

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: May 11, 2015

CLAIM NO. 201201301

JAMES WILES

PETITIONER

VS.

APPEAL FROM HON. UDELL B. LEVY,
ADMINISTRATIVE LAW JUDGE

HEFTON FARMS, LLC;
TYSON FOODS, INC.;
UNINSURED EMPLOYERS' FUND; and
HON. UDELL B. LEVY,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING

* * * * *

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

ALVEY, Chairman. James Wiles ("Wiles") seeks review of the opinion and order rendered December 10, 2014 by Hon. Udell B. Levy, Administrative Law Judge ("ALJ") dismissing his claim pursuant to the agricultural exemption contained in KRS 342.630(1) and KRS 342.650(5). Wiles also seeks review

of the January 23, 2015 order overruling his petition for reconsideration.

On appeal, Wiles argues his work was a part of the Tyson Foods, Inc. ("Tyson") food processing industry and was therefore outside the exemption provided in KRS 342.630(1) and KRS 342.650(5). Wiles also argues Tyson is a statutory employer and responsible for workers' compensation benefits for his injury pursuant to KRS 342.610(2). Finally, Wiles argues the agricultural exemptions contained in KRS 342.630(1) and KRS 342.650(5) are unconstitutional as applied in this case because they violate the equal protection provisions of the Kentucky and United States constitutions. Because the ALJ engaged in the appropriate analysis in determining Wiles' claim is barred by the agricultural exemptions pursuant to KRS 342.630(1) and KRS 342.650(5), we affirm. Because we have no authority to rule on constitutional issues, Wiles' argument pertaining to the constitutionality of KRS 342.630(1) and KRS 342.650(5) is preserved, but will not be addressed.

Wiles filed a Form 101 on September 24, 2012 alleging he sustained a work-related injury to his right knee while working for Hefton Farms, LLC ("Hefton Farms") in Sebree, Kentucky, when he tripped over a water line while carrying feed lines he had replaced. Wiles' previous work

history included working for a fence company, as a laborer at a chicken processing plant, working as a truck mechanic, and installing flooring. In the Form 101, Wiles also named Tyson as a statutory employer pursuant to KRS 342.610(2), and the Uninsured Employers' Fund as a party because Hefton Farms did not have workers' compensation insurance coverage.

The claim was initially assigned to the Hon. Edward D. Hays, Administrative Law Judge ("ALJ Hays"). The claim was later assigned to the ALJ when ALJ Hays retired.

We will not review the medical evidence because it is not relevant to the determinations made by the ALJ, or the issues on appeal. It is noted Wiles filed a notice on May 4, 2013 challenging the constitutionality of KRS 342.630(1) and KRS 342.650(5).

Wiles testified by deposition on November 27, 2012 and at the hearing held October 13, 2014. Wiles was born on December 18, 1958, and resides in Madisonville, Kentucky. He completed the seventh grade, and has not obtained a GED. Wiles was hired by Greg Hefton ("Hefton") in June 2010 to perform maintenance work on his chicken farms. Wiles stated Hefton Farms operates chicken growing farms. When he applied for work with Hefton Farms, he was aware the farms were engaged in raising chickens. He stated Hefton Farms raised chicks until they reached a certain weight. The chicks were

delivered to Hefton Farms by Tyson. When the chickens reached a certain weight, Tyson returned to pick them up.

Wiles' job entailed repairing tunnel fans, replacing electrical motors, working on feeders, and maintaining feed and water lines for chicken houses used in raising chicks/chickens. The maintenance work he performed was to facilitate the raising of chickens, which was the sole purpose of the farms on which he worked for Hefton. On May 24, 2012, Wiles was replacing feed lines which were used to feed the chicks/chickens. As he was carrying pieces of feed line he had removed, Wiles tripped over a water line which was used to provide water to the chicks/chickens. As he fell, he twisted his right knee and he heard it pop. He reported this to Hefton who provided some liniment. Wiles continued to have difficulty with his right knee which became swollen. He sought treatment at Multicare in Madisonville, Kentucky. The bills were initially paid through an accident and sickness plan provided by Hefton Farms, until the benefits were exhausted.

Hefton testified by deposition on November 2, 2012. He owns Hefton Farms which is the operating company for several chicken farms he owns. He stated the payroll for all of his employees is processed through Hefton Farms. Likewise all payments for items on the various farms are

made through Hefton Farms. He stated he is the sole owner of all of the farms. He contracts with Tyson to raise chickens, and is solely engaged in growing chickens on his farms.

Hefton testified all individuals who work on the chicken farms are employed by Hefton Farms, not Tyson. Tyson provides the chicks and feed. Tyson also provides technical assistance through service technicians who spot check to see if the farms are operated within contract specifications. Those service technicians are neither paid nor employed by Hefton Farms. Likewise, they do not have the authority to hire or fire Hefton Farms employees. Each individual farm location has an onsite manager who resides on the farm. Hefton Farms also has support personnel who travel to the various farms. Each Hefton Farms employee is paid by check, and receives a W-2 at the end of the year.

Hefton testified Wiles was employed as a maintenance worker who traveled to various farms to repair or maintain chicken houses. On the date of the accident, Wiles was working at the Sebree Poultry Farm. There were no chicks/chickens located there at the time. Wiles was preparing the chicken houses for a new flock. He stated Wiles was injured when he tripped over a drinker, or water line while working on feeding lines. The height of the

water line was adjustable depending on the size of the chickens. He stated Wiles was paid ten dollars per hour for twenty to thirty-five hours of work each week. Wiles was also provided housing which included a house, gas and water; however, he was responsible for paying any electricity he used.

Hefton stated he did not have workers' compensation insurance for his employees because they were engaged in farming, and he did not believe coverage was required. He does provide health and accident insurance coverage for his employees. He stated he owns the Sebree Poultry Farm where Wiles was working on the date of the accident.

Craig Coberley ("Coberley"), the Complex Manager for Tyson, testified by deposition on March 31, 2014. He stated Hefton Farms is a "grow out" facility which raises chickens. He stated Tyson provides service technicians who operate as liaisons between it and the farm owners. He stated it takes approximately seven weeks to grow the chicks to the size necessary for processing. Farm owners are paid based upon the total weight of the chickens when removed from the farms. He stated Tyson has nothing to do with Hefton Farms' hiring or firing practices, and it has no right to hire or fire any of those employees. Coberley

stated on May 24, 2012, there were no chicks/chickens at the Hefton Farms poultry farm located in Sebree.

A benefit review conference ("BRC") was held on August 19, 2014. The BRC order and memorandum lists the issues preserved for determination which include benefits per KRS 342.730; average weekly wage; unpaid/contested medical bills; TTD; vocational rehabilitation benefits; whether the work was agricultural and excluded by the Act; whether Tyson is liable via up-the-ladder contractors' liability; and the constitutional challenges listed above.

The ALJ issued an opinion and order dismissing Wiles' claim on December 10, 2014. For his analysis, findings of fact, and conclusions of law, the ALJ stated as follows:

Any analysis as to what constitutes an agricultural enterprise is necessarily an exercise in statutory interpretation. *Williams v. Eastern Coal Corp.*, 952 S.W.2d 696, 698 (Ky. 1997) Statutes must be interpreted according to the plain meaning of the Act and in accordance with the legislative intent. *Floyd County Board of Education v. Ratliff*, 955 S.W.2d 921, 925 (Ky. 1997) The legislature's intention for enacting a statute must be ascertained from words used in enacting statutes rather than surmising what may have been intended but was not expressed. *Revenue Cabinet v. O'Daniel*, 153 S.W.3d 815, 819 (Ky. 2005) (*quoting Flying J Travel Plaza v. Commonwealth*

of Ky., *Dep't of Highways*, 928 S.W.2d 344, 347 (Ky. 1996)).

Employers and employees engaged in agricultural work are exempted from compliance with Kentucky's Workers Compensation laws pursuant to KRS 342.630(1) and 342.650(5) respectively. In addition, "up-the-ladder" coverage by contractors is inapplicable for owners and lessee of land "principally used for agriculture". KRS 342.610(2)(b) "Agriculture" is defined in pertinent part by KRS 342.0011(18) as "the operation of farm premises, including ... 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. It shall not include the commercial processing, packing, drying, storing, or canning of such commodities for market, or making cheese or butter or other dairy products for market."

To determine whether parties fall under the agricultural exemption requires looking at how the premises were being used at the time of injury. Activity generally recognized as an agricultural pursuit should be considered an agricultural use, and exclusions, not inclusions, need to be placed in the definition by the General Assembly. *Fitzpatrick v. Crestfield Farm, Inc.*, 582 S.W.2d 44 (Ky. App. 1978) The relevant issue in this case is where and how the chickens are raised, and not the use for which they are sold. *Michael v. Cobos*, 744 S.W.2d 419 (Ky. 1987).

Plaintiff argues in his brief that his work was part of the meat processing

industry, not agricultural in nature, and therefore outside the exclusion provided by KRS 342.650(5). Clearly, while Tyson Foods is a meat producer whose operations would not be exempt under the statutes, Mr. Wiles was employed by Hefton Farms. Therefore, the question in this case is whether Hefton Farms was a subsidiary of a company that processed chickens for human consumption or a separate agricultural entity engaged in the business of raising chickens from the time they were hatched until ready to be shipped off the premises for "processing".

The evidence in this case shows that Hefton Farms is a business engaged solely in agriculture. Additionally, it seems clear from the evidence in this case that Hefton Farms and Tyson Foods are completely separate entities with congruent interests. Tyson is a meat producer that needs to have their recent hatchlings properly raised until they are ready for processing; Hefton Farms is set up to raise chickens- and nothing more- albeit on a large scale basis. It makes no difference how the chickens came to Hefton Farm or where they are sent for processing once they are raised. *Bob White Packing Company v. Hardy*, 340 S.W.2d 245 (Ky. 1960).

Moreover, there is nothing about the parties' relationship or business transactions that alter their separate nature. It is not unusual for an agricultural business like Hefton Farms to obtain a letter of intent or agree to assign Tyson's payments directly to their lending institution so they could secure financing to operate. It is also good business practice for Tyson to be able to monitor the growth of their chickens and to reserve the right

to intervene if they are not being treated humanely. None of these factors lead to the conclusion that Tyson is actually controlling Hefton Farm's day to day operation. Furthermore, the fact that Hefton Farms has the expertise and technology to comply with Tyson's specifications for feeding the chickens brought there to be "grown-out" reinforces the conclusion that they are in the business of raising poultry, an agricultural enterprise by definition.

In *Bob White Packing Company, et al., supra*, the injured employee was working on a farm owned and operated by a meat packing company. Some cattle were kept on the farm until they were to be slaughtered and incident to their processing operation. That is not the situation in this case. Mr. Hefton testified that the purpose for his chicken farms was for animal husbandry or to raise chickens for eventual slaughter by Tyson Foods. His main function was to grow the chickens, not slaughter them. In *Fitzpatrick v. Crestfield Farm, Inc.*, 582 S.W.2d 44 (Ky. App. 1978), the Court noted that they could not find "where any Court has held that the usual practice of animal husbandry is not included within the general term 'agriculture'." According to Webster's Dictionary 'animal husbandry' is a branch of agriculture concerned with the production and care of domestic animals." *Id.* at 46. While it is true that the ultimate endgame in this scenario is for the chickens to be slaughtered, Hefton Farms raises the chickens but does not participate in slaughtering them.

Plaintiff further argues that his work with Hefton Farms was in maintenance

only and had nothing to do with the raising and care for the poultry. Plaintiff's premise is misplaced. At the time of injury, Mr. Wiles was changing a feed line in preparation for the next shipment of hatchlings. Without proper maintenance, Hefton Farms could not properly care for the poultry they raised from chicks to pullets and broilers. His work was incident to the farm's chicken raising operations and his injury is therefore exempted from coverage under the Act.

ORDER

IT IS HEREBY ORDERED AND ADJUDGED that Plaintiff's claim for workers compensation benefits per KRS 342 et seq. is **DISMISSED** as the parties were engaged in agriculture and therefore exempted from coverage. Plaintiff has expressly reserved his right to challenge constitutionality of the exemption.

Wiles filed a petition for reconsideration on December 22, 2014. He first requested the ALJ to determine the overall nature of the relationship between Hefton and Tyson in order to determine the applicability of KRS 342.630(1). Wiles also requested a modification in language used by the ALJ regarding the time period of Hefton's involvement with the chicken growing process. Wiles also questioned the ALJ's use of the term humanely. Wiles additionally requested modification of other language used

by the ALJ regarding Hefton's raising of chickens pursuant to its contract with Tyson.

In an order issued on January 23, 2015, the ALJ stated as follows:

The undersigned, however, believes litigants are entitled to a clear understanding of what facts were relied upon to reach the ultimate conclusions, and that those conclusions must be stated in a manner that allows the parties to understand the decision so that meaningful review can be conducted. *Cook v. Paducah Recapping Services*, 694 S.W.2d 684, 689 (Ky. 1985); *Shields v. Pittsburgh & Midway Coal Mining Co.*, 634 S.W.2d 440, 444 (Ky. App. 1982); *Big Sandy Community Action Program v. Chaffins*, 502 S.W.2d 526, 531 (Ky. 1973).

In their [sic] Request delineated in Paragraph 1, Plaintiff suggests the undersigned erred by failing to consider the overall nature of the relationship between Hefton and Tyson's processing operation as a factor in determining the applicability of KRS 342.630(1). To be clear, I believe the controlling factor is the manner in which the premises where the injury occurred was being utilized. Hefton Farms is in the business of raising hatchlings until they meet Tyson's size/weight specifications and to employ protocol mandated by Tyson to allow the chickens to reach those specifications within approximately seven (7) weeks. No processing takes place at the farm, nor are the chickens merely warehoused at the farm awaiting processing. The parties are certainly aware that the chickens will eventually be sent for processing once they are "grown out".

But that factor, as well as the nature of the relationship between the farmer and processor, is irrelevant so long as the actual premises where this work is being conducted is used solely for purposes meeting the definition of "agriculture" pursuant to KRS 342.610(2)(b).

In Paragraph 2, Plaintiff once again requests additional consideration of the relationship between Hefton Farms and Tyson. The ultimate finding in this case is that Plaintiff was employed by Hefton Farms, that Hefton Farms is a separate entity from- and that there is no evidence they are a subsidiary of- Tyson, and that Hefton Farms is an agricultural entity because they are solely engaged in the business of raising chickens from the time they are hatched until ready to be shipped off the premises for processing. While I do not believe it makes any difference in determining whether Hefton Farms was engaged solely in agriculture, Plaintiff is correct that the evidence shows the chicks were delivered from Tyson's hatchery, that Tyson service techs ascertain when the chickens are sufficiently "grown out" and that the chickens are then taken by Tyson trucks from Hefton Farms to be "processed" (i.e., butchered and packaged) at a separate facility in Robards, Kentucky.

With regard to Plaintiff's third assertion, the purpose for the questioned portion was to set out the limited extent to which Tyson reserved the right to take over Hefton Farm on a temporary basis. Regardless of the accuracy of equating the term "animal welfare issues" to "humane" treatment of the chickens, this is not a factor in determining whether the business in which Hefton Farms engaged was

agricultural. Moreover, Tyson's failure to intercede in the event there were animal welfare issues would not alter the agricultural nature of the business conducted at Hefton Farms.

The concerns Plaintiff raises in Paragraphs 4, 5 and 6 of his Petition have been addressed. The evidence in this case shows Hefton Farms raised hatchlings delivered by Tyson, according to Tyson's specifications, and with the understanding they would eventually be shipped by Tyson to a separate location to be slaughtered and processed. Therefore, since the business conducted on their premises was solely agricultural, Plaintiff and Hefton Farms are exempt from coverage pursuant to KRS 342.630 and 342.650.

The remainder of Plaintiff's Petition is DENIED to the extent he requests further reconsideration, restatement, or amendment of the Opinion and Order.

As an administrative tribunal, this Board has no jurisdiction to determine the constitutionality of a statute enacted by the Kentucky General Assembly. Blue Diamond Coal Co. v. Cornett, 189 S.W.2d 963 (Ky. 1945). See also Vision Mining, Inc. v. Gardner, 364 S.W.3d 455, 464 (Ky. 2011); Abel Verdon Const. v. Rivera, 348 S.W.3d 749, 752 (Ky. 2011). Likewise, an Administrative Law Judge lacks the power and jurisdiction to review and determine the constitutionality of the statute. Because this Board has no authority or jurisdiction to reverse rulings of the Kentucky courts, we can render no determination on this issue.

Wiles argues his employment was part of the Tyson food processing industry, and was therefore outside the exemptions provided in KRS 342.630(1) and KRS 342.650(5). As the claimant in a workers' compensation proceeding, Wiles had the burden of proving each of the essential elements of his cause of action. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Because Wiles was unsuccessful in his burden, the question on appeal is whether the evidence compels a different result. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). "Compelling evidence" is defined as evidence that is so overwhelming, no reasonable person could reach the same conclusion as the ALJ. REO Mechanical v. Barnes, 691 S.W.2d 224 (Ky. App. 1985). The function of the Board in reviewing the ALJ's decision is limited to a determination of whether the findings made by the ALJ are so unreasonable under the evidence they must be reversed as a matter of law. Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000).

As fact-finder, the ALJ has the sole authority to determine the weight, credibility and substance of the evidence. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). Similarly, the ALJ has the sole authority to judge all reasonable inferences to be drawn from the evidence. Miller v. East Kentucky Beverage/Pepsico, Inc., 951 S.W.2d

329 (Ky. 1997); Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979). The ALJ may reject any testimony and believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same adversary party's total proof. Magic Coal Co. v. Fox, 19 S.W.3d 88 (Ky. 2000); Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999). Mere evidence contrary to the ALJ's decision is not adequate to require reversal on appeal. Id. In order to reverse the decision of the ALJ, it must be shown there was no substantial evidence of probative value to support his decision. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

The Board, as an appellate tribunal, may not usurp the ALJ's role as fact-finder by superimposing its own appraisals as to the weight and credibility to be afforded the evidence or by noting reasonable inferences could otherwise have been drawn from the record. Whittaker v. Rowland, supra. So long as the ALJ's ruling with regard to an issue is supported by substantial evidence, it may not be disturbed on appeal. Special Fund v. Francis, supra.

On review, we find Wiles' appeal to be nothing more than a re-argument of the evidence before the ALJ. Wiles impermissibly requests this Board to engage in fact-finding and substitute its judgment as to the weight and

credibility of the evidence for that of the ALJ. This is not the Board's function. See KRS 342.285(2); Paramount Foods, Inc. v. Burkhardt, 695 S.W.2d 418 (Ky. 1985).

Based upon his own testimony, as well as the testimony provided by Hefton and Coberly, Wiles was at all relevant times employed by Hefton. Although Wiles argues he was engaged in the Tyson food processing industry, there is no evidence he was employed anywhere other than Hefton Farms on the date of his accident. The ALJ determined Wiles was employed by Hefton Farms on the date of the accident. The ALJ then performed a proper analysis and determined Hefton Farms was a farming operation, and all of Wiles' work was agricultural in nature. He determined replacing the feed line, which Wiles was doing at the time of the accident, was necessary for the feeding and raising of chickens, and therefore agricultural.

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.

Upon review of applicable case law and the statutory authority set forth in KRS Chapter 342, we conclude in order for the exclusion contained in KRS 342.650(5) to apply, evidence must demonstrate the whole character of the employee/employer's work is agricultural/farming in nature. Simply engaging in incidental services which may be typically farming/agricultural in nature is insufficient to trigger the exclusion contained in KRS 342.650(5) where the incidental farming/agricultural work is essential to and in furtherance of another business purpose.

In Fitzpatrick v. Crestfield Farm, Inc., 582 S.W.2d 44 (Ky. App. 1978), the Kentucky Court of Appeals addressed whether the operator of a farm who boarded thoroughbred race horses was excluded from the operation of the Act in view of the definition of agriculture. The

evidence established the petitioner operated a farm premises in which tobacco, hay, cattle and thoroughbred yearlings were raised. In addition, thoroughbred brood mares owned by other people were fed, housed and cared for on the farm. Financial reports indicated over a three year period, seventy-three percent of the farm's gross receipts came from the boarding of brood mares owned by others. Id. at 45.

The Court first noted it could not find in its research any court holding the usual practice of animal husbandry is not included within the general term "agriculture." The Court also noted animal husbandry is defined by Webster's Dictionary as a branch of agriculture concerned with the production and care of domestic animals. Id. at 46. The Court rejected the argument since the boarding of mares is not specifically mentioned in the legislative definition of agriculture, the activity should be excluded, by stating as follows:

The legislative definition of agricultural 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 this is 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. Id.

The Court ultimately held "animal husbandry is an agricultural pursuit and that feeding, housing, and caring for horses is an activity customarily conducted on farm premises and an activity generally recognized as an agricultural pursuit." Id. The Court's holding was not altered by the fact the farm fed, housed and cared for horses belonging to someone else for a fee, perhaps giving the operation a commercial rather than agricultural connotation, stating as follows:

However, the 'hortel' has not been generally recognized as being a separate and distinct commercial enterprise. While some people may make reference to the race horse 'industry', the definition of agriculture set out in the statute specifically includes the raising of livestock for racing purposes. The 'raising' of race horses obviously includes feeding, housing, and caring for brood mares. It would be an illogical and impermissibly narrow distinction to say that raising race horses is agriculture, but that once they are 'raised', (presumably from foal to racing age) their feeding, housing, and care rendered on farm premises becomes a commercial operation.

Neither can this Court find any logical basis for making a distinction based on the ownership of the horses involved. The activity of feeding, housing, and caring for the horses is exactly the same whether the horse is owned by the operator of the farm premises or someone else. The normal routine of farm operation is not changed simply because the farm operator cares for brood mares owned by others in addition to caring for his own brood mares. Id. at 47.

In Michael v. Cobos, 744 S.W.2d 419 (Ky. 1987), the Kentucky Supreme Court held the agriculture exemption includes the conditioning and exercising of racehorses which have been released to the track, but have returned to the farm for rehabilitation from an injury. After citing to Fitzpatrick v. Crestfield Farm, supra, the Court held as follows:

Thus, the question to be decided is whether the conditioning and exercising of racehorses which have been released to the track, but have returned to the farm for rehabilitation following an injury 'is an activity ordinarily and customarily conducted on farm premises and an activity generally recognized as an agricultural pursuit.' We hold that it is

Id. (citing Fitzpatrick v. Crestfield Farm, 582 S.W.2d at 46.).

After reviewing the reasoning by the Court of Appeals in Fitzpatrick v. Crestfield Farm, supra, the 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 opinion at p. 4-5 (*citing Robinson v. Lytle*, 124 S.W.2d 78, 80 (Ky. 1939)).

Based upon the above statutory language and case law, we conclude the ALJ did not err in dismissing Wiles' claim. There is no evidence Hefton Farms was engaged in any activity other than agricultural. Specifically, Hefton Farms raised chickens. As the ALJ noted, the fact these chickens were owned by Tyson is of no consequence. Likewise, although the chicks may ultimately be slaughtered, processed and sold, this was all done after they were removed from Hefton Farms. This does not alter the fact that Hefton Farms was solely engaged in farming, in particular animal husbandry. Although Wiles was hired as a maintenance worker, his job existed solely to repair and maintain the equipment used in raising chickens. In fact, the activity in which Wiles was engaged at the time of the injury was replacing feeding lines in preparation of receipt of a flock of chickens for growing at the Sebree facility.

Wiles argues Bob White Packing Co. v. Hardy, 340 S.W.2d 245 (Ky. 1960) is applicable and establishes his claim is compensable. However, in that case, the farm where Hardy was injured was owned and operated by the meat packing company. There, the Kentucky Court of Appeals determined the employment was not solely agricultural, and was part of Bob White Packing Company's overall production. Here, the ALJ clearly determined Wiles was employed by Hefton Farms who was solely engaged in raising chickens and was not involved in the slaughter, processing or sale of the chickens.

Substantial evidence supports the ALJ's determination Wiles' job was agricultural and his claim is therefore statutorily barred. The Court of Appeals in Fitzpatrick specifically held "animal husbandry is an agricultural pursuit and that feeding, housing, and caring for horses is an activity customarily conducted on farm premises and an activity generally recognized as an agricultural pursuit." Id. at 46. Here, the testimony establishes Hefton Farms' activities consisted solely of chicken growing activities. All of Wiles' job duties related to performing tasks necessary for raising chickens.

We conclude based upon the above testimony and case law, the ALJ did not err in determining Hefton Farms

was engaged in agriculture, and Wiles was, at the time of his injury, an agricultural employee.

This conclusion is not altered by the fact Hefton Farms raised chickens belonging to Tyson for a fee. See Fitzpatrick v. Crestfield Farm, Inc., 582 S.W.2d at 47. The above-referenced case law demonstrates the comprehensive reach of the language "agriculture means the operation of a farm premises." KRS 342.0011(18). Here, the activity engaged in by Wiles at the time of the injury clearly falls within the purview of KRS 342.650(5).

Because we determine the ALJ did not err in dismissing the Wiles' claim, it is unnecessary to address the argument that Tyson is a statutory employer with up-the-ladder liability pursuant to KRS 342.610(2) because Hefton Farms had no workers' compensation insurance coverage. Hefton Farms was engaged in agriculture only, and therefore had no requirement to have workers' compensation insurance for its employees.

Therefore, the December 10, 2014 opinion and order and the January 23, 2015 overruling Wiles' petition for reconsideration rendered by Hon. Udell B. Levy, Administrative Law Judge, are hereby **AFFIRMED**. Wiles' argument regarding the constitutionality of KRS 342.630(1)

and KRS 342.650(5) is preserved for further appellate review.

ALL CONCUR.

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