

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: February 21, 2020

CLAIM NO. 200670297

DELMAR JESSIE

PETITIONER

VS. APPEAL FROM HON. JEFF V. LAYSON, III,
ADMINISTRATIVE LAW JUDGE

ROGER'S TRUCKING COMPANY and
HON. JEFF V. LAYSON, III,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING

* * * * *

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

ALVEY, Chairman. Delmar L. Jessie, Jr. ("Jessie") appeals from the Opinion and Order rendered September 30, 2019 by Hon. Jeff V. Layson, III, Administrative Law Judge ("ALJ"). The ALJ determined Jessie's weekly payments of permanent total disability benefits, paid by his employer, Roger's Trucking, Inc. ("Roger's"), at the rate of \$578.03 pursuant to the terms of the Form 110-I settlement agreement

approved September 13, 2019, terminate when he reaches age seventy. No petition for reconsideration was filed.

On appeal, Jessie argues the amended version of KRS 342.730(4) effective July 14, 2018 is not applicable to his case. Jessie also argues the statute is unconstitutional. We find the ALJ properly determined that changes to KRS 342.730(4) effective July 14, 2018 are applicable, in accordance with the holding by the Kentucky Supreme Court in Holcim v. Swinford, 581 S.W.3d 37 (Ky. 2019). Regarding Jessie's challenge to the constitutionality of the statute, we cannot rule on constitutional issues. Therefore, we affirm.

Jessie filed a Form 101 on March 9, 2018, alleging he sustained injuries to multiple body parts when he slipped and fell from a truck in Nashville, Tennessee on November 16, 2016. Roger's paid TTD benefits at the rate of \$578.03 until June 9, 2017. A settlement agreement was approved by the ALJ on September 13, 2019. The agreement reflects Jessie is a paraplegic as a result of his work-related fall. Dr. Jeffrey Fadel assessed a 75% impairment rating pursuant to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment. Roger's agreed to pay \$578.03 beginning June 10, 2017.

The agreement specifically states as follows:

Permanent total disability benefits at \$578.03 per week will be voluntarily paid from 6/10/2017 in accordance with the Kentucky Workers' Compensation Act and per final adjudication of this claim. The Plaintiff has requested that the ALJ issue an Opinion and Order as to the period of payment pursuant to Kentucky law to preserve this issue for appeal.

The agreement also reflects as follows:

The Plaintiff has preserved the issue of duration of benefits. A Notice of Constitutional Challenge was filed by the Plaintiff. The issue is whether the recent enacted version of KRS 342.730(4) has retroactive application to this claim. The parties submit the matter on the record as of the date the Form 110 is approved by the ALJ. Voluntary Briefs will be due within 14 days of the Form 110 approval.

The claim is settled between the parties except for the issue remaining to be decided by the ALJ and for possible appeal on the issue of duration of benefits.

Medical benefits shall remain open per KRS Chapter 342 for the work-related injury of 11/16/2006.

In the Opinion and Order issued September 30, 2019, the ALJ determined the version of KRS 342.730(4) effective July 14, 2018 is applicable to Jessie's claim. He determined Jessie's permanent total disability benefits will terminate when he reaches age seventy. The ALJ also determined that he does not have authority to determine constitutional issues.

Jessie appeals the ALJ's decision to this Board challenging the retroactive application of the version of KRS 342.730(4) effective July 14, 2018, and the constitutionality of that statute. Jessie properly notified the Kentucky Attorney General regarding his challenge to the constitutionality of the statute in accordance with KRS 418.075.

We initially note this Board, as an administrative tribunal, has no authority to make a determination on the constitutionality of a statute. Blue Diamond Coal Company v. Cornett, 300 Ky. 647, 189 S.W.2d 963 (1945). Therefore, on that issue, we affirm.

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 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 affirm the ALJ's decision.

Accordingly, the Opinion and Order rendered September 30, 2019 by Hon. Jeff V. Layson, III, Administrative Law Judge, is hereby **AFFIRMED**.

STIVERS, MEMBER, CONCURS.

DISTRIBUTION:

COUNSEL FOR PETITIONER:

LMS

HON MARK D KNIGHT
PO BOX 49
SOMERSET, KY 42502

COUNSEL FOR RESPONDENT:

LMS

HON CARL M BRASHEAR
PO BOX 24564
LEXINGTON, KY 40524

RESPONDENT:

USPS

HON DANIEL CAMERON
KENTUCKY ATTORNEY GENERAL
700 CAPITAL AVE, STE 118
FRANKFORT, KY 40601

ADMINISTRATIVE LAW JUDGE:

LMS

HON JEFF V LAYSON, III
MAYO-UNDERWOOD BLDG
500 MERO STREET, 3rd FLOOR
FRANKFORT, KY 40601