Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: December 23, 2014

CLAIM NOS. 201301487 & 201301486

ROBBIE HATFIELD PETITIONER

VS. **APPEAL FROM HON. JANE RICE WILLIAMS, ADMINISTRATIVE LAW JUDGE**

MCCOY-ELKHORN COAL CO., INC.
HON. JANE RICE WILLIAMS,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING

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

RECHTER, Member. Robbie Hatfield ("Hatfield") appeals from the July 14, 2014 Opinion, Award and Order and the August 25, 2014 Order on Petition for Reconsideration rendered by Hon. Jane Rice Williams, Administrative Law Judge ("ALJ"), awarding medical benefits for an occupational hearing loss, but finding KRS 342.7305 barred an award of income benefits.

The sole issue on appeal is the constitutionality of KRS 342.7305(2). Because we have no authority to decide constitutional matters, we must affirm.

Hatfield filed a Form 101 and a Form 103 on October 1, 2013 alleging an occupational hearing loss arising out of and in the course of his employment as a welder with James River Coal Company. The injury occurred when a piece of hot slag went into his ear, burning a hole in his eardrum. Hatfield also alleged repeated exposure to loud noise over the years. He was last exposed to the noise on July 2, 2012.[1]

Hatfield introduced medical records from Dr. William M. Parell who treated him for the perforation of his eardrum. Following Hatfield's recovery from surgery to repair the eardrum, Dr. Parell determined Hatfield had normal hearing in the right ear and mild to profound left sensorineural hearing loss. He did not offer an opinion concerning an impairment rating for the hearing loss.

Dr. Barbara Eisenmenger performed a university evaluation on December 10, 2013. Dr. Eisenmenger stated testing did not establish a pattern of hearing loss compatible with that caused by hazardous noise exposure in

the work place. She stated Hatfield's hearing loss is not related to repetitive exposure but is the result of a single incident or trauma. Dr. Eisenmenger assigned a 4% impairment rating pursuant to the American Medical Association, Guides to the Evaluation of Permanent Impairment, 5th Edition ("AMA Guides").

In the July 14, 2014 opinion, the ALJ found Hatfield entitled to medical benefits pursuant to KRS 342.020 for his hearing loss, but he had failed to meet the 8% impairment threshold contained in KRS 342.7305. Thus he did not qualify for income benefits. The ALJ noted she lacked subject matter jurisdiction to rule on the constitutionality of KRS 342.7305.

Hatfield filed a petition for reconsideration requesting additional findings as to whether he sustained a physical injury causing a harmful change in the human organism, and requesting that the ALJ articulate with particularity the basis for denial of income benefits for the physical injury pursuant to KRS 342.730(1). Hatfield requested an award for the physical injury based upon the 4% impairment rating. The ALJ reaffirmed her findings in the

[1] Hatfield later amended his claim to include a psychological claim but did not appeal the ALJ's determination he failed to prove a ratable permanent psychiatric condition.

August 25, 2014 order denying the petition for reconsideration.

On appeal, Hatfield argues the 8% threshold for income benefits pursuant to KRS 342.7305 is unconstitutional and violates the equal protection guarantees of both the United States Constitution and the Kentucky Constitution. Hatfield contends there is no rational basis for treating hearing loss claims differently than other injury claims.

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.

Hatfield does not challenge any other aspect of the ALJ's decision. The ALJ's findings of entitlement to medical benefits is supported by substantial evidence. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). The ALJ appropriately determined Hatfield sustained

occupational hearing loss warranting future medical benefits, including hearing aids if needed. Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979); Caudill v. Maloney's Discount Stores, 560 S.W.2d 15, 16 (Ky. 1977). Hatfield sustained an injury to his ear caused by the single traumatic injury to his eardrum. KRS 342.7305 applies to occupational hearing loss caused by a single incident of trauma or by repetitive trauma. Thus, a single physical trauma injury, in this case the hot slag burning the ear drum, is subject to the 8% threshold. The ALJ correctly applied the law as written to the facts of the case and determined no permanent income benefit could be awarded.

Accordingly, the July 14, 2014 Opinion, Award and Order and the August 25, 2014 Order on Petition for Reconsideration rendered by Hon. Jane Rice Williams, Administrative Law Judge, are hereby **AFFIRMED**.

ALL CONCUR.

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