

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: May 14, 2021

CLAIM NO. 201882691

JOANN CONN

PETITIONER

VS. APPEAL FROM HON. JONATHAN R. WEATHERBY,
ADMINISTRATIVE LAW JUDGE

INGRAM MICRO AND
HON. JONATHAN R. WEATHERBY,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING

* * * * *

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

BORDERS, Member. Joann Conn (“Conn”) appeals from the February 12, 2021 Opinion, Award, and Order rendered by Hon. Jonathan R. Weatherby, Administrative Law Judge (“ALJ”). The ALJ awarded temporary total disability benefits, medical benefits, and permanent partial disability (“PPD”) benefits, terminating when Conn reaches the age of seventy. Conn appeals, challenging the constitutionality of the recent amendment to KRS 342.730(4) and its application of

her award of PPD benefits. Because the Kentucky Supreme Court has determined the amended version of KRS 342.730(4), effective July 14, 2018, has retroactive applicability, and because this Board has no jurisdiction to determine the constitutionality of a statute, we affirm.

Conn filed her claim on March 24, 2020, alleging a right shoulder injury and development of compensatory left shoulder symptoms resulting from a March 31, 2018 fall. Conn was 65 years old on the date of injury.

Conn argues the 1994 version of KRS 342.740 applies to her claim. Because the Kentucky Supreme Court found the old age Social Security cutoff in the 1996 version unconstitutional in Parker v. Webster County Coal, LLC, 529 S.W.3d 759 (Ky. 2017), she argues she is entitled to 425 weeks of PPD benefits when that provision is severed. She argues the retroactive application of the amended statute to her claim violates the equal protection and contracts clauses of the United States and Kentucky Constitutions.

As this appeal only concerns the constitutionality of KRS 342.730(4), a recitation of the facts considered by the ALJ and his findings regarding the determinations set forth in his opinion are unnecessary.

KRS 342.730(4), as amended by House Bill 2 effective July 14, 2018, 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), effective July 14, 2018, regarding the termination of benefits at age seventy has retroactive applicability. Because the Kentucky Supreme Court has determined the amendment applies retroactively, we affirm the ALJ's award of PPD benefits subject to the limitations in KRS 342.730(4), effective July 14, 2018.

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 Conn's argument regarding the constitutionality of the amended statute. Thus, we affirm in this regard.

Accordingly, the February 12, 2021 Opinion, Award, and Order rendered by Hon. Jonathan R. Weatherby, Administrative Law Judge, is hereby **AFFIRMED**.

ALL CONCUR.

ALL CONCUR.

DISTRIBUTION:

COUNSEL FOR PETITIONER:

LMS

HON STEPHANIE N WOLFINBARGER
640 SOUTH FOURTH ST, STE 400
LOUISVILLE, KY 40202

COUNSEL FOR RESPONDENT:

LMS

HON RODNEY MAYER
600 E MAIN ST, STE 100
LOUISVILLE, KY 40202

ADMINISTRATIVE LAW JUDGE:

LMS

HON JONATHAN R WEATHERBY
MAYO-UNDERWOOD BLDG
500 MERO ST, 3rd FLOOR
FRANKFORT, KY 40601