

Commonwealth of Kentucky  
Workers' Compensation Board

OPINION ENTERED: May 1, 2015

CLAIM NO. 201400637

GEORGE COLLESTER

PETITIONER

VS.                   **APPEAL FROM HON. THOMAS G. POLITES,  
ADMINISTRATIVE LAW JUDGE**

BILL'S RIDING STABLE,  
UNINSURED EMPLOYERS' FUND  
HON. THOMAS G. POLITES,  
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION  
AFFIRMING**

\* \* \* \* \*

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

**RECHTER, Member.** George Collester ("Collester") appeals from the November 10, 2014 Opinion and Order rendered by Hon. Thomas G. Polites, Administrative Law Judge ("ALJ"). The ALJ determined Collester's claim is barred by the agricultural exemption contained in KRS 342.650(5).

Collester argues the employer's business does not qualify for the agricultural exemption. We affirm.

At the hearing, Collester testified he was employed by Bill's Riding Stable taking care of horses and taking customers on trail rides. He shod and fed horses, and cleaned stables. On October 24, 2013, he had been saddling horses for the public to ride. He had been instructed to breed the farm stud to a mare. The horse kicked Collester in the face, causing him to lose consciousness.

Logan W. Tankersley ("Tankersley") testified by deposition on August 27, 2014. Tankersley lives on a 46 acre farm and operates Bill's Riding Stable on the farm. He has fourteen riding horses that are rented to the public to ride on trails on private property and in the National Forest. He also has a stud horse and personal horses which are not used for the riding stable. With the exception of an occasional sale of hay, the riding stable is his only source of income. Tankersley's only employees were his daughter and Collester. Collester was hired to work with the horses including grooming, shoeing, feeding, cleaning stalls, and occasionally he would lead trail rides. He performed other duties on the farm including mowing and other farm activity if business was slow. Tankersley was

not present at the time of the accident, but was informed Collester was in the corral with two horses when they began to fight and he was kicked in the head.

The ALJ found Collester's employment constituted work of an agricultural nature and therefore Collester's claim is barred by the exemption set forth in KRS 342.650(5). The ALJ reviewed the holdings in Fitzpatrick v. Crestfield Farm, Inc., 582 S.W.2d 44 (Ky. App. 1978), Michael v. Cobos, 744 S.W.2d 419 (Ky. 1987), Steve Crabtree v. John Grider, 1991-SCE-787-WC (rendered June 4, 1992)(not to be published), and Hanawalt v. J. Thomas Brown and Karen Brown d/b/a Wild Rose Equestrian Center, WCB no. 2013-00296 then held as follows:

When the facts of the instant claim are considered in light of the above case authority interpreting the agricultural exemption, it is clear that the Defendant/Employer herein was engaged in agriculture, that the claimant at the time of his injury was an agricultural employee, and the specific duties being performed by the Plaintiff at the time of his injury were agricultural in nature and therefore fall within the definition of agriculture and thus are included within the agricultural exemption. The evidence is un rebutted that Bill's Riding Stables engaged in activities solely horse related and the only business activities performed by the farm were raising and housing of horses and the provision of trail riding activities for the public utilizing the farm's horses. The ALJ concludes a

trail riding business such as the Defendant's herein is no different than an equestrian center as in Hanawalt, as both employers were engaged in commercial operations involving horses, and as such a similar result is compelled. Further, there is no question that Plaintiff's actual work activities at the time of his injury, that is attempted breeding of a horse, is the exact definition of animal husbandry and as specifically stated by the court in Fitzpatrick, "animal husbandry is an agricultural pursuit." As such, given the Defendant's business was solely engaged in agriculture and the Plaintiff's exact job activity at the time of his injury was agricultural as well, a finding that Plaintiff's claim is barred by the agricultural exemption contained in KRS 342.650(5) is compelled and Plaintiff's claim is hereby dismissed.

Collester argues the employer does not qualify for the agricultural exemption because its business does not meet the definition of "agriculture" in KRS 342.0011(18). He notes the horses are not livestock used for food products or racing. Collester believes the fact the employer purchased workers' compensation insurance after the accident is evidence his business is not exempt. Collester contends the cases cited by the ALJ do not apply since the evidence is clear and un rebutted that the employer does not board horses, raise race horses, nor does it raise horses for show or sale. Collester argues the employer's business offers

recreational services to the public rather than engaging in agricultural pursuits.

KRS 342.630(1) states "any person, other than one engaged solely in agriculture" that has one or more employees are employers mandatorily subject to and required to comply with the Workers' Compensation Act. KRS 342.650 provides classes of employees who are exempt from coverage under the Act and includes "Any person employed in agriculture." KRS 342.650(5). KRS 342.0011(18) defines agriculture as follows:

'Agriculture' means the operation of farm premises, including the planting, cultivation, producing, growing, harvesting, and preparation for market of agricultural or horticultural commodities thereon, the raising of livestock for food products and for racing purposes, and poultry thereon, and any work performed as an incident to or in conjunction with the farm operations, including the sale of produce at on-site markets and the processing of produce for sale at on-site markets.

The Court of Appeals rejected the narrow reading of the agricultural exemption advocated by Collester. In Fitzpatrick, it explained as follows:

The legislative definition of agriculture is stated in general terms as meaning "the operation of farm premises" and the following enumeration of more specific types of activity to be included within the general term

does not have the effect of excluding all that is not mentioned. Particularly is this true when in the same definition the legislature went on specifically to enumerate those activities which were not to be included within the general term. Therefore, the question to be decided by the Court is whether or not feeding, housing, and caring for brood mares is an activity ordinarily and customarily conducted on farm premises and an activity generally recognized as an agricultural pursuit.

Id. at 46.

Although not binding case authority, we find the unpublished case of Steve Crabtree v. John Grider, No. 1991-SC-787-WC (rendered June 4, 1992)(not to be published) provides guidance and is helpful in our analysis. In Crabtree, the claimant was injured while working as a groomer for an animal husbandry enterprise involved in breeding, raising, training, boarding and selling horses. The claimant injured himself when he fell from a horse. His job consisted of cleaning barns and stalls, grooming horses, and assisting with training. Some of the horses on the farm were owned by the employer while others were there for boarding/training purposes. The majority were primarily show and riding horses. The owner's entire income was derived from the operation of the farm and its activities such as blacksmith services, show winnings, stud fees,

judging fees, and horse sale commissions. The Kentucky Supreme Court noted although KRS 342.0011(18) specifically mentions the raising of livestock for racing purposes, it does not exclude raising livestock for other purposes. The Court found the legislative general definition "Agriculture means the operation of farm premises" to be comprehensive.

Id., slip op. at 3. The Court went on to state as follows:

[W]e believe that restricting the agricultural exemption to horse farms involving only race horses places an impermissible limitation upon the application of the statute. Furthermore, we can discern no rational basis for treating horse farms for racing purposes and show purposes differently.

Id., slip op. at 3-4

After reviewing the Court of Appeals' reasoning in Fitzpatrick, the Supreme Court went on to state:

The obvious impact of specifically naming the raising of livestock for racing purposes represents a clear legislative intent that such activity be exempted as agriculture. However, even without the specification, we believe the general clause would have included farm premises for the purpose of raising race horses or show horses. Many other jurisdictions exempt farm laborers, and it has been recognized that "[t]he term "agriculture" used in the Kentucky Act supplies a boundary which is broader, in many instances, than that employed by other states and certainly equal to the most liberal . . . . [I]t can be readily

seen that the boundary extends further in some cases than in others, and that "agriculture" is the broadest exclusion.'

Id. slip op. at 4-5 *citing* Robinson v. Lytle, 124 S.W.2d 78, 80 (Ky. 1939).

In Hanawalt v. Brown, --- S.W.3d ----, 2015 WL 1284389 (Ky. App. 2015)(currently on appeal to the Kentucky Supreme Court) the Court of Appeals affirmed the Board's holding that the feeding, care, and training of horses at an equestrian center which offers only horse-related services including horse boarding, training, riding lessons, camps, and academies are activities "customarily conducted on farm premises and an activity generally recognized as an agricultural pursuit" and the agricultural exemption applied to the employment. The Court of Appeals held "Although the statutory definition specifically mentions the raising of livestock for racing purposes, it does not exclude the raising of livestock for other purposes, such as the operation of an equestrian center." Id.

We conclude, based upon the above testimony and case law, the ALJ did not err in determining the employer was engaged in agriculture, and Collester was an agricultural employee at the time of his work injury. Although the statutory definition specifically mentions

raising livestock for racing purposes, it does not exclude raising livestock for other purposes, such as the operation of a riding stable. All of Collester's duties consisted of typical farming activities. The activity Collester engaged in at the time of the injury clearly falls within the purview of KRS 342.650(5). It is undisputed at the time of Collester's injury he was involved with the breeding of horses which clearly falls within the definition "animal husbandry" and constitutes agriculture as defined in KRS 342.0011(18).

Finally, we note the fact that the employer elected to obtain workers' compensation coverage after the injury is irrelevant. An exempt employer is not prohibited from opting to be insured.

Accordingly, the November 10, 2014 Opinion and Order rendered by Hon. Thomas G. Polites, Administrative Law Judge, is **AFFIRMED**.

ALL CONCUR.

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