Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: April 24, 2015

CLAIM NO. 201385946

FLAGSHIP TRANSPORTATION, LLC PETITIONER

VS. **APPEAL FROM HON. R. ROLAND CASE, ADMINISTRATIVE LAW JUDGE**

CORY KEELING (DECEASED)/MINDY KEELING (WIFE)
HON. R. ROLAND CASE,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING

* * * * * *

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

RECHTER, Member. Flagship Transportation, LLC ("Flagship") appeals from the December 9, 2014 Opinion, Award and Order of Hon. R. Roland Case, Administrative Law Judge ("ALJ"). The issue on appeal is whether a lump-sum death benefit paid pursuant to KRS 342.750(6) accrues interest from the date of the worker's death, or from the date a personal

representative of the estate is appointed. The ALJ determined interest accrues from the date of the worker's death. Flagship now appeals, challenging this conclusion. We affirm the ALJ.

Cory Keeling was killed on April 19, 2013 in a motor vehicle accident during the course of his employment as a truck driver. His spouse, Mindy Keeling, filed a claim for workers' compensation benefits which was initially denied on the grounds of voluntary intoxication. Later, Flagship abandoned this assertion and a settlement agreement was reached as to all issues except for the amount of interest due on the lump-sum payment paid pursuant to KRS 342.750(6). The ALJ determined:

> It is the Administrative Law Judge's conclusion, interest accrues from the date of death. The decedent has an estate when he dies. The estate is not formed at the time of the appointment of a representative but at the time of death. The lump-sum benefit became due and payable upon death. Interest is owed on past-due income benefits from the date of an injury even if the worker does not file a claim until several months or years after the injury. Similarly, in an occupational disease claim, benefits are awarded with interest from the last day of exposure even if a claim is not asserted until four or five years after the last exposure and the employer had no knowledge the claim was even going to be filed. The Administrative Law Judge sees no basis to deny interest in this

> case since the cases clearly indicate the lump-sum payment is an income benefit and the Administrative Law Judge concludes it carries interest from the date of death.

The ALJ thus awarded interest from April 19, 2013 until paid, at a rate of twelve percent. Flagship now appeals, arguing interest should begin to accrue at the date upon which Mindy Keeling was appointed personal representative of her husband's estate – May 6, 2014. Because the facts are uncontested and Flagship has raised a purely legal question, our review is *de novo*.

KRS 342.750(6) provides:

> In addition to other benefits as provided by this chapter, if death occurs within four (4) years of the date of injury as a direct result of a work-related injury, a lump-sum payment of Fifty Thousand Dollars ($50,000) shall be made to the deceased's estate, from which the cost of burial and cost of transportation of the body to the employee's place of residence shall be paid.

KRS 342.040(1) states "all income benefits shall be payable on the regular payday of the employer with interest at the rate of twelve percent (12%) per annum on each installment from the time it is due until paid." Flagship does not dispute that interest accrues on a lump-sum death benefit payment. Rather, it disputes when the payment is "due." Because neither statute plainly indicates

when the lump-sum death benefit is “due”, we turn to applicable case law.

In Bradley v. Commonwealth, 301 S.W.3d 27 (Ky. 2009), the Kentucky Supreme Court considered whether the lump-sum death benefit is an “income benefit” for purposes of KRS 342.040(1). Likening the lump-sum death benefit to any other type of income benefit under Chapter 342, the Court determined “a lump-sum death benefit is a form of income benefit.” Id. at 31. It further explained “interest accrues on a lump-sum death benefit under KRS 342.040(1) just as it does on other past-due income benefits awarded under Chapter 342.” Id. at 30.

In Bradley, the Court did not squarely address when the lump-sum death benefit is “due” for purposes of calculating interest. However, we note the ALJ in Bradley calculated interest from the date of the worker’s death, and that calculation was not disturbed on appeal. We note income benefits are “due” as of the date of the worker’s injury and interest on past-due amounts is calculated from the date of injury. It follows from Bradley that the lump sum death benefit is also “due” as of the date of the worker’s death. The ALJ did not err in awarding interest accruing from the date of Cory Keeling’s death.

For the foregoing reasons, the December 9, 2014 Opinion, Award and Order of Hon. R. Roland Case is hereby **AFFIRMED**.

ALL CONCUR.

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ADMINISTRATIVE LAW JUDGE:

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