

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: February 28, 2020

CLAIM NO. 201689179

DEBRA SUE DARNELL

PETITIONER

VS.

APPEAL FROM HON. W. GREG HARVEY,
ADMINISTRATIVE LAW JUDGE

SAPUTO DAIRY and
HON. W. GREG HARVEY,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING

* * * * *

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

ALVEY, Chairman. Debra Sue Darnell (“Darnell”) appeals from the January 25, 2019 Opinion, Award, Order, and the February 14, 2019 order on her petition for reconsideration rendered by Hon. Greg Harvey, Administrative Law Judge (“ALJ”). The ALJ awarded permanent total disability (“PTD”) benefits and medical benefits for the SI joint injury Darnell sustained while working for Saputo Dairy (“Saputo”).

On appeal, Darnell argues the ALJ's retroactive application of the amended version of KRS 342.730(4) effective July 14, 2018 is unconstitutional. We find the ALJ's decision is in conformity with the holding by the Kentucky Supreme Court in Holcim v. Swinford, 581 S.W.3d 37 (Ky. 2019). We also note this Board lacks the authority to make determinations on constitutional issues. Therefore, we affirm.

Darnell filed a Form 101 on July 17, 2018, alleging she sustained multiple injuries when she fell from a step stool upon which she was standing at work. She alleged the stool broke, causing her to fall onto her left side. We will not discuss the evidence since it is not relevant to the issue raised on appeal.

A Benefit Review Conference was held on November 15, 2018. The issues identified included permanent income benefits pursuant to KRS 342.730, safety violation, permanent total disability, future medical benefits, prior active impairment, extent and duration, compensability of future medical benefits as to the lumbar spine, appropriate duration of any award, and whether Darnell retains the capacity to return to the type of work performed at the time of her injury.

The ALJ rendered his decision on January 25, 2019. He determined Darnell sustained a work-related SI joint injury on March 16, 2016 while working for Saputo. He awarded PTD benefits for the work-related injury. The ALJ awarded medical benefits for treatment of the SI joint only. The ALJ found Saputo was not liable for a safety violation pursuant to KRS 342.165(1). The ALJ also determined the version of KRS 342.730(4) effective July 14, 2018 is applicable to Darnell's claim, and her income benefits will terminate when she reaches seventy years of age.

Darnell filed a petition for reconsideration arguing the ALJ's decision contained two typographical errors regarding the amount of her weekly PTD benefits. She argued the correct amount should be reflected as \$569.85 per week. She also argued the ALJ erred in applying the version of KRS 342.730(4) effective July 14, 2018 to her claim. She additionally argued the ALJ erred in limiting her future medical benefits to her SI joint injury. She also argued the ALJ erred in refusing to assess a safety penalty against Saputo pursuant to KRS 342.165.

In his order issued February 14, 2019, the ALJ amended the award of weekly benefits to reflect the correct amount of \$569.85. He also noted he properly applied the version of KRS 342.730(4) effective July 14, 2018 to her claim. The ALJ found Darnell's arguments regarding the limitation of the award of medical benefits, and the refusal to assess a safety penalty pursuant to KRS 342.165(1) were merely re-arguments of the merits of the claim.

On appeal, Darnell argues the retroactive application of the version of KRS 342.730(4) effective July 14, 2018 is unconstitutional. We note Darnell properly placed the Kentucky Attorney General on notice of the constitutional challenge to this statute as required by KRS 418.075.

We additionally note that House Bill 2 became effective July 14, 2018.

Section 13 of that bill amended KRS 342.730(4) to provide 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 as seventy (70) or four (4) years after the

employee's date of injury or date of last exposure, whichever last occurs.

In accordance with the holding by the Kentucky Supreme Court in Holcim v. Swinford, supra, we affirm the ALJ's application of KRS 342.730(4) as amended in 2018. In that case, the Kentucky Supreme Court determined the amended version of KRS 342.730(4) regarding the termination of benefits at age seventy has retroactive applicability. We find Darnell's award is governed by the limitations set forth in the amended statute.

We additionally note that this Board, as an administrative tribunal, has no jurisdiction to determine the constitutionality of a statute. Blue Diamond Coal Company v. Cornett, 300 Ky. 647, 189 S.W.2d 963 (1945). Consequently, we are without authority to render a decision upon Darnell's argument regarding the constitutionality of the amended statute. Thus, we affirm.

Accordingly, the January 25, 2019 Opinion, Award, and Order, and the February 14, 2019 order denying Darnell's petition for reconsideration, rendered by Hon. Greg Harvey, Administrative Law Judge, are hereby **AFFIRMED**.

STIVERS, MEMBER, CONCURS.

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