

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: September 28, 2018

CLAIM NO. 200791750

KAREN WOODALL (SPOUSE) OF
STEVEN R. SPILLMAN, DECEASED,
AND THE ESTATE OF STEVEN SPILLMAN,
KAREN WOODALL AND JENNIFER NELSON
CO-ADMINISTRATORS

PETITIONERS

VS. **APPEAL FROM HON. STEPHANIE L. KINNEY,
ADMINISTRATIVE LAW JUDGE**

CALLOWAY COUNTY SHERIFF'S DEPT. AND
HON. STEPHANIE L. KINNEY,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION
AFFIRMING IN PART,
REVERSING IN PART & REMANDING**

* * * * *

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

ALVEY, Chairman. Steven Spillman (“Spillman”), Deceased, by and through his personal representatives Karen Woodall and Jennifer Nelson (“Estate”), and Karen Woodall (“Woodall”), individually, appeal from the Opinion and Order rendered

June 11, 2018 by Hon. Stephanie L. Kinney, Administrative Law Judge (“ALJ”), dismissing their claims against the Calloway County Sheriff’s Department (“Calloway County”). Woodall and the Estate also appeal from the June 29, 2018 order denying their petitions for reconsideration.

On appeal, Woodall and the Estate argue the ALJ erred in finding the four-year requirement set forth in KRS 342.750(6) is applicable to benefits outlined in KRS 342.750(1)(a). Woodall and the Estate also argue the four-year limitation on lump sum death benefits contained in KRS 342.750(6) is unconstitutional. We affirm the ALJ’s determination that Woodall and the Estate are barred from recovering the lump sum death benefit contained in KRS 342.750(6) since Spillman died more than four years after the date of his work injury. However, we reverse the ALJ’s determination that the four-year cap contained in KRS 342.750(6) is applicable to the benefits enumerated in KRS 342.750(1)(a), and remand for the ALJ to determine what benefits, if any, to which Woodall may be entitled. This Board lacks the jurisdiction to rule on the constitutional issues raised by Woodall and the Estate. Therefore, on this issue, we must affirm.

Woodall and Spillman were married on October 4, 2003, until his death on January 17, 2017. Spillman sustained multiple injuries in a motor vehicle accident (“MVA”) on March 4, 2007 in the course and scope of his duties as a deputy for Calloway County. He filed a Form 101 on February 13, 2009 alleging injuries to his low back, shoulder, left side of the neck and spleen. The claim was assigned to Hon. Chris Davis, Administrative Law Judge (“ALJ Davis”). ALJ Davis rendered a decision on January 5, 2010, finding Spillman sustained work-

related injuries to his low back and left shoulder. The ALJ awarded permanent partial disability (“PPD”) benefits based upon a 22% impairment rating pursuant to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment (“AMA Guides”), enhanced by the three-multiplier contained in KRS 342.730(1)(c)1. ALJ Davis’ decision was not appealed.

Spillman filed a motion to reopen his claim on January 8, 2013, alleging his condition had worsened. The claim was reopened and assigned to Hon. R. Scott Borders, Administrative Law Judge (“ALJ Borders”). The claim was ultimately settled. ALJ Borders approved the Form 110-I settlement agreement on October 23, 2013. The settlement agreement acknowledged Spillman’s weekly benefits were increased from \$269.07 per week to \$350.96, in accordance with a 30% impairment rating assessed pursuant to the AMA Guides, with payments ending on June 16, 2016.

In 2016, Spillman experienced increasing problems with his low back, necessitating surgery by Dr. Rex Arendall. The surgery was performed on January 11, 2017. Spillman subsequently developed shortness of breath, and it was determined he had a massive pulmonary embolus. He died on January 17, 2017, due to complications from this condition, as noted by both Dr. Arendall and Dr. George Nichols, both of whom related the death to complications from the 2007 MVA.

On September 28, 2017, Woodall filed a Form 101, in her own name, asserting her claim for benefits based upon Spillman’s death. Woodall and Jennifer Nelson (“Nelson”), Co-Administratrixes of Spillman’s Estate, also filed a motion to

reopen his claim to obtain benefits for Woodall as the surviving spouse, and for lump sum death benefits payable to the Estate. On October 3, 2017, Woodall and Nelson filed a Form 11 Request to Substitute Party and Continue Benefits. Hon. Douglas W. Gott, Chief Administrative Law Judge (“CALJ”) entered an order on October 11, 2017 providing Calloway County twenty days to show cause why benefits should not be continued to Woodall. Calloway County responded that there were no remaining benefits to be continued since Spillman’s award of PPD benefits ended on June 16, 2016. The Estate countered that its motion to reopen was timely filed within four years of the order approving the Form 110-I settlement agreement on October 3, 2013, and that the Estate should be substituted for the plaintiff. The CALJ entered an order on November 28, 2017 stating Woodall was substituted as the party plaintiff by order dated October 11, 2017, and determined there was a *prima facie* case for reopening. The CALJ ordered the claim assigned to an ALJ for determination.

The claim was assigned to the ALJ by scheduling order from the Department of Workers’ Claims dated December 14, 2017. A benefit review conference (“BRC”) was held on April 10, 2018. The BRC Order and Memorandum reflects the contested issues included benefits to the surviving spouse, lump sum benefit to the Estate, constitutionality of the four-year cap on death benefits to the Estate, constitutionality and retroactive effect of House Bill 2, whether this is a new claim or a reopening, sanctions for unreasonable proceedings, entitlement to benefits pursuant to KRS 342.730(3) and KRS 342.750, and the right to reopen. The parties

waived the right to a hearing, and the ALJ provided an additional limited time to introduce evidence, and set forth a briefing schedule.

The ALJ rendered her decision dismissing the claim on June 11, 2018.

The ALJ determined as follows:

1. Whether this is a new claim or a reopening, and constitutionality and retroactive effect of House Bill 2.

The first issue this ALJ must address is procedural in nature. The ALJ must address the appropriate method for Plaintiff and Plaintiff's estate to seek benefits. Plaintiff filed a motion to reopen, and the surviving spouse filed an application in her own right. This ALJ notes this issue was addressed in Family Dollar v. Baytos, 525 S.W.3d 65 (Ky. 2017). Baytos held filing a motion to reopen claimant's workers' compensation claim was not the appropriate vehicle for claimant's widow to assert her own claim for death benefits under the Workers' Compensation Act; given that widow was not a party to claimant's claim and claimant waived entitlement to any additional benefits, widow should have filed a claim for benefits in her own right. Ky. Rev. Stat. Ann. § 342.125. Thus, it is clear, under Batos,[sic] a separate Form 101 should be filed by Plaintiff's widow to assert a right to benefits. This finding renders the issues of constitutionality of 4 year cap on death benefits and constitutionality and retroactive effect of House Bill 2 moot.

2. Benefits to surviving spouse, lump sum benefits to the estate, entitlement to benefits under KRS 342.730 (3) and 342.750, and constitutionality of 4 year cap on death benefits to the estate.

Plaintiff has moved for lump sum death benefits. However, under KRS 342.750, benefits are only appropriate if Plaintiff's death occurs within 4 years of the work related injury. Plaintiff's injury occurred on March 4, 2007 and Plaintiff died on January 17, 2017, well outside the four year period. Thus, Plaintiff, nor his widow, are entitled to benefits under KRS 342.750.

This ALJ notes Plaintiff's argument that KRS 342.750 is unconstitutional. However, this ALJ does not have the authority to address the constitutionality of a statute. This ALJ defers to the Kentucky Court of Appeals and Supreme Court on this issue.

3. Compensability of unpaid or contested medical expenses.

The compensability of unpaid or contested medical expenses was preserved as an issue. However, there seems to be little disagreement. The Defendant approved and already paid for Plaintiff's January 2017 medical expenses for Plaintiff's surgery and hospitalization. Under KRS 342.020(1), the Employer shall pay for the cure and relief from the effects of a work-related injury as may reasonably be required at the time of injury and thereafter during disability. The medical proof establishes the surgery Plaintiff underwent on January 11, 2017 was reasonable and necessary treatment for Plaintiff's injury. Drs. Nichols and Arendall have both opined Plaintiff's death arose as a result of Plaintiff's work related treatment. Thus, the complications, which required treatment, following the surgery for Plaintiff's work-related injury are compensable under Elizabethtown Sportswear v. Stice, 720 S.W.2d 732, (Ky. App. 1986).

4. Sanctions for unreasonable proceedings.

Plaintiff argues sanctions are appropriate in this claim for the Defendant's unwillingness to attempt to resolve the claim through settlement. Additionally, Plaintiff argues the Defendant has stalled this claim while waiting for House Bill 2 to take effect. As set forth above, House Bill 2 does not apply to this claim. Moreover, the Defendant has not delayed the adjudication of this claim in any manner. The Defendant completed proof timely and never requested an extension. Furthermore, the Defendant was agreeable to submit this claim for a decision at the Benefit Review Conference. The Defendant was within in[sic] right to deny Plaintiff's claim for benefits under KRS 342.750 as Plaintiff's death occurred over 9 years following the work injury, and well outside the four year period. Thus,

this ALJ finds sanctions are not appropriate in this claim.

Woodall and the Estate filed a Petition for Reconsideration, arguing the ALJ correctly stated that KRS 342.750(6) limits the lump sum benefits to estates to deaths occurring within four years from the date of injury. However, they argued the ALJ erred in applying this four-year limitation to benefits to which Woodall may be entitled pursuant to KRS 342.750(1)(a). They additionally noted they had challenged the four-year limitation for the lump sum benefit on constitutional grounds. They cited to specific language contained in Family Dollar v. Baytos, 525 S.W.3d 65, 68 FN 2 (Ky. 2017) where the Supreme Court stated as follows in a footnote:

The Court of Appeals stated that surviving spouses shall receive death benefits if the death occurs within four years of the injury. In this sense, the panel misstated the text. The portion of this provision relating to income benefits has no such limitation – in fact, there is no temporal limitation whatsoever within KRS 342.750 for the recovery of death benefits. The four-year limitation the panel cites only applies to KRS 342.750(6), a separate provision within this statute relating to an estate's entitlement to a \$50,000 lump-sum payment to offset costs of burial and transportation of the body.

Woodall and the Estate also requested the ALJ to re-visit her determination regarding sanctions against Calloway County.

The ALJ entered an order on June 29, 2018 denying the Petition for Reconsideration, specifically finding as follows:

This matter comes before the Administrative Law Judge (“ALJ”) upon Plaintiff's petition for reconsideration. Plaintiff's arguments are primarily centered upon his interpretation of KRS 342.750 and his argument

addressing the constitutionality of that statute. These are the same arguments presented in Plaintiff's brief, which have already been considered. Thus, this is a re-argument of the merits, and this portion of Plaintiff's petition is over-ruled.

Secondly, Plaintiff requests this ALJ to reconsider sanctions. This ALJ finds this is also a re-argument of the merits. Thus, this portion of Plaintiff's petition is also over-ruled.

After reviewing this matter and the ALJ being in all ways sufficiently advised, it is hereby ordered as follows:

Plaintiff's petition for reconsideration is over-ruled.

1. This is a final and appealable order.

On appeal, Woodall and the Estate present two arguments. First, they allege the ALJ erred in applying the four-year restriction contained in KRS 342.750(6) to benefits, which may be available to Woodall pursuant to KRS 342.750(1)(a). That statutory provision states as follows:

If the injury causes death, income benefits shall be payable in the amount and to or for the benefit of the persons following, subject to the maximum limits specified in subsections (3) and (4) of this section:

- (1) (a) If there is a widow or widower and no children of the deceased, to such widow or widower 50 percent of the average weekly wage of the deceased, during widowhood or widowerhood.

KRS 342.750(6) states as follows:

- (6) In addition to other benefits as provided by this chapter, if death occurs within four (4) years of the date of injury as a direct result of a work-related injury, a lump-sum payment of fifty thousand dollars (\$50,000) shall be made to**

the deceased's estate, from which the cost of burial and cost of transportation of the body to the employee's place of residence shall be paid. Annually, the commissioner shall compute, in accordance with KRS 342.740, the increase or decrease in the state average weekly wage, and consistent therewith, shall adjust the amount of the lump sum payment due under this subsection for injuries occurring in the succeeding year. (Emphasis added).

We agree with Woodall and the Estate that the ALJ erred in applying the four-year limitation on benefits that may be available to Woodall pursuant to KRS 342.750(1)(a). The four-year limitation is contained in a separate statutory provision, and clearly applies only to the lump sum benefit payable to the estate, and not to weekly benefits, which may be available to Woodall. We note Woodall complied with the procedure set forth in Family Dollar v. Baytos, supra, by filing a claim in her own name within two years of the date of Spillman's death. Therefore, statutory changes to KRS 342.125 effective July 14, 2018 regarding limitations on reopening are not applicable.

We additionally note Calloway County's argument that the payout of Spillman's award pursuant to KRS 342.730 had expired; therefore, there were no benefits to continue. We also acknowledge its policy argument regarding the statutory intent; however, the Kentucky Supreme Court decreed in Baytos that KRS 342.750(1)(a) establishes a separate right for the spouse. Because the ALJ erred in determining the four-year limitation applied to KRS 342.750(1)(a), we are compelled to reverse, and remand for a determination of whether Woodall is eligible for an

award of benefits pursuant to that statutory provision, and if so, the amount. We direct no particular result.

Regarding the ALJ's determination of the four-year limitation set forth in KRS 342.750(6), we must affirm. The statute clearly sets forth that any claim for this benefit accrues only if an employee dies within four years of the date of his work injury. Spillman did not die until over nine years after the date of his injury. Therefore, under the plain meaning of the statute, we find the ALJ did not err in holding the claim for the lump sum benefit payable to the Estate is barred.

We note Woodall and the Estate have raised the issue of the constitutionality of the four-year limitation contained in KRS 342.750(6). Because we lack the jurisdiction to decide the constitutionality of the statute in question, we must affirm the ALJ's determination. Blue Diamond Coal Company v. Cornett, 300 Ky. 647, 189 S.W.2d 963 (1945).

Accordingly, the June 11, 2018 decision and the June 28, 2018 order on petition for reconsideration issued by Hon. Stephanie L. Kinney, Administrative Law Judge, are hereby **AFFIRMED IN PART, REVERSED IN PART**, and **REMANDED** for a determination regarding Woodall's entitlement to benefits pursuant to KRS 342.750(1)(a).

STIVERS, MEMBER, CONCURS.

RECHTER, MEMBER, CONCURS IN RESULT ONLY.

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