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TENNESSEE
WORKERS' COMPENSATION
APPEALS BOARD

**TENNESSEE BUREAU OF WORKERS' COMPENSATION**
**WORKERS' COMPENSATION APPEALS BOARD**

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| Steven Norfleet | ) | Docket No. 2023-06-01814 |
| | ) | |
| v. | ) | State File No. 65510-2022 |
| | ) | |
| Four Star Paving, LLC, et al. | ) | |
| | ) | |
| | ) | |
| Appeal from the Court of Workers' | ) | |
| Compensation Claims | ) | |
| Kenneth M. Switzer, Chief Judge | ) | |

**Dismissed and Remanded**

In this interlocutory appeal, the employer challenges the trial court's decision not to approve a proposed settlement and its alleged refusal to issue an order explaining the basis of its decision. Following a first settlement approval hearing, in response to the employer's motion, the trial court issued an order in which it expressly declined to enter an order explaining the basis for its decision not to approve the proposed settlement. That order was not timely appealed. Following a second settlement approval hearing, during which the trial court orally declined to approve the settlement, no order was issued, but the employer filed a transcript of the second hearing and a notice of appeal six business days after the hearing. Upon careful review of the record and relevant precedent, we dismiss the employer's appeal and remand the case for any additional proceedings as may be appropriate.

Presiding Judge Timothy W. Conner delivered the opinion of the Appeals Board in which Judge Pele I. Godkin and Judge Meredith B. Weaver joined.

Garett P. Franklyn, Knoxville, Tennessee, for the employer-appellant, Four Star Paving, LLC

Steven Norfleet, Big Rock, Tennessee, employee-appellee, pro se

## Factual and Procedural Background

Steven Norfleet ("Employee") reported suffering an injury at work on September 12, 2022, when he fell over a wall into a ditch while employed by Four Star Paving, LLC ("Employer"). His claim was accepted as compensable, and he received authorized

medical treatment for a "closed intra-articular die-punch fracture of [the] left radius." Employee underwent surgery that included the insertion of a plate and screws into his left wrist. Employee was subsequently released at maximum medical improvement on November 21, 2022, and his treating physician indicated he retained no permanent medical impairment as a result of his work injury.

On March 14, 2023, a petition was filed for "settlement approval only," and the parties appeared before the trial court to present a proposed settlement agreement for approval. The proposed agreement reflected that Employee was entitled to no permanent disability benefits but that he had agreed to accept a lump sum payment of $2,000.00 to terminate his entitlement to any future medical benefits. There is no transcript of that settlement approval hearing, but the trial court did not approve the settlement, as Employer subsequently filed a "motion for entry of order," asking the trial court to "enter an order outlining the basis for its denial of the proposed settlement." As an exhibit to its motion, Employer submitted a Final Medical Report (Form C-30A) purportedly signed by the authorized treating physician, Dr. Tyler Morris, indicating that the doctor did not "anticipate the need for future medical treatment for this injury."

On March 24, 2023, the trial court entered an order denying Employer's motion for an order explaining the basis of its decision not to approve the proposed settlement, reasoning that Employer had "cited no case law or other authority supporting the relief it seeks." The court also noted that it "could not find that [Employee] was 'receiving, substantially, the benefits provided by this chapter'" (quoting Tennessee Code Annotated section 50-6-240(a)). That order was not timely appealed.

On May 9, 2023, the parties again appeared before the trial court to submit the proposed settlement agreement for approval. As part of its presentation, Employer submitted to the court Dr. Morris's purported responses to a questionnaire apparently sent to him on or about April 10, 2023.[1] In one of the responses, Dr. Morris apparently responded in the affirmative to the question, "[D]oes this mean that [Employee] *required* no future medical treatment for his September 12, 2022 injury [as of the date of Dr. Morris's final medical report]?" (Emphasis in original.) The court again declined to approve the settlement. On this occasion, unlike the first settlement approval hearing, Employer did not orally request or file a motion seeking written findings of fact and conclusions of law from the court. However, Employer had retained a court reporter and filed a transcript of the hearing during which the court discussed its rationale for declining to approve the settlement. In addition, because no written order had been issued, Employer's attorney submitted his own affidavit summarizing the settlement

[1] The questionnaire, which was undated, was accompanied by a cover letter from Employer's attorney dated April 10, 2023. The questionnaire contained three questions, all of which were answered with a "check mark" beside the "yes" response. The responses to the questionnaire were unsigned and undated.

approval hearing. Six business days after the second hearing, Employer filed a notice of appeal, purportedly appealing an "other order filed on May 9, 2023."

## Standard of Review

The standard we apply in reviewing a trial court's decision presumes that the court's factual findings are correct unless the preponderance of the evidence is otherwise. *See* Tenn. Code Ann. § 50-6-239(c)(7) (2022). When the trial judge has had the opportunity to observe a witness's demeanor and to hear in-court testimony, we give considerable deference to factual findings made by the trial court. *Madden v. Holland Grp. of Tenn., Inc.*, 277 S.W.3d 896, 898 (Tenn. 2009). However, "[n]o similar deference need be afforded the trial court's findings based upon documentary evidence." *Goodman v. Schwarz Paper Co.*, No. W2016-02594-SC-R3-WC, 2018 Tenn. LEXIS 8, at *6 (Tenn. Workers' Comp. Panel Jan. 18, 2018). The interpretation and application of statutes and regulations are questions of law that are reviewed *de novo* with no presumption of correctness afforded the trial court's conclusions. *See Mansell v. Bridgestone Firestone N. Am. Tire, LLC*, 417 S.W.3d 393, 399 (Tenn. 2013). We are also mindful of our obligation to construe the workers' compensation statutes "fairly, impartially, and in accordance with basic principles of statutory construction" and in a way that does not favor either the employee or the employer. Tenn. Code Ann. § 50-6-116 (2022).

## Analysis

In this appeal, Employer raises multiple issues, which we have consolidated and restated as: (1) whether the trial court erred in not issuing a written order explaining the basis of its decision; and (2) whether the trial court erred in declining to approve the proposed settlement agreement.

### *Necessity for a Written Order*

It is a well-established principle that a court "speaks through its orders." *See, e.g.*, *Andric v. Costco Wholesale Mbrshp., Inc.*, No. W2017-01661-SC-R3-WC, 2018 Tenn. LEXIS 395, at *9 n.2 (Tenn. Workers' Comp. Panel Aug. 2, 2018) (quoting *Alexander v. JB Partners*, 380 S.W.3d 772, 777 (Tenn. Ct. App. Nov. 1, 2011) ("[A] court speaks through its orders and not through the transcript.")). In the present case, no order was issued following the May 9 hearing. Thus, although Employer submitted a transcript of that hearing, the court's ruling as reflected in that transcript is not appealable. *See* Tenn. Code Ann. § 50-6-217(a)(2) ("Any party aggrieved by *an order issued by a workers' compensation judge* may appeal the order . . . ." (emphasis added)). Moreover, Employer did not timely appeal the trial court's March 24, 2023 order. Thus, at this stage of the case, there is no written order subject to appellate review.

However, that does not end our consideration of this appeal. Employer asserts that the trial court erred by not preparing and filing an order following the May 9 hearing. As an issue of first impression, we must consider whether a trial court must issue an order in circumstances where it declines to approve a proposed settlement following an evidentiary hearing.

As with most issues, our starting point is the Workers' Compensation Law. Tennessee Code Annotated section 50-6-238(a)(3) describes the duties of judges on the Court of Workers' Compensation Claims:

> It shall be the duty of a workers' compensation judge to hear and determine claims for compensation, to approve settlements of claims for compensation, to conduct hearings, and *to make orders, decisions, and determinations*. Workers' compensation judges shall conduct hearings in accordance with the Tennessee Rules of Civil Procedure, the Tennessee Rules of Evidence, and the rules adopted by the bureau and shall have authority to swear in witnesses at hearings . . ., to issue subpoenas, to compel obedience to their judgments, orders, and process . . . and to conduct judicial settlement conferences.

Tenn. Code Ann. § 50-6-238(a)(3) (2022) (emphasis added). Hence, although the issuing of orders is one function of workers' compensation judges, this statute does not describe any particular circumstances in which a judge *must* issue an order.

Rules governing the Court of Workers' Compensation Claims also speak to the duties of workers' compensation judges. For example, Tenn. Comp. R. and Regs. 0800-02-21-.18 addresses a judge's obligations when a party files a motion. Specifically, Rule 0800-02-21-.18(5) states, "The judge *will* prepare and issue an order reflecting the decision unless otherwise ordered." (Emphasis added.) With respect to the section of rules governing settlements, however, nothing expressly obligates a court to issue an order after it declines to approve a settlement agreement. *See* Tenn. Comp. R. & Regs. 0800-02-21-.23.

Other sources of law speak more directly to a court's obligation to issue written orders. Specifically, Rule 52 of the Tennessee Rules of Civil Procedure addresses "Findings by the Court." Rule 52.01, entitled "Findings Required," states that, "[i]n all actions tried upon the facts without a jury, the court *shall* find the facts specially and *shall* state separately its conclusions of law and direct the entry of an appropriate judgment." Tenn. R. Civ. P. 52.01 (emphasis added). Thus, by using the word "shall," Rule 52.01 mandates a trial court to make findings of fact and conclusions of law in circumstances where an "action" has been tried "upon the facts." *See Roney v. Nordhaus*, No. M2014-02496-COA-R3-CV, 2015 Tenn. App. LEXIS 999, at *3 (Tenn. Ct. App.

Dec. 30, 2015) ("Rule 52.01 now mandates that trial courts make findings of fact and conclusions of law regardless of the parties' request.").

Rule 52.01 also states, however, that "[f]indings of fact and conclusions of law are unnecessary on decisions of . . . motions except as provided in Rules 41.02 and 65.04(6)."[2] Tenn. R. Civ. P. 52.01. This rule raises the question of whether a petition seeking approval of a proposed settlement agreement is an "action tried upon the facts" or a "motion" for approval of a settlement.

Further, the necessity for a written order or judgment has been addressed by the Tennessee Court of Appeals:

> In actions tried without a jury, the trial court is required to "find facts specially and . . . state separately its conclusions of law and direct the entry of the appropriate judgment." These requirements are more than mere technicalities. The requirements of Rule 52.01 are essential to facilitating appellate review and promoting the just and speedy resolution of appeals. A trial court must do more than merely state its decision.

*Beasley v. Beasley*, No. W2019-01972-COA-R3-CV, 2020 Tenn. App. LEXIS 465, at *9 (Tenn. Ct. App. Oct. 20, 2020) (quoting Tenn. R. Civ. P. 52.01) (other internal quotation marks and citations omitted); *see also Anthony v. Kelly Foods, Inc.*, 704 S.W.2d 305, 308 (Tenn. 1986) ("A 'judgment' as used in the Tennessee Rules of Civil Procedure includes a decree or any order from which an appeal lies.").

We also note a significant difference between the appellate system created by the Workers' Compensation Law and the appellate system in judicial branch courts. Unlike judicial branch courts, where appeals are governed by the Tennessee Rules of Appellate Procedure, appeals from the Court of Workers' Compensation Claims to the Workers' Compensation Appeals Board are governed by statutes and applicable regulations. Tennessee Code Annotated section 50-6-217(a)(2) authorizes a party in a workers' compensation case to appeal any order issued by a workers' compensation judge, whether interlocutory or final in nature. Hence, interlocutory appeals to the Appeals Board are as of right. A party in the Court of Workers' Compensation Claims has the right to appeal a trial judge's interlocutory ruling on a matter, whereas, in a judicial branch court, that party would need to seek permission for such an appeal. *Compare* Tenn. Code Ann. § 50-6-217(a)(2) and Tenn. R. App. P. 9 and 10. Yet, a party is hindered from exercising this right if no written order has been issued reflecting the trial judge's ruling on a matter that has been appropriately presented to and considered by the court.

[2] Rule 41.02 addresses motions for involuntary dismissal, and Rule 65.04(6) addresses temporary injunctions.

In *State v. Byington*, 284 S.W.3d 220 (Tenn. 2009), the Tennessee Supreme Court considered a case where the trial court's final order did not reflect a ruling the court had clearly made as evidenced by the transcript of the hearing. There, the defendant had filed a motion for a new trial, which the trial court orally denied during a post-trial hearing as reflected in the transcript of that hearing. *Id.* at 223. On appeal, the Court of Criminal Appeals concluded it did not have jurisdiction to consider the defendant's appeal because there was no written order reflecting the judge's ruling on the motion for a new trial. *Id.* However, the Supreme Court concluded the Court of Criminal Appeals erred by not directing the trial court to supplement the record to include a written order addressing the court's ruling on the defendant's motion for a new trial. *Id.*

In support of its ruling in *Byington*, the Supreme Court cited Tennessee Rule of Appellate Procedure 24, which states, in pertinent part, that "the appellate or trial court may direct that a supplemental record be certified and transmitted." *Id.*; *see also* Tenn. Code Ann. § 27-3-128 (2022) ("The court shall also, in all cases, where, in its opinion, complete justice cannot be had by reason of some defect in the record . . . remand the cause to the court below for further proceedings . . . upon such terms as may be deemed right."). The Court also noted its holding in *State v. Smotherman*, 201 S.W.3d 657 (Tenn. 2006):

> [A]ny matter that the trial court has appropriately considered is properly includable in the appellate record pursuant to Rule 24(g) of the Tennessee Rules of Appellate Procedure when the matter is "necessary to convey a fair, accurate[,] and complete account of what transpired in the trial court with respect to those issues that are the bases of appeal."

*Id.* at 661 (quoting *State v. Housler*, 167 S.W.3d 294, 298 (Tenn. 2005)).

A similar issue was addressed by the Tennessee Court of Appeals in *Hibbens v. Rue*, No. E2014-00829-COA-R3-CV, 2015 Tenn. App. LEXIS 464 (Tenn. Ct. App. June 12, 2015). That case involved a child custody dispute, and the mother had filed several post-trial motions. *Id.* at *11-12. In addressing certain procedural aspects of the case, the Tennessee Court of Appeals explained as follows:

> A trial court speaks through its order. A judgment must be reduced to writing in order to be valid, and an oral ruling may be modified or reversed in the meantime. *No oral pronouncement is of any effect unless and until it is made a part of a written judgment duly entered*.

*Id.* at *13 (internal quotation marks and citations omitted) (emphasis added). *See also Saweres v. Royal Net Auto Sale, Inc.*, No. M2010-01807-COA-R3-CV, 2011 Tenn. App. LEXIS 423, at *7 (Tenn. Ct. App. Aug. 1, 2011) ("We do not review the court's oral

statements, unless incorporated in a decree, but review the court's order and judgments[,] for that is how a court speaks." (internal quotation marks and citation omitted)).

Based on our review of relevant statutes, rules, and precedent, we conclude the underlying principle addressed by Tennessee Rule of Civil Procedure 52 and by Tennessee's appellate courts also applies to the Court of Workers' Compensation Claims: if a trial court has appropriately considered a matter, conducted an evidentiary hearing in which it swore in witnesses, weighed evidence such as testimony and stipulated medical records, and made a legal ruling reflecting the judgment of the court, it is obligated to issue a written order or judgment reflecting its findings of fact and conclusions of law. Moreover, such a ruling is properly includable in the record on appeal by way of a written order or judgment.[3]

In the present case, the parties filed a petition for benefit determination. We have previously held that the filing of a petition is the general equivalent of the filing of a complaint because it "initiates the process for resolving disputes" and tolls the statute of limitations as provided in Tennessee Code Annotated section 50-6-203(b). *See Valladares v. Transco Prods., Inc.*, Nos. 2015-01-0117, 2015-01-0118, 2016 TN Wrk. Comp. App. Bd. LEXIS 31, at *17 (Tenn. Workers' Comp. App. Bd. July 27, 2016). Hence, when the petition in this case was filed, a cause of action was pending before the court. Thereafter, during both settlement approval hearings, the court heard sworn testimony regarding the facts of the case and considered stipulated medical evidence presented by the parties.

However, during the second settlement approval hearing, after Employer's attorney summarized to the court the evidence and other information Employer believed supported the proposed settlement, the following exchange occurred between the court and Employee:

> The Court: Okay, Mr. Norfleet, [Employer's attorney] said a lot of things that you believe, and he's not your attorney, so I'd like to hear it out of your own mouth. He is not speaking for you.
>
> Mr. Norfleet: After reconsideration, I would like to get an estimate [of future medical costs] to make sure.
>
> The Court: You would like to do that.

[3] We do not intend to suggest, however, that a party is automatically entitled to a written order reflecting a court's ruling on any issue arising at any stage of a case. For example, a trial court may hear arguments pertaining to a particular issue in a case, take that matter under advisement, and, at its discretion, issue a written ruling at a later date. Moreover, in accordance with Rule 52.01, findings of fact and conclusions of law are not necessary on decisions of motions except as required by that rule or by any other rule or statute applicable to the Court of Workers' Compensation Claims.

Mr. Norfleet: I would like to get the estimate from the doctor to make sure.

Immediately thereafter, the court confirmed Employee's request: "He wants to get an estimate from the doctor. Let's see what the doctor says, okay?" Employer's attorney responded: "That[] works." As a result, the court made no further rulings but discussed a new hearing date to be set after a reasonable period of time to obtain a response from the treating physician.

We conclude that the requirements of Rule 52 were not triggered under the particular circumstances of this case because the court, in essence, continued the second settlement approval hearing pending the receipt of additional medical information from the treating physician pursuant to Employee's request. Thus, although the court initially expressed concerns about the terms of the settlement during that hearing, it took the matter under advisement pending the receipt of additional evidence and reserved ruling on the matter. Under these circumstances, there was no obligation under Rule 52 to issue a written order because the matter was taken under advisement and the hearing was continued. Thus, we conclude the trial court did not err in not issuing a written order or judgment following the second settlement approval hearing. As a result, because the court's March 24, 2023 order was not timely appealed, and because the second settlement approval hearing was continued without resolution, there is no appealable order in this case. Our decision on this issue renders Employer's second issue moot.

## Conclusion

For the foregoing reasons, we dismiss Employer's appeal and remand the case for any further proceedings as may be appropriate. Costs on appeal are taxed to Employer.

**TENNESSEE BUREAU OF WORKERS' COMPENSATION**
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## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Appeals Board's decision in the referenced case was sent to the following recipients by the following methods of service on this the 31st day of July, 2023.

| Name | Certified Mail | First Class Mail | Via Fax | Via Email | Sent to: |
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