

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: January 31, 2020

CLAIM NO. 201561007

ARAMINTA GILL

PETITIONER

VS. **APPEAL FROM HON. JOHN H. McCracken,
ADMINISTRATIVE LAW JUDGE**

MAR-CONE APPLIANCE PARTS CO. and
HON. JOHN H. McCracken,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION
AFFIRMING**

* * * * *

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

ALVEY, Chairman. Araminta Gill (“Gill”) appeals from the November 21, 2018 Opinion, Award, and Order rendered by Hon. John H. McCracken, Administrative Law Judge (“ALJ”) awarding her temporary total disability (“TTD”) benefits, permanent partial disability (“PPD”) benefits, and medical benefits. The ALJ determined Gill sustained left and right shoulder injuries caused by repetitive trauma while working for Mar-Cone Appliance Parts Co. (“Mar-Cone”). The date of injury

was determined as November 5, 2015. The ALJ determined Mar-Cone is entitled to credit for wages paid to Gill during a period she was awarded TTD benefits pursuant to KRS 342.730(7) amended effective July 14, 2018. Gill also appeals from the December 21, 2018 order on reconsideration.

On appeal, Gill argues the 2018 amendment to KRS 342.730(7) is unconstitutional. We determine the ALJ properly applied the revision of KRS 342.730(7) effective July 14, 2018 to Gill's claim, pursuant to the holding by the Kentucky Supreme Court in Holcim v. Swinford, 581 S.W.3d 37, 41-44 (Ky. 2019). We also note we cannot determine the constitutionality of a statute, and therefore affirm.

Gill filed a Form 101 on April 30, 2018, alleging "multiple upper extremity injuries" caused by repetitive trauma she sustained while working for Mar-Cone. The claim was assigned to the ALJ by order dated May 15, 2018. The parties submitted evidence supporting their respective positions. We will not outline the evidence since it is not pertinent to the issue raised on appeal.

The ALJ rendered an opinion on November 21, 2018 determining Gill sustained injuries to both her left and right shoulders. Relying upon the opinions from Dr. Gary T. Bray, an orthopedic surgeon, the ALJ found Gill has a 5% impairment rating attributable to her left shoulder injury, and 7% impairment attributable to her right shoulder injury, for a combined impairment rating of 12% pursuant to the Fifth Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment. The ALJ enhanced the award of PPD benefits by the three multiplier contained in KRS 342.730(1)(c)1. The PPD benefits

were awarded at the rate of \$116.61 for 425 weeks beginning November 5, 2015, interrupted by any period of TTD benefits. The ALJ declined to award vocational rehabilitation benefits. He also awarded medical benefits for Gill's injuries, including her left shoulder. The ALJ gave credit to Mar-Cone for overpayment of TTD benefits as to rate. He also found Gill was entitled to an additional period of TTD benefits from October 10, 2016 to January 16, 2017. The ALJ allowed Mar-Cone credit during the period TTD benefits were paid when Gill was also paid wages, pursuant to KRS 342.730(7) effective July 14, 2018. He also awarded 12% interest on unpaid benefits through June 28, 2017, and 6% thereafter. The ALJ also limited the award of income benefits pursuant to the provisions of KRS 342.730(4) effective July 14, 2018.

Gill filed a petition for reconsideration on December 3, 2018, arguing the ALJ erred in finding she was paid for forty hours of work per week from October 10, 2016 through January 17, 2017, and granting Mar-Cone credit for wages paid during that period. Gill argued she was paid for less than forty hours per week during that period. On December 21, 2018, the ALJ amended his decision to state Mar-Cone was only entitled to a credit for wages received by Gill, after taxes, during that period.

On appeal, Gill argues the ALJ erred in granting a credit to Mar-Cone for wages paid during the awarded period of TTD benefits pursuant to the recent amendment of KRS 342.730(7), effective July 14, 2018. Gill argues the credit provided in that statutory provision is unconstitutional.

KRS 342.730(7) amended by House Bill 2, effective July 14, 2018, mandates as follows:

Income benefits otherwise payable pursuant to this chapter for temporary total disability during the period the employee has returned to a light-duty or other alternative job position shall be offset by an amount equal to the employee's gross income minus applicable taxes during the period of light-duty work or work in an alternative job position.

While this statutory provision differs from that concerned in Holcim v. Swinford, 581 S.W.3d 37, 41-44 (Ky. 2019), House Bill 2 noted that this statutory provision is also retroactive. In Holcim v. Swinford, *supra*, the Kentucky Supreme Court determined the amended version of KRS 342.730(4) regarding the termination of benefits at age seventy has retroactive applicability. However, the Court declined to address the constitutionality of the amended version of KRS 342.730(4) since it had not been properly raised as an issue before the Court and the Attorney General had not been timely notified of a constitutional challenge. *Id.* at 44. Based upon that decision, we find the ALJ properly applied the amended version of KRS 342.730(7).

We note Gill has challenged the constitutionality of the revised version of KRS 342.730(7), effective July 14, 2018. This Board, as an administrative tribunal, cannot determine the constitutionality of a statute. Blue Diamond Coal Company v. Cornett, 300 Ky. 647, 189 S.W.2d 963 (1945); *See also* Vision Mining, Inc. v. Gardner, 364 S.W.3d 455 (Ky. 2011); Abel Verdon Const. v. Rivera, 348 S.W.3d 749, 752 (Ky. 2011). Because this Board has no authority or jurisdiction to reverse rulings of the Kentucky courts, we can render no determination on this issue, and we are compelled to affirm.

Accordingly, the November 21, 2018 Opinion, Award, and Order, and the December 21, 2018 Order on the Petition for Reconsideration rendered by Hon. John H. McCracken, Administrative Law Judge, are hereby **AFFIRMED**.

STIVERS, MEMBER, CONCURS.

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