

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: February 7, 2020

CLAIM NO. 201702201

LONE MOUNTAIN PROCESSING

PETITIONER

VS.

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

JEFFERY MULLINS and
HON. R. ROLAND CASE,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING IN PART,
VACATING IN PART & REMANDING

* * * * *

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

ALVEY, Chairman. Lone Mountain Processing (“Lone Mountain”) appeals from the Opinion, Award, and Order rendered June 18, 2018 by Hon. R. Roland Case, Administrative Law Judge (“ALJ”). The ALJ, relying upon the March 8, 2018 report from Dr. Sanjay Chavda, found Jeffrey Mullins (“Mullins”) has Category 3/3 “A” coal workers’ pneumoconiosis (“CWP). Based upon this determination, the

ALJ found Mullins is permanently totally disabled. He awarded benefits accordingly with application of the tier-down provisions contained in the 1994 version of KRS 342.730(4). The ALJ also entered orders on petitions for reconsideration filed by Lone Mountain on June 26, 2018 and June 29, 2018.

On appeal, Lone Mountain argues the tier-down provision contained in the 1994 version of KRS 342.730(4) is inappropriate. It argues the changes to KRS 342.730(4), effective July 14, 2018, are applicable to Mullins' award, and his benefits should terminate when he reaches age seventy. In accordance with the holding by the Kentucky Supreme Court in Holcim v. Swinford, 581 S.W.3d 37 (Ky. 2019), we vacate the ALJ's determination regarding the application of the tier-down provisions of KRS 342.730(4), and remand for a determination in accordance with the amended version of that statute effective July 14, 2018.

Mullins filed a Form 102-CWP on December 28, 2017, asserting he had contracted CWP from working in excess of 39 years as a coal miner. He alleged his last injurious exposure occurred on March 8, 2017, while working for Lone Mountain. In support of his claim, Mullins filed Dr. Glen Baker's July 28, 2017 x-ray report. Dr. Baker stated he had reviewed the x-ray taken on that date, and found it was a quality 1 film. He found Mullins had a q/q opacities in all six lung zones, with a 2/1 profusion. Dr. Chavda's March 8, 2018 report noted an x-ray taken that date was a film quality 1. He noted p/t opacities in all six lung zones, with a 3/3 profusion. He also noted Mullins had breathing difficulties.

In the Opinion, Award, and Order issued June 18, 2018, the ALJ determined Mullins is permanently totally disabled due to CWP, based upon Dr.

Chavda's report. The ALJ noted the holding in Parker v. Webster County Coal, LLC, 528 S.W.3d 759 (Ky. 2017), and found the tier-down provision contained in the 1994 version of KRS 342.730(4) is applicable.

Mullins filed two petitions for reconsideration. In the first one, Lone Mountain argued the version of KRS 342.730(4), modified by House Bill 2, and which would be effective July 14, 2018, applied, and the ALJ erred in applying the 1994 version of that statute. In the second petition, Lone Mountain argued the ALJ should find that half of the liability for the award should be assessed against the Coal Workers' Pneumoconiosis Fund. The ALJ denied both petitions in orders issued June 26, 2018 and June 29, 2018.

Lone Mountain's sole issue on appeal is that the claim should be remanded, in part, for application of the 2018 changes to KRS 342.730(4). We note House Bill 2, 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, supra, 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 this amendment applies retroactively, we vacate the ALJ's

decision regarding the applicability of the 1994 version of KRS 342.730(4), and remand for an amended award of benefits pursuant to KRS 342.730(4) effective July 14, 2018.

Accordingly, the June 18, 2018 Opinion, Award, and Order, and the June 26, 2018 and June 29, 2018 Orders on Petitions for Reconsideration issued by Hon. R. Roland Case, Administrative Law Judge, are hereby **AFFIRMED IN PART and VACATED IN PART**. This claim is **REMANDED** for an amended award applying the version of KRS 342.730(4), effective July 14, 2018, to the award of permanent total disability benefits.

STIVERS, MEMBER, CONCURS.

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