

OPINION ENTERED: August 27, 2012

CLAIM NO. 201100013

ESTATE OF JOSEPH HAYWARD PARKS

PETITIONER

VS.

**APPEAL FROM HON. RICHARD M. JOINER,
ADMINISTRATIVE LAW JUDGE**

WALLACE COTTON
UNINSURED EMPLOYERS' FUND
and HON. RICHARD M. JOINER
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION AND ORDER
DISMISSING
* * * * ***

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

STIVERS, Member. The Estate of Joseph Hayward Parks, deceased ("Estate"), seeks review of the November 30, 2011, opinion and order of Hon. Richard M. Joiner, Administrative Law Judge ("ALJ") dismissing its claim for income and medical benefits against Wallace Cotton ("Cotton") and the

Uninsured Employers' Fund ("UEF"). No petition for reconsideration was filed.

On appeal, the Estate argues KRS 342.680 creates a presumption Joseph Hayward Parks' ("Parks") death is work-related, and the ALJ erred in determining Parks was not an employee of Cotton at the time of his death and his death is not work-related.

On January 3, 2011, a Form 101 was filed styled "Estate of Joseph Hayward Parks v. Wallace Cotton and Uninsured Employers' Fund" alleging Parks died on April 7, 2010, when he was "struck by falling tree." The Form 101, signed by Samantha Johnson ("Johnson"), does not indicate her authority to sign the Form 101. Also attached to the Form 101 are a Form 104, Form 105, and the certificate of death. *Significantly, the Form 101 did not name the personal representative of the estate as the plaintiff.*

A January 19, 2011, letter from the Department of Workers' Claims states an application for resolution of an injury claim was filed on January 3, 2011. The letter states the application contains deficiencies, and the "matter has been referred to the Frankfort Motion Docket where the Administrative Law Judge will issue an order regarding the application."

On January 27, 2011, the UEF filed a Form 111- Notice of Claim Denial.

On February 3, 2011, the estate filed a "Notice of Filing Form 106" with the attached Form 106- Medical Waiver and Consent signed and dated by Johnson on January 26, 2011. The Form 106 reads as follows:

I, Estate of Joseph Parks having filed a claim for workers' compensation benefits, do hereby waive any physician-patient, psychiatrist-patient, or chiropractor-patient privilege I may have and hereby authorize any health care provider to furnish to myself, my attorney, my employer, its workers' compensation carrier or its agent, the Division of Workers' Compensation Funds, the Uninsured Employers' Fund, or Administrative Law Judge any information or written material reasonably related to my work-related injury occurring on or about 4/7/10 any medical information relevant to the claim including past history of complaints of, or treatment of, a condition similar to that presented in this claim or other conditions related to the same body part.

Such information is being disclosed to the purpose of facilitating my claim for Kentucky workers' compensation benefits.

I understand that no medical provider may condition treatment or payment on whether I sign this medical waiver; however, I further understand that failure to sign this medical waiver may result in suspension or delay of the workers' compensation claim.

I understand that the information used or disclosed pursuant to this medical waiver may be subject to re-disclosure by the recipient.

This authorization shall remain valid for 180 days following its execution. A photocopy of the authorization may be accepted in lieu of the original.

The authorization includes, but is not restricted to, a right to review and obtain all copies of all records, x-rays, x-ray reports, medical charts, prescriptions, diagnoses, opinions and courses of treatment.

It indicates Johnson is the Executrix of the estate.

On February 14, 2011, Cotton filed a Form 111 Notice of Claim Denial.

On February 18, 2011, Hon. J. Landon Overfield, Chief Administrative Law Judge ("CALJ Overfield") entered an order stating, in part, as follows:

Plaintiff's Form 101 is defective in that the claim is to be initiated by the decedent's estate and evidence of probate appointment of an estate representative was not attached to the tendered initiating pleading.

Accordingly, the Estate was granted twenty days from the date of the order in which to cure the defect. The order stated in the event the defect is cured the claim would be recorded as filed on January 3, 2011, the date the defective Form 101 was tendered for filing. The order also

stated in the event the defect was not cured within the allotted time, the "claim shall not be initiated."

On February 24, 2011, Cotton filed a Special Answer.

On February 24, 2011, a "Notice of Filing Order Appointing Samantha Johnson as Administratrix of the Estate of Joseph Hayward Parks" was filed. The body of the notice states as follows:

The Plaintiff, Estate of Joseph Hayward Parks, by counsel, in accordance with the ALJ's Order of February 18, 2011, hereby gives notice of the filing of an Order of the Ohio District Court appointing Samantha Johnson as Administratrix of the Estate of Joseph Hayward Parks.

The May 14, 2010, order of the Ohio District Court appointing Johnson as Administratrix of the Estate of Joseph Hayward Parks was attached. No motion was made to amend the Form 101 to list the Administratrix as the plaintiff.

On March 9, 2011, Cotton filed a Second Special Answer.

On March 10, 2011, the Estate filed a "Plaintiff's Notice of Filing Death Certificate of Joseph Parks."

The Estate also filed various medical and pharmacy records.

On May 24, 2011, CALJ Overfield entered the following order:

This matter comes before the Frankfort Motion Docket upon the filing of a certified copy of the appointment of administratrix in the decedent's estate thereby curing the defect in the Form 101 Application for Resolution of Injury Claim tendered for filing on January 3, 2011. Having reviewed the record, finding the defects in plaintiff's Form 101 to have been cured, and being duly and sufficiently advised, IT IS HEREBY ORDERED;

- The Form 101, Application for Resolution of Injury Claim is deemed to have filed on January 3, 2011.
- This matter shall be referred to an Administrative Law Judge for final adjudication. A notice of assignment shall contain a proof schedule for the parties.

Significantly, the above order did not order Johnson as Administratrix of the Estate of Joseph Hayward Parks was joined as the plaintiff.

A March 25, 2011, letter from the Kentucky Department of Workers' Claims indicates an application for adjustment of injuries was filed on January 3, 2011. The letter states the "Defendant-employers are advised to forward all correspondence to their insurance carrier at

the time of the alleged injury." It also requested the insurance carriers, self-insured employers, and uninsured employer to "please contact counsel of [their] choice at this time." The letter concluded by stating "[a] scheduling order, or other appropriate order will be entered."

The parties filed various medical records. The Estate filed the records of the Department of Labor, Occupational Safety and Health Compliance, concerning its investigation into the death of Parks. In addition, the Estate introduced the report of Dr. Henry A. Spiller, Director of the Kentucky Regional Poison Control Center, Board Certified in Toxicology, concerning his review of the medical examiner's report and Parks' medical and pharmacy records.

The following depositions were introduced: February 21, 2011, deposition of Cotton; March 23, 2011, deposition of Johnson; April 16, 2011, deposition of Danny Parks; and May 16, 2011, deposition of Kim Mattingly.

Johnson's deposition reveals she was born on January 20, 1987, and that she, Christina Parks, and Christopher Parks are Parks' children. Although during the deposition, there was some discussion regarding her receipt of bills related to her father's death, Johnson was never

identified as the personal representative of the Estate. The deposition caption is styled: "Joseph Hayward Parks (deceased) Samantha Johnson (Administrator) v. Wallace Cotton and Uninsured Employer's Fund." All of the other depositions have this same style. The Benefit Review Conference ("BRC") order is styled "Estate of Joseph Hayward Parks v. Wallace Cotton and Uninsured Employers' Fund." The October 4, 2011, order reassigning this matter to ALJ Joiner and the October 19, 2011, hearing order are both styled "Joseph Hayward Parks (DEC) Samantha Johnson (ADMIN) v. Wallace Cotton and Uninsured Employers Fund." The hearing transcript is styled "Samantha Johnson, Administratrix of the Estate of Joseph Hayward Parks, deceased v. Wallace Cotton and Uninsured Employers Fund." The Estate's brief is styled "Estate of Joseph Hayward Parks v. Wallace Cotton and Uninsured Employers Fund." The November 30, 2011, opinion and order dismissing the claim is styled "Joseph Hayward Parks (DEC) Samantha Johnson (ADMIN) v. Wallace Cotton and Uninsured Employer's Fund." Significantly, the notice of appeal is styled "Estate of Joseph Hayward Parks v. Wallace Cotton and Uninsured Employers Fund." The body of the notice of appeal reads as follows:

The Plaintiff, Estate of Joseph Hayward Parks, pursuant to KRS 342.285(1) and 803 KAR 25:010, §21, hereby gives notice of its appeal to the Workers' Compensation Board from the Opinion and Order rendered November 30, 2011 by Honorable Richard M. Joiner, Administrative Law Judge, in the above-styled claim.

Because we believe the Notice of Appeal is jurisdictionally defective, we *sua sponte* dismiss the appeal. As previously noted, the caption in the Notice of Appeal merely lists the "Estate of Joseph Hayward Parks" as the petitioner. The proper party to file the Notice of Appeal is Johnson in her capacity as Administratrix of the Estate of Joseph Hayward Parks. We note the Form 101 does not designate Johnson as Administratrix of the Estate as the Plaintiff. There was no attempt throughout the proceedings to amend the Form 101 to reflect Johnson, as Administratrix of the Estate of Joseph Hayward Parks, is the plaintiff in the claim. The Administratrix, as the personal representative of the Estate, must institute the action on behalf of the Estate against Cotton and the UEF. The Estate can only act through the personal representative. The Form 101 and the notice of appeal must list Johnson, in her capacity as Administratrix of the Estate of Joseph Hayward Parks, as a party. Amazingly, neither the ALJ nor the defendants raised the absence of

the Administratrix as the plaintiff as an issue and allowed the claim to be resolved by the ALJ's November 30, 2011, opinion and order.

The body of the notice of appeal fails to name Johnson, as Administratrix of the Estate of Joseph Hayward Parks, as the party appealing to the Board. Johnson, as the Administratrix, is an indispensable party to the appeal and must be named as the petitioner in the notice of appeal. Until Johnson secured an order naming her as the plaintiff, she was not a party to the action. In order to appeal from the November 30, 2011, opinion and order, Johnson, as the Administratrix, must file the notice of appeal and prosecute the appeal. Since Johnson in her capacity as the Administratrix is not named as a party to the appeal, this Board is without jurisdiction to rule on the merits of the appeal.

Failure to name indispensable parties, in this case Johnson in her capacity as Administratrix of the Estate of Joseph Hayward Parks, is a jurisdictional defect fatal to the 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 any argument raised on appeal since the actual party in this action is not the Estate of Joseph

Hayward Parks but Johnson in her capacity as the Administratrix of the Estate of Joseph Hayward Parks. 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 case of Harrison v. Park Hills Bd. of Adjustment, 330 S.W.3d 89 (Ky. App. 2011) is controlling. In Harrison v. Park Hills Bd. of Adjustment, *supra*, the Court of Appeals stated:

However, in *City of Devondale v. Stallings*, 795 S.W.2d 954 (Ky. 1990), the Court addressed its prior holding in *Ready* as follows:

In *Ready*, *supra*, we applied this policy of substantial compliance to a situation where the defect in the notice of appeal was a result of failure to properly designate the final judgment appealed from, as required by CR 73.03. The notice of appeal was timely filed in *Ready*, and *all proper parties were named*. There was simply an error in designating the documents appealed from. We

held that these nonjurisdictional defects in the notice of appeal should not result in automatic dismissal; rather, the Court should consider any harm or prejudice resulting from the defect in deciding the appropriate sanction. We concluded that since no substantial harm resulted to the parties, dismissal of the appeal was an inappropriate remedy.

Stallings, 795 S.W.2d at 957 (emphasis in original, citation omitted). The Court went on to state that *Ready* "involved defects that were nonjurisdictional in nature. It is only in this context that a discussion of substantial compliance and possible prejudice is appropriate." *Stallings*, 795 S.W.2d at 957. Finally, the Court concluded:

A notice of appeal, when filed, transfers jurisdiction of the case from the circuit court to the appellate court. It places the named parties in the jurisdiction of the appellate court. In the case at bar, the notice of appeal omitted two indispensable parties to the lawsuit. Therefore, the notice of appeal transferred jurisdiction to the Court of Appeals of only the named parties.

Id. at 96-97.

Were we to hold otherwise, we would be permitting the decedent to appeal the November 30, 2011, opinion and order of the ALJ.

Accordingly, the above-styled appeal is **DISMISSED.**

ALL CONCUR.

HON. FRANKLIN A. STIVERS, MEMBER
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