Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: March 4, 2016

CLAIM NO. 201280645

MCCOY ELKHORN COAL CORP. PETITIONER

VS. **APPEAL FROM HON. JEANIE OWEN MILLER, ADMINISTRATIVE LAW JUDGE**

JEANNIE SARGENT,
WIDOW OF FARLEY SARGENT,
and HON. JEANIE OWEN MILLER,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
VACATING AND REMANDING
* * * * * *

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

STIVERS, Member. McCoy Elkhorn Coal Corp. ("McCoy Elkhorn") appeals from the September 25, 2015, Opinion and Award of Hon. Jeanie Owen Miller, Administrative Law Judge ("ALJ") determining, pursuant to the agreement of the parties, whether the income benefits payable pursuant to KRS 342.750 due to the work-related death of Farley Sargent ("Farley")

should be enhanced pursuant to KRS 342.165(1). McCoy Elkhorn also appeals from the August October 27, 2015, Order ruling on its petition for reconsideration.

This claim was filed on June 17, 2014, by Jeannie Sargent ("Jeannie"), as the widow of Farley Sargent, who died on June 25, 2012, in a mine accident while in the employ of McCoy Elkhorn. The May 5, 2015, Benefit Review Conference Order & Memorandum reads as follows: "the matter is bifurcated on the issue of the safety penalty and the undersigned awaits a Form 110 with respect to all matters except the issue of applicability of KRS 342." A hearing was waived by both parties. Proof was to remain open until July 1, 2015, and the matter would stand submitted on the record at the close of proof.

On September 14, 2015, the ALJ approved a settlement agreement styled "Farley Sargent deceased v. McCoy Elkhorn Coal Company." In the September 25, 2015, Opinion and Award, the ALJ entered the following Award:

> 1. The Plaintiff, Jeannie Sargent, widow of Farley Sargent, shall recover of Defendant/employer, McCoy Elkhorn Coal Corporation, and/or its insurance carrier, an additional 30%, pursuant to KRS 342.165, of the amount of each payment awarded pursuant to the Agreement as to Compensation and Order Approving Settlement, approved and entered on September 14 2015.

. . .

The above award clearly incorporates the terms of the settlement agreement and awards income benefits based solely on the terms of the settlement agreement.

Because the settlement agreement approved by the ALJ and by extension the September 25, 2015, Opinion and Award are not in conformity with the provisions of KRS 342, pursuant to KRS 342.285(2) we vacate the September 25, 2015, Opinion and Award and remand the claim to the ALJ for entry of an order joining all the real parties in interest in this claim. The ALJ shall also set aside her September 14, 2015, Order approving the settlement agreement.

As previously noted, this claim was only asserted by the widow, Jeannie Sargent. The personal representative of the estate and Farley's children, as statutory recipients of income benefits, were never joined as parties in the claim. The estate and the children are real parties in interest in this action. At the time of Farley's death he had three minor children namely: Josh Sargent, born January 29, 1996; Alyssa Sargent, born July 17, 2002; and Sarah Sargent, born January 13, 2004. However, between the time of Farley's death and the time the parties reached the settlement agreement, Josh Sargent, the oldest child of Farley attained the age of eighteen. Further, we note the

record is silent as to whether the district court in the county in which the children resided approved the settlement of the minor's claims for the work-related death of their father. No one signed the agreement as guardian for the two infant children. Since Josh Sargent had attained the age of 18 and was of majority at the time the settlement agreement was entered, the district court was not required to approve the settlement of the funds due and payable to him. However, prior to any payment or execution of any settlement agreement, the district court should have approved the purported settlement of the minors' claims. Further, since Josh Sargent was of majority and the agreement terminates his entitlement to income benefits, he should have been joined as a party and signed any settlement agreement.

Therefore, the matter must be remanded to the ALJ for entry of an order joining the personal representative of the estate and Alyssa Sargent and Sarah Sargent, through their guardian, and Josh Sargent, individually, as he is an adult.[1] We note Jeannie signed as the "Administrator [sic] of the estate." However, we find no document in the file

[1] The September 25, 2015, Opinion and Award and the settlement agreement state Jeannie is the Administratrix of the estate.

indicating she was appointed Administratrix of the estate. That fact aside, Jeannie, as Administratrix of the estate, was never made a party to the action.

After entry of an order joining the real parties in interest identified herein and setting aside the September 14, 2015, Order approving the settlement agreement, the ALJ shall require the parties to submit a new settlement agreement to be executed by the widow, the personal representative of the estate, Alyssa Sargent and Sarah Sargent, through their guardian, and Josh Sargent. The settlement agreement shall only be approved by the ALJ upon approval of the settlement agreement on behalf of the minors by the appropriate district court.

There are three separate categories of recipients in this action: the widow, the children, and the estate. Each is entitled to separate benefits. We do not question the widow's right to file the claim. However, when the widow filed the claim she should have joined all the parties entitled to benefits pursuant to KRS 342.750. Further, we emphasize the fact Josh Sargent turned eighteen does not necessarily disqualify him from continuing to receive income benefits pursuant to KRS 342.730(1)(e). Pursuant to the ALJ's September 2015, decision, Josh Sargent's entitlement to enhanced benefits is terminated

when he became eighteen. KRS 342.730(1)(e) specifically notes if upon reaching age eighteen, Josh Sargent satisfies the test of being physically or mentally incapable of self-support, actually dependent, or enrolled in an educational institution, he continues to qualify as a recipient of income benefits. The ALJ shall be satisfied from the evidence that none of those factual scenarios exist before she approves a settlement agreement, signed by Josh Sargent, terminating his benefits on his eighteenth birthday.

Accordingly, the September 25, 2015, Opinion and Award and the October 27, 2015, Order ruling on the petition for reconsideration are **VACATED**. This claim is **REMANDED** to the ALJ with directions to join the personal representative of the estate, Alyssa Sargent and Sarah Sargent, through their guardian, and Josh Sargent, as parties. The ALJ shall set aside the September 14, 2015, Order approving the settlement agreement. The ALJ shall determine the income benefits to which Josh Sargent is entitled. The ALJ shall also direct the parties to tender a settlement agreement in conformity with the statute and in the case of the two minor children approved by the district court. Once a settlement agreement in accordance with our directive has been executed by the parties and

approved by the ALJ, the ALJ may re-enter an opinion and order deciding the beneficiaries' entitlement to enhanced benefits.

ALL CONCUR.

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