

Commonwealth of Kentucky  
Workers' Compensation Board

OPINION ENTERED: March 27, 2020

CLAIM NO. 201690453

JOHNNY RIGGS

PETITIONER

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

UNITED PRODUCERS, INC.  
and HON. JONATHAN R. WEATHERBY,  
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION  
AFFIRMING

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

**STIVERS, Member.** Johnny Riggs (“Riggs”) seeks review of the November 25, 2019, Opinion and Award of Hon. Jonathan R. Weatherby, Administrative Law Judge (“ALJ”), finding him permanently totally disabled due to a work injury sustained while in the employ of United Producers, Inc. (“United Producers”). The ALJ found Riggs sustained a February 29, 2016, work injury to his hips and low back which permanently totally disabled him and awarded permanent total disability (“PTD”)

benefits beginning February 29, 2016, and “continuing for a period of four years from the date thereof.” No petition for reconsideration was filed.

### **BACKGROUND**

Riggs’ Form 101 alleges he injured his back and hips when he was struck by cattle while working for United Producers. At the time of his injury, Riggs was 80 years old.

The July 9, 2019, Benefit Review Conference Order and Memorandum reflects the parties stipulated Riggs sustained a February 29, 2016, work-related injury and provided due and timely notice. The parties also stipulated Riggs’ average weekly wage and income and medical benefits were paid. The contested issues were benefits per KRS 342.730; work-relatedness/causation; unpaid or contested medical expenses; and exclusion for pre-existing disability/impairment. Under the heading “Other” is listed “duration of benefits.”

In his decision, relying upon Riggs’ testimony and Dr. Ellen Ballard’s opinions, the ALJ found “[Riggs] is no longer capable of providing services to another in return for remuneration on a regular and sustained basis in a competitive economy.” Consequently, Riggs is permanently totally disabled. Regarding the duration of benefits, the ALJ found as follows: “The ALJ is without the authority to rule in any way inconsistent with the statute but hereby preserves the issue for appellate review.”

On appeal, Riggs argues retroactive application of the newly enacted KRS 342.730(4) is unconstitutional. Riggs notes that at the time of his injury the 1996 version of KRS 342.730(4) was in effect. However, the Kentucky Supreme Court subsequently found that version to be unconstitutional. Riggs contends the 1996

version of KRS 342.730(4) does not state the remainder of the statute is deemed null and void if one sub-section of the statute is deemed unconstitutional. Thus, the remainder of the statute is capable of standing alone and capable of being executed without subsection (4). Pursuant to the 1996 version of KRS 342.730, Riggs asserts he would receive an award of PTD benefits continuing during his disability. However, during the pendency of his claim, the Kentucky General Assembly passed an amended version of KRS 342.730(4) which became effective on July 14, 2018. Riggs contends the 2018 version of KRS 342.730(4) disparately treats Kentucky's injured workers without reasonable justification and violates the equal protection clause of the Constitution. According to Riggs, applying legislative changes retroactively to a contract in derogation of a party's rights violates the contracts clause of the United States and Kentucky Constitutions. As such, the retroactive application of the statute limiting the duration of his PTD benefits violates the equal protection clause, and the contracts clause of the Kentucky Constitution. Riggs seeks reversal of the ALJ's decision concerning the duration of his income benefits.

### **ANALYSIS**

The ALJ correctly determined KRS 342.730(4), as amended, which became effective on July 14, 2018, applies to Riggs' award. Pursuant to House Bill 2, signed by the Governor on March 30, 2018, and 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, 44 (Ky. 2019), the Supreme Court determined the amended version of KRS 342.730(4) has retroactive applicability declaring as follows:

Since the newly-enacted amendment applies retroactively, it must be used to determine the duration of Swinford's benefits. We remand this matter to the ALJ to apply the time limits set out in the 2018 amendment to KRS 342.730(4).

Whether the amended version of KRS 342.730(4) has retroactive effect has been decided by our state's highest court. The record in this litigation reveals Riggs' date of birth is August 15, 1935. Accordingly, the ALJ correctly limited Riggs' award of PTD benefits by KRS 342.730(4) as amended in 2018.

Riggs contends retroactive applicability of the amended version of KRS 342.730(4) violates both the United States and Kentucky Constitutions. The Board, as an administrative tribunal, has no jurisdiction to rule on the constitutionality of a statute. Blue Diamond Coal Company v. Cornett, 300 Ky. 647, 189 S.W.2d 963 (1945).<sup>1</sup> Consequently, we are without authority to render a decision based upon Riggs' sole argument on appeal. Thus, we must affirm on this issue.

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<sup>1</sup> We question whether the constitutionality issue was properly preserved. Although the parties listed duration of benefits as a contested issue, they did not state whether the issue was predicated upon a constitutional argument. We also note KRS 418.075 requires that notice be provided to the Attorney General in any proceeding which involves the constitutionality of a statute. After reviewing the record, we can find no indication notice was ever given to the Attorney General by Riggs.

Accordingly, the November 25, 2019, Opinion and Award of the Administrative Law Judge is **AFFIRMED**.

ALL CONCUR.

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