Associates, PSC; Madison Physical Therapy; Christopher A. Boni, D.C.; New Lexington Clinic, PSC; Instant Care Center; and Surgeons Preference, as parties to the dispute. The ALJ sustained this motion by order entered November 30, 2011.

In the Opinion and Order entered February 17, 2012, the ALJ found as follows:

1. The Defendant/employer/movant is ordered to reimburse the Plaintiff pursuant to the dictates of the above findings for medical expenses, mileage and out of pocket costs as filed in this matter.
2. The treatment by Dr. Wan is found to be reasonable, necessary and related to Plaintiff's work injury and will remain the responsibility of the Defendant/employer.

Lexmark filed a petition for reconsideration on March 5, 2012, arguing Roberts did not timely submit the Form 114's, and therefore reimbursement is barred by statute. Lexmark also argued the Form 114's and bills filed by Roberts do not contain essential information, so

the ALJ was required to address the non-compensable portions of the submitted bills. The petition for reconsideration was denied by order entered March 21, 2012.

On April 20, 2012, Lexmark filed a notice of appeal to the Board. In the notice, only Roberts and the ALJ were named as parties. Only Roberts, through counsel, the ALJ, and the Department of Workers' Claims were served with the notice. Likewise, in its brief, Lexmark only served Roberts' counsel, the ALJ, and the Department of Workers' Claims. Lexmark's appeal involves medical treatment and bills from Richard T. C. Wan, M.D.; Howell Allen Clinic; St. Thomas OP Neurological Center; Neurosurgical Anesthesiologists; Elswick Chiropractic & Associates, PSC; Madison Physical Therapy; Christopher A. Boni, D.C.; New Lexington Clinic, PSC; Instant Care Center; and Surgeons Preference, and therefore they are indispensable parties to this appeal. The failure to name an indispensable party is a jurisdictional defect fatal to an appeal. Commonwealth of Kentucky, Department of Finance, Division of Printing v. Drury, 846 S.W.2d 702 (Ky. 1993).

Consequently, we are without jurisdiction to rule on the merits of Lexmark's arguments raised on appeal. An indispensable party to an appeal is one whose absence

prevents the tribunal from granting complete relief among those already listed as parties. See CR 19.01; CR 19.02; Braden v. Republic-Vanguard Life Ins. Co., 657 S.W.2d 241 (Ky. 1983); Milligan v. Schenley Distillers, Inc., 584 S.W.2d 751 (Ky. App. 1979). As a matter of law, the failure to name an indispensable party is a jurisdictional defect fatal to an appeal – even one to this Board. Id. The issues raised by Lexmark on appeal concern the resolution of a medical dispute with the above medical providers who were not named as respondents in the notice of appeal as directed by 803 KAR 25:010 Section 21 (2)(c)(2), which requires the petitioners to denote all parties as respondents against whom the appeal is taken.

803 KAR 25:010 § 21 of the administrative regulations governing appeals to the Workers' Compensation Board expressly mandates:

Review of Administrative Law Judge Decisions.

(1) General.

(a) Pursuant to KRS 342.285(1), decisions of administrative law judges shall be subject to review by the Workers' Compensation Board in accordance with the procedures set out in this administrative regulation.

(b) Parties shall insert the language 'Appeals Branch' or 'Workers' Compensation Board' on the outside of

an envelope containing documents filed in an appeal to the board.

(2) Time and format of notice of appeal.

(a) 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.

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

(c) The notice of appeal shall:

1. Denote the appealing party as the petitioner;

2. **Denote all parties against whom the appeal is taken as respondents;**

3. Name the administrative law judge who rendered the award, order, or decision appealed from as a respondent;

4. If appropriate pursuant to KRS 342.120 or KRS 342.1242, name the director of the Division of Workers' Compensation Funds as a respondent; and

5. Include the claim number.

(Emphasis added).

803 KAR 25:010 § 21(2) is our administrative counter-part to CR 73.02(1)(a) and CR 73.03(1). Those rules provide respectively:

(1)(a) The notice of appeal shall be filed within 30 days after the date of notation of service of the judgment or order under Rule 77.04(2).

. . . .

(1) The notice of appeal shall specify by name all appellants and all appellees ("et al." and "etc." are not proper designation of parties) and shall identify the judgment, order or part thereof appealed from. It shall contain a certificate that a copy of the notice has been served upon all opposing counsel, or parties, if unrepresented, at their last known address.

The notice of appeal, when properly filed, transfers jurisdiction of a case from the ALJ to the Board and places all parties named therein under the Board's jurisdiction. Both this Board and the Kentucky appellate courts have repeatedly held the failure to name a party in the notice of appeal to the Board is a jurisdictional defect fatal to the appeal. Comm. of Kentucky, Dept. of Finance, Div. of Printing v. Drury, supra; Peabody Coal Co. v. Goforth, 857 S.W.2d 167 (Ky. 1993).

The case law clearly establishes strict, not substantial, compliance is required with regard to naming all dispensable parties. Johnson v. Smith, 885 S.W.2d 944, 950 (Ky. 1994); City of Devondale v. Stallings, 795 S.W.2d 954 (Ky. 1990); Stewart v. Kentucky Lottery Corp., 986

S.W.2d 918, 921 (Ky. App. 1998), (“[t]he substantial compliance doctrine simply does not apply to notices of appeal.”). As the case law plainly states, dismissal is the result mandated for failure to name an indispensable party. City of Devondale v. Stallings, *supra*.

Without question, Richard T. C. Wan, M.D.; Howell Allen Clinic; St. Thomas OP Neurological Center; Neurosurgical Anesthesiologists; Elswick Chiropractic & Associates, PSC; Madison Physical Therapy; Christopher A. Boni, D.C.; New Lexington Clinic, PSC; Instant Care Center; and Surgeons Preference are indispensable parties, however they were not named in Lexmark’s notice of appeal. This is confirmed by Lexmark’s argument on appeal regarding the reasonableness of Dr. Wan’s treatment. We conclude the absence of those providers as parties to this appeal prevents the Board from granting complete relief, and more particularly the relief Lexmark seeks on appeal. Consequently, we are obligated to dismiss Lexmark’s appeal for lack of jurisdiction. Without jurisdiction, we decline to provide any commentary on the merits of the appeal.

Based upon the foregoing, **IT IS HEREBY ORDERED** the appeal filed by Lexmark is **DISMISSED** in its entirety.

STIVERS, MEMBER, CONCURS. SMITH, MEMBER, NOT SITTING.

MICHAEL W. ALVEY, CHAIRMAN
WORKERS' COMPENSATION BOARD

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