

Commonwealth of Kentucky  
Workers' Compensation Board

OPINION ENTERED: January 19, 2018

CLAIM NO. 201602268

MCDONALD'S

PETITIONER

VS.

APPEAL FROM HON. CHRISTINA D. HAJJAR,  
ADMINISTRATIVE LAW JUDGE

JANICE SMITH and  
HON. CHRISTINA D. HAJJAR,  
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION  
AFFIRMING

\* \* \* \* \*

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

**ALVEY, Chairman.** BBT, Inc. d/b/a McDonald's ("McDonald's") appeals from the August 18, 2017, Opinion, Award and Order rendered by Hon. Christina D. Hajjar, Administrative Law Judge ("ALJ"). The ALJ found Janice Smith ("Smith") sustained multiple injuries on September on December 29, 2015 when she tripped and fell on a mat while working as a hostess for

McDonald's. The ALJ awarded temporary total disability ("TTD") benefits, permanent partial disability ("PPD") benefits and medical benefits. McDonald's also appeals from the September 21, 2017 order denying, in part, its petition for reconsideration.

In the sole issue raised on appeal, McDonald's contends the ALJ erred in applying a 12% interest rate per annum on all due and unpaid installments of compensation through June 28, 2017. We determine the ALJ did not err in assessing a 12% per annum interest on all unpaid benefits through June 28, 2017, and 6% thereafter. Therefore, we affirm.

In her Form 101, Smith claimed she sustained injuries to her head, right shoulder, back, and arm, complicated by anxiety and depression when she tripped over a mat and fell striking her head and right side while working for McDonald's. Because the occurrence of an injury, entitlement to TTD benefits, PPD benefits and medical benefits are not at issue, we will not summarize or discuss the evidence.

A Benefit Review Conference ("BRC") was held on June 7, 2017. The BRC Order and Memorandum reflects the issues preserved for determination by the ALJ included whether Smith retained the capacity to return to the type of

work performed at time of the injury, benefits per KRS 342.730, notice, work-relatedness/causation, unpaid or contested medical expenses, injury as defined by the Act, credit for TTD, exclusion for pre-existing disability/impairment, and TTD.

The ALJ rendered an Opinion, Order and Award on August 18, 2017, finding Smith sustained temporary injuries to her right knee, forehead and back when she slipped and fell at work. The ALJ dismissed Smith's claim for neck and arm injuries. The ALJ found Smith sustained a work-related right shoulder injury, which required surgery, and sustained a worsening of anxiety and depression. The ALJ awarded TTD benefits at the rate of \$160.34 per week from April 4, 2016 through March 13, 2017. The ALJ then awarded PPD benefits at the rate of \$20.84 per week based upon a 13% impairment rating, limited. The ALJ ordered PPD benefits would terminate pursuant to KRS 342.730(4). The ALJ also awarded medical benefits pursuant to KRS 342.020.

Smith filed a petition for reconsideration arguing the ALJ erred in referencing KRS 342.730(4) in light of the decision in Parker v. Webster County Coal, LLC, 2011-SC-000526 (Kentucky Supreme Court April 27, 2017). McDonald's filed a petition for reconsideration arguing the ALJ erred in awarding 12% in all past due benefits through June 28, 2017,

and 6% thereafter. The petitions were denied by order dated September 21, 2017.

In the sole issue before this Board on appeal, McDonald's argues the award of 12% interest on unpaid benefits through June 28, 2017, and 6% thereafter is inappropriate. McDonald's acknowledged the decision in Stovall v. Couch, 658 S.W.2d 437 (Ky. 1983). In its brief, McDonald's references House Bill 223, Section 5, which it asserts contains "non-codified language", providing direction to the parties. It also attached a copy of the bill to its brief. McDonald's argues the legislature clearly provided its intent that the 6% interest rate is retroactive in effect based upon its "non-codified language". We disagree and affirm.

The applicable statute is KRS 342.040. Prior to June 29, 2017, that provision of the statute 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 twelve percent (12%) per annum on each installment from the time it is due until paid, . . .

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 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, except that if the administrative law judge determines that a denial, . . .

In Stovall v. Couch, supra, the Court of Appeals resolved the very issue raised by McDonald's on appeal. Couch was found totally occupationally disabled due to coal workers' pneumoconiosis ("CWP"). The issue on appeal was whether the Board erred in awarding interest at the rate of 12% on all past due benefits. On the date of last injurious exposure to CWP, the statute allowed 6% interest on unpaid benefits. However, the statute was subsequently amended effective July 15, 1982, increasing the interest rate to 12% per annum on each installment from the time it is due until paid. In determining the employer owed 6% interest on all past due installments through July 14, 1982, and 12% on all unpaid installments thereafter, the Court of Appeals concluded as follows:

On this appeal, appellants contend that KRS 342.040, governing the rate of interest on past due installments, was misapplied. On the date of last injurious exposure, that statute allowed 6% interest on such benefits. However, the provision was amended, effective July 15, 1982, increasing the rate of interest to 12% per annum on each installment *from*

*the time it is due* until paid. To uphold the Board's award would amount to retroactive application of the amendment, appellants contend.

As this particular application of KRS 342.040 has yet to be the topic of an appellate decision, both sides in this controversy look for analogy to the case of *Ridge v. Ridge*, Ky., 572 S.W.2d 859 (1978). *Ridge* dealt with the application of an amendment to the statute governing the legal rate of interest on judgments. The Kentucky Supreme Court decided:

... to adopt the position that the rate of interest on judgments is a statutory rather than a contractual matter. We therefore hold that the increase of the legal interest rate applies prospectively to prior unsatisfied judgments, the new rate beginning with the effective date of the amendment. *Id.* at 861.

Appellants assert that, employing the logic of *Ridge*, the 12% rate of interest should begin on the effective date of the statutory amendment, July 15, 1982, and that prior to that date, interest should be 6% as per the old statute. Appellee Couch looks to the language in *Ridge*, namely that the new rate of interest "applies prospectively to prior unsatisfied judgments," thus concluding that the rate of interest is controlled by the date of judgment and not the date of accrual of the cause of action, and that the 12% rate in effect upon the date of judgment is applicable.

In *Campbell v. Young*, Ky., 478 S.W.2d 712, 713 (1972), the then Court of Appeals discussed the question of when interest was to begin accruing on unpaid

compensation benefits. That court held that interest was due from the date *the claim for compensation was filed*. In the instant case, when Couch filed his claim, the interest rate in effect was 6% per annum. In our opinion, the plain wording of KRS 342.040 dictates that appellants may only be assessed interest on unpaid benefits at 6% prior to July 15, 1982, and at 12% thereafter. Consequently, the Board's award to the contrary and the lower court's affirmation thereof was in error.

Id. at 437-438.

The same logic applies here. Smith's entitlement to PPD benefits vested at the time of her injury. Therefore, as of the date of injury and up through June 28, 2017, Smith is entitled to 12% interest on all past due benefits. Smith is entitled to 6% interest on income benefits accrued from and after June 29, 2017.

In Hamilton v. Desparado Fuels, Inc., 868 S.W.2d 95, 97 (Ky. 1993), the Supreme Court instructed:

Accordingly, we believe that what constitutes an authorized attorney's fee for prosecuting a claim for those particular benefits also should be determined by the law in effect on the date of the injury. A contract that provides otherwise is void. KRS 342.320(2).

KRS 446.080(1) provides that statutes are to be liberally construed in order to promote their objectives and the legislative intent, and KRS 446.080(3) provides that no statute is to be applied retroactively absent an express

legislative directive. In *Peach v. 21 Brands Distillery*, Ky. App., 580 S.W.2d 235 (1979), the court emphasized that the rule against the retroactive application of statutes should be strictly construed. Particularly where a statute creates new rights or duties, it should be presumed that the legislature intended for the statute's application to be prospective only. The 1990 amendment to KRS 342.320(1) exposes injured workers to liability for substantially greater attorney's fees in relation to the size of their awards than was authorized at the time the maximum amount of the award was fixed. We find no indication, whatever, that the legislature intended for the 1990 amendment to KRS 342.320 to apply retrospectively to awards of attorney's fees relative to injuries which occurred before its effective date.

Contrary to McDonald's assertion, we find no indication, express or implied, that the legislature desired the recent amendment to have retroactive effect. Therefore, we affirm the ALJ's decision regarding the applicable interest rate.

Accordingly, the August 18, 2017, Opinion, Award, and Order, and the Order on reconsideration dated September 21, 2017 rendered by Hon. Christina D. Hajjar, Administrative Law Judge are hereby **AFFIRMED**.

ALL CONCUR.



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