

Commonwealth of Kentucky  
Workers' Compensation Board

OPINION ENTERED: January 22, 2020

CLAIM NO. 201793962

CITY OF HENDERSON

PETITIONER

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

THOMAS ROBARDS;  
AND HON. JOHN H. MCCRACKEN,  
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION  
VACATING IN PART  
AND REMANDING**

\* \* \* \* \*

BEFORE: ALVEY, Chairman, STIVERS and RECHTER<sup>1</sup>, Members.

**RECHTER, Member.** The City of Henderson (“Henderson”) appeals from the March 30, 2018 Opinion, Award and Order, and the June 11, 2019 Order rendered by Hon. John H. McCracken, Administrative Law Judge (“ALJ”), awarding

---

<sup>1</sup> Although Board Member Rechter’s term expired on January 4, 2020, she is permitted to serve until January 22, 2020 pursuant to KRS 342.213(7)(b), and will participate in decisions rendered by this Board through that date.

Thomas Robards temporary total disability benefits and permanent partial disability benefits (“PPD”) for 425 weeks. On appeal, Henderson argues the amended version of KRS 342.730(4) retroactively applies to limit the award to 208 weeks. Because the amended version of KRS 342.730(4) has retroactive application to all pending claims, we vacate and remand.

Robards, born December 14, 1948, was 68 years old at the time of a work-related accident which resulted in a low back injury. The ALJ awarded PPD benefits beginning February 13, 2017, and continuing for 425 weeks. Henderson filed a petition for reconsideration arguing the amended version of KRS 342.730(4) limits Robards’ benefits to 208 weeks. By Order dated June 11, 2019, the ALJ denied Henderson’s petition for reconsideration because the amended statute was not yet effective.

On appeal, Henderson argues the ALJ erred in awarding PPD benefits for a period of 425 weeks. Henderson notes the 425-week award of PPD benefits extends well past the four-year limitation provided in the amended version of KRS 342.730(4), which became effective July 14, 2018. Consistent with the retroactive application of the amended version of KRS 342.730(4), the award of PPD benefits for a period of 425 weeks should be reversed, and the ALJ should be directed to retroactively apply KRS 342.730(4) to limit the award of temporary and permanent disability income benefits to a period of four years, or 208 weeks.

House Bill 2, effective July 14, 2018, KRS 342.730(4) mandates as follows:

All income benefits payable pursuant to this chapter shall terminate as of the date upon which the employee

reaches the age of seventy (70), or four (4) years after the employee's injury or last exposure, whichever last occurs. In like manner all income benefits payable pursuant to this chapter to spouses and dependents shall terminate as of the date upon which the employee would have reached age seventy (70) or four (4) years after the employee's date of injury or date of last exposure, whichever last occurs.

In Holcim v. Swinford, 581 S.W.3d 37 (Ky. 2019), the Kentucky Supreme Court determined the amended version of KRS 342.730(4) regarding the termination of benefits at age seventy has retroactive applicability. Because the Kentucky Supreme Court has determined the newly enacted amendment applies retroactively, we vacate the ALJ's award of a 425 week period of PPD benefits.

Accordingly, the March 30, 2018 Opinion, Award and Order and the June 11, 2018 Order rendered by Hon. John H. McCracken, Administrative Law Judge, are hereby **VACATED** and this matter is **REMANDED** for entry of an amended award in conformity with KRS 342.730(4) as amended effective July 14, 2018.

ALL CONCUR.

**DISTRIBUTION:**

**COUNSEL FOR PETITIONER:**

HON. R. CHRISTION HUTSON  
300 BROADWAY  
PO BOX 995  
PADUCAH, KY 42002

**LMS**

**COUNSEL FOR RESPONDENT:**

HON. DANIEL CASLIN  
3201 ALVEY PARK DRIVE WEST  
OWENSBORO, KY 42303

**LMS**

**ADMINISTRATIVE LAW JUDGE:**

HON. JOHN H. McCracken  
MAYO-UNDERWOOD BLDG  
500 MERO STREET, 3<sup>RD</sup> FLOOR  
FRANKFORT, KY 40601

**LMS**