

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: January 19, 2018

CLAIM NO. 201600138

ICG EAST KY/ARCH COAL

PETITIONER

VS.

APPEAL FROM HON. R. ROLAND CASE,
ADMINISTRATIVE LAW JUDGE

JOHNNY SANDLIN;
KENTUCKY CWP FUND;
AND HON. R. ROLAND CASE,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING

* * * * *

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

RECHTER, Member. ICG East Ky/Arch Coal ("Arch") appeals from the September 11, 2017 Order on Reconsideration rendered by Hon. R. Roland Case, Administrative Law Judge ("ALJ") awarding interest on past due benefits at a rate of 12% prior

to June 29, 2017 and 6% thereafter. On appeal, Arch argues the 6% rate should apply to all past due benefits. We affirm.

In a July 28, 2017 Opinion, Award and Order, the ALJ awarded Johnny Sandlin ("Sandlin") a 50% disability as a result of coal workers' pneumoconiosis commencing June 1, 2011. The ALJ awarded interest at a rate of 6% for all past due benefits. Sandlin filed a petition for reconsideration arguing entitlement to interest at a rate of 12% for past due benefits accruing prior to June 29, 2017.

The ALJ sustained Sandlin's petition for reconsideration by Order dated September 11, 2017, indicating he was persuaded the claim is governed by Stovall v Couch, 658 S.W.2d 437 (Ky. App. 1983). Accordingly, the ALJ held Sandlin is entitled to interest at a rate of 12% on all due and unpaid installments of compensation through June 28, 2017 and at 6% thereafter.

On appeal, Arch argues the ALJ erred in awarding interest at the 12% rate for past due benefits accruing prior to June 29, 2017. Because the decision was rendered after the effective date of the amendment to KRS 342.040, Arch argues Sandlin could only receive interest at a rate of 6% for the entire period of past due benefits.

Prior to June 29, 2017, KRS 342.040 read, in relevant part, as follows:

All income benefits shall be payable on the regular payday after seven (7) days after the injury or disability resulting from an occupational disease, with interest at the rate of twelve percent (12%) per annum on each installment from the time it is due until paid, except that if the administrative law judge determines that a denial, . . .

Effective June 29, 2017, the Kentucky legislature amended KRS 342.040 to read, in relevant part, as follows:

All income benefits shall be payable on the regular payday of the employer, commencing with the first regular payday after seven (7) days after the injury or disability resulting from an occupational disease, with interest at the rate of six percent (6%) per annum on each installment from the time it is due until paid, . . .

In Campbell v. Young, 478 S.W.2d 712 (Ky. 1972), the former Court of Appeals, now Supreme Court, held that interest was payable on each installment from the time it was due until paid, regardless of the employer's lack of knowledge. In Sweasy v. Wal-Mart Stores, Inc., 295 S.W.3d 835, 839, 840 (Ky. 2009), the Kentucky Supreme Court concluded, "the compensable period for partial disability begins on the date that impairment and disability arise, without regard to the date of MMI, the worker's disability

rating, or the compensable period's duration." Thus, the compensable period began on the date of Sandlin's injury.

We have recently considered an identical issue in Limb Walker Tree Service v. Ovens (WCB No. 2015-78695, December 22, 2017), and Lake Cumberland Health Dep't v. Oliver (WCB No. 2012-71309, December 21, 2017). In both cases, we relied upon Stovall v. Couch, id., to conclude a change in the legal interest rate applies prospectively. As applied to this claim, Sandlin's entitlement to permanent partial disability benefits vested as of June 1, 2011. The date the ALJ's opinion was rendered is immaterial. Thus, from that date and through June 28, 2017, Sandlin is entitled to 12% interest on all past due benefits. Sandlin is entitled to 6% interest on income benefits accrued from and after June 29, 2017. We find no indication that the legislature desired the recent amendment to have retroactive effect. See KRS 446.080(3).

Accordingly, the September 11, 2017 Order on Reconsideration rendered by Hon. R. Roland Case, Administrative Law Judge, is hereby **AFFIRMED**.

ALL CONCUR.

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