

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: February 7, 2020

CLAIM NO. 201300160

PULASKI COUNTY BOARD OF EDUCATION

PETITIONER/
CROSS-RESPONDENT

VS.

APPEAL FROM HON. JOHN H. McCracken,
ADMINISTRATIVE LAW JUDGE

JEFF BYRD

and

HON. JOHN M. McCracken,
ADMINISTRATIVE LAW JUDGE

RESPONDENT/
CROSS-PETITIONER

RESPONDENT

OPINION
AFFIRMING IN PART,
REVERSING IN PART & REMANDING

* * * * *

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

ALVEY, Chairman. Pulaski County Board of Education ("Pulaski County") appeals, and Jeff Byrd ("Byrd") cross-appeals from the January 23, 2018 Opinion, Award, and Order rendered by Hon. John H. McCracken, Administrative Law Judge ("ALJ"). The ALJ found Byrd sustained a worsening of the August 10, 2011 and February 21, 2012 injuries he experienced while working for Pulaski County.

The claims for those injuries were originally settled by agreement approved on February 8, 2013. The ALJ determined that Byrd is now permanently totally disabled because of his work-related injuries. Pulaski County and Byrd also appeal from the ALJ's March 6, 2018 order on reconsideration.

On appeal, Pulaski County argues the ALJ erred in finding Byrd is permanently totally disabled due to a worsening of his work-related injuries. It also argues the limitations contained in KRS 342.730(4) effective July 14, 2018 are applicable to this claim. Byrd argues the tier-down provisions contained in the 1994 version of KRS 342.730(4) found by the ALJ, are not applicable. Byrd also argues the application of the 1994 version of KRS 342.730(4) is unconstitutional. Byrd also argues the retroactive application of the version of KRS 342.730(4) effective July 14, 2018 is unconstitutional. We affirm the ALJ's determination that Byrd sustained a worsening of his condition, and is now permanently totally disabled. We reverse the ALJ's determination regarding the application of the 1994 version of KRS 342.730(4), and remand for the application of the version of that statute effective July 14, 2018. We affirm the issues raised regarding the constitutionality of the statute because as an administrative tribunal, we have no authority to make such determinations.

Byrd alleged he sustained two work injuries. The first occurred on August 10, 2011 as he was attempting to replace a motor on a piece of equipment at a wastewater treatment plant. He alleged he reinjured his low back on February 21, 2012 when he slipped and fell on a snowy and muddy trail as he was attempting to obtain a water sample at work. No Form 101 was filed for either claim. The claims

were settled by agreement approved by Hon. J. Landon Overfield, Administrative Law Judge, on February 8, 2013. The claim was settled based upon a 6% impairment rating pursuant to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment (“AMA Guides”) assessed by Dr. Amr El-Naggar. Dr. El-Naggar stated that 70% of the impairment rating was attributable to the work injuries, and 30% was attributable to an October 2011 motor vehicle accident (“MVA”).

Byrd testified by deposition on May 26, 2017, and again at the hearing held November 27, 2017. Byrd was born on March 26, 1973, and is a resident of Somerset, Kentucky. He is a high school graduate. He later attended vocational school where he studied graphics communication. Upon completion of that course, he was a journeyman pressman. He has also held electrical and wastewater certifications.

Byrd’s work history includes working as a press operator for a printing company, as a machine operator at a factory, in building maintenance, and for Pulaski County. When he began working for Pulaski County, he assisted with maintenance of fourteen buildings and athletic fields. He later operated and maintained wastewater package plants for four schools. He apprenticed for that position, took a test administered by the EPA, and obtained a license.

On August 11, 2011, Byrd was replacing a motor at a wastewater treatment plant at Eubanks Elementary School. He estimated the motor weighed in excess of 70 pounds. When he attempted to put the motor in place, he experienced a pop and immediate low back pain. He called his supervisor and drove back to the

maintenance shop. He completed an accident report the following day, and sought treatment with his family physician, Dr. Brent Cherry, who prescribed pain medication and physical therapy.

On October 28, 2011, Byrd's vehicle was rear-ended as he was heading home from work. He was taken to Lake Cumberland Regional Hospital for treatment of neck pain and a headache. He testified that he primarily injured his neck in the MVA. He also treated with Dr. Chad Henderson, D.C., a chiropractor, for his neck pain. He first saw Dr. El-Naggar on February 13, 2012. His medications after the MVA were the same as he was taking prior to its occurrence.

On February 21, 2012, Byrd was collecting samples at a wastewater treatment plant. As he descended on a snowy trail down a steep bluff, his feet slipped from under him, and he fell onto his buttocks. He immediately experienced a significant increase in low back pain. He testified it took a long time for him to get back to his truck after the incident. He reported the accident to his supervisor, and missed work for two weeks. He returned to light duty work, at the same pay rate, and eventually settled his claim. He continued to take medications, and had multiple epidural steroid injections. He continued to work until his May 20, 2014 fusion surgery. Byrd reported that he was in extreme pain for a couple of weeks after the surgery, and then his condition improved until he started physical therapy in September 2014. His left leg started tingling and became numb. Byrd reported Pulaski County paid temporary total disability ("TTD") benefits from the date of the surgery until Dr. David Jenkinson evaluated him. He also testified that Pulaski

County had paid for most of his medical treatment related to the two work injuries, including the surgery.

Byrd reported he continues to have low back pain. He has trouble straightening his back, and has difficulty when he attempts to tie his shoes or pick items up from the floor. He stated he uses a device to pull on his socks, and wears slip-on shoes due to his ongoing problems. He has problems with extended periods of sitting or standing. He has to change positions frequently, and cannot stand for long periods. Byrd still uses Lidoderm patches, takes Norco or Lortab, and uses Aleve or Ibuprofen. He has also had epidural injections since his surgery. He also uses heat and cold therapy. Byrd stated he physically could not return to work as a wastewater operator. He stated he could not work a full day, even with alternating positions. He currently receives disability retirement benefits from his job at Pulaski County, and Social Security disability benefits.

In support of his motion to reopen, Byrd filed Dr. El-Naggar's January 23, 2017 affidavit. Dr. El-Naggar stated Byrd's condition has worsened since he settled his claim. He noted Byrd underwent fusion surgery on May 20, 2014, and continues to experience low back pain radiating into his left lower extremity. Dr. El-Naggar stated that Byrd now has a 22% impairment rating, of which he stated 70% is attributable to the work injuries, and 30% to the MVA. He also stated Byrd has increased restrictions since his surgery.

Byrd additionally submitted Dr. El-Naggar's treatment records from February 13, 2012 through June 27, 2016. Those records primarily reflect treatment for Byrd's ongoing low back complaints, and include the May 20, 2014 operative

note. Byrd's treatment has included epidural injections, an L5-S1 hemi-laminectomy with partial facetectomies, and discectomy following a posterior lumbar interbody fusion at L5-S1 with cage and bone graft. Dr. El-Naggar has also prescribed Flector patches, various medications, traction, exercise, ultrasound, heat, massage, and physical therapy. He also ordered multiple X-rays and MRIs.

Byrd also filed records from Dr. Harold Rutledge for treatment administered between June 5, 2012 and May 23, 2015. Dr. Rutledge administered epidural injections for treatment of Byrd's low back pain radiating into both lower extremities, worse on the left.

Dr. Jenkinson evaluated Byrd at Pulaski County's request on December 12, 2016. He noted Byrd had sustained two work-related low back injuries while working for Pulaski County, and is no longer working. He also noted Byrd underwent a low back fusion at L5-S1 in May 2014. Dr. Jenkinson stated he found no objective abnormality to support a specific diagnosis other than possible transient soft tissue injuries from the August 10, 2011 work accident, the October 8, 2011 MVA, and the February 21, 2012 slip and fall at work. He stated Byrd would have reached maximum medical improvement six months after his surgery. He stated he saw no objective basis from the records or the imaging studies supporting the need for surgery. Regardless of the need for surgery, Dr. Jenkinson stated Byrd now qualifies for a 20% impairment rating pursuant to the AMA Guides. He stated Byrd retains the physical capacity to return to his pre-injury work without restrictions, and no additional treatment is necessary for the 2011 or 2012 work injuries.

In a supplemental report dated June 12, 2017, Dr. Jenkinson stated his opinions in the previous report remain unchanged. He stated a 20% impairment rating is appropriate. He disagreed with the 22% rating assessed by Dr. El-Naggar. He stated Byrd's subjective complaints are disproportionate to his objective abnormalities. He stated he believes Byrd can return to work at his previous occupation.

Pulaski County also submitted the August 13, 2017 records review report prepared by Dr. Russell Travis. Dr. Travis noted the August 10, 2011 work accident. He noted a September 13, 2011 medical examination was essentially normal. He also noted the February 2012 accident. Dr. Travis stated both of those incidents resulting in soft tissue injuries. He also noted the October 28, 2011 MVA. Dr. Travis stated Byrd has a 20% impairment rating pursuant to the AMA Guides due to the fusion surgery. Dr. Travis opined the surgery "had no relationship whatsoever to the work related injuries of either 8/10/11 or 2/21/12". Dr. Travis stated he agreed with Dr. Jenkinson. He stated Byrd could return to work with restrictions of no lifting over 50 pounds frequently, or over 75 pounds occasionally. He also stated Byrd should be allowed to change positions as needed. He opined Byrd could return to his past work. He also stated Byrd should be weaned from opioid medication.

A Benefit Review Conference was held on September 5, 2017. It was noted Pulaski County had paid TTD benefits from April 22, 2012 to March 11, 2012, and again from May 20, 2014 to January 23, 2017. It was also noted Pulaski County had paid \$61,729.58 in medical benefits. The issues preserved included Byrd's

physical capacity to return to the type of work performed on the date of injury, work-relatedness/causation, injury as defined, benefits per KRS 342.730, TTD (overpayment/underpayment), credit for previous settlement, medical benefits, whether Byrd met the requirements for reopening pursuant to KRS 342.125, intervening/superseding accident, apportionment, permanent total disability, and constitutionality of KRS 342.730(4).

The ALJ rendered his decision on January 23, 2018. The ALJ determined Byrd's condition had worsened since the approval of the 2013 settlement, and he is now permanently totally disabled. Regarding whether Byrd sustained a permanent injury due to the two work accidents, the ALJ found as follows:

In this case the evidence of what type of injury occurred on August 10, 2011 and February 21, 2012 comes from Dr. El-Naggar, Dr. Travis, Dr. Jenkinson and Dr. Tutt by way of being mentioned in a report. Dr. El-Naggar opined that as a result of the two work accidents Mr. Byrd sustained a permanent impairment of six percent to his low back. He attributed 70 percent of his low back condition to his work accidents and 30 percent to a motor vehicle accident that occurred in October 2011.

The ALJ relies upon the opinions of Dr. El-Naggar and Mr. Byrd's testimony to find that he sustained an injury to his low back while working for Defendant on August 10, 2011 and February 21, 2012. Dr. El-Naggar was the treating physician at that time and had a better opportunity than Drs. Jenkinson and Travis to assess if he sustained a work-related injury, and whether it was permanent or not. The ALJ does not find Dr. Jenkinson's examination in December 2016 to be as persuasive as that of Dr. El-Naggar as the treating doctor. Dr. El-Naggar had the opportunity to personally examine Mr. Byrd during that time period, to conduct physical examinations and to make a determination based upon his treatment as to what type of injury he sustained.

Even Defendant's own physicians state that Mr. Byrd may have suffered a transient low back strain/sprain injury as a result of these two work injuries. Therefore, it is a question of degree and who the ALJ believes on the question of whether Mr. Byrd sustained a permanent injury or a temporary one as the evidence is overwhelming that he sustained some type of injury on those two occasions.

The ALJ relies on the opinions of Dr. El-Naggar, Mr. Byrd's treating doctor, to find that Mr. Byrd sustained a six percent permanent impairment as a result of the August 10, 2011 and February 21, 2012 work injuries apportioned 70 percent to be work-related and 30 percent related to the October 2011 motor vehicle accident. The ALJ does not believe that the October 2011 motor vehicle accident was a superseding intervening cause that operated to terminate Defendant's liability. Even Dr. Jenkinson stated that he found no significant injury produced by the motor vehicle accident.

The ALJ also noted Pulaski County did not timely object to the May 2014 fusion surgery. He cited to the holding in Phillip Morris, Inc. v. Poynter, 786 S.W.2d 124 (Ky. App. 1990) which places the burden upon the employer to challenge medical bills or requested treatment within thirty days. He noted Pulaski County opted to pay for the surgery. The ALJ also relied upon Dr. El-Naggar in determining Byrd had sustained his burden of proof in establishing a worsening of condition due to his work injuries since the March 7, 2013 settlement.

The ALJ also determined Byrd is now permanently totally disabled.

He specifically found as follows:

Permanent total disability is defined in KRS 342.0011(11)c as the condition of an employee who, due to an injury, has a permanent disability rating and has a complete and permanent inability to perform any type of work as a result of an injury. Work is defined as meaning providing service to another in return for

remuneration on a regular and sustained basis in a competitive economy. KRS 342.0011(34).

In City of Ashland v. Stumbo, 461 SW3d 392 (Ky. 2015) the Kentucky Supreme Court laid out a five-step analysis which the ALJ must utilize in determining entitlement to permanent total disability. Initially, the ALJ must determine if the claimant suffered a work related injury. Next, the ALJ must determine what, if any, impairment rating the claimant has. Third, the ALJ must determine what permanent disability rating the claimant has. Then the ALJ must make a determination that the claimant is unable to perform any type of work. Finally, the ALJ must determine that the total disability is the result of the work injury. In determining whether a worker is totally disabled, an Administrative Law Judge must consider several factors including the worker's age, education level, vocational skills, medical restrictions, and the likelihood that he can resume some type of "work" under normal employment conditions. Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky., 2000).

The ALJ may consider Plaintiff's own testimony as to his capabilities and limitations as to his physical capacity to return to work. Hush v. Abrams, 584 S.W.2d 48 (Ky. 1979).

Mr. Byrd is 55 years old, has a high school education, with a two year degree in graphics communication, a journeyman's pressman degree and had a water treatment plant operator class I license and electrician license. There is no proof that Mr. Byrd was not able to carry out his normal work functions until his lumbar surgery of May 20, 2014. He had a good work record and continued to work when injured. Of significance, are Dr. El-Naggar's office records immediately following his lumbar surgery. Mr. Byrd initially reported that his back pain and radiculopathy were improved. In fact, they stayed that way until he began physical therapy about three months post-surgery. Once he began physical therapy, his condition steadily worsened. His complaints of back pain radiating into his left leg with numbness returned. The ALJ finds this convincing, especially in light of Dr. Jenkinson and Dr. Travis stating that basically there is no reason he should not be

able to return to his job from this single level fusion. The ALJ finds Mr. Byrd's reports to Dr. El-Naggar on how his back progressed following surgery to be convincing. Mr. Byrd made a very credible witness.

Mr. Byrd testified that he is never pain free. His pain radiates from his low back down his left leg. He reports his pain levels to be between a four and six on average; but, if he does any activity it jumps to a seven or eight. He is unable to bend since the fusion. He testified that depending on the type of chair, his ability to sit is limited to between 20 and 30 minutes without having to change positions. He stated that he is unable to stand more than five to ten minutes at a time. He has to alternate positions throughout the day. He is taking Hydrocodone, Lidocaine patches, and Gabapentin. When he takes the Gabapentin he is unable to function and therefore only takes it at night. He is unable to tie his own shoes, uses a sock puller and wears a back brace if he is out to do any type of shopping. Mr. Byrd stated that he is unable to drive more than 20 to 30 minutes at a time without stretching.

Dr. El-Naggar placed permanent restrictions on Mr. Byrd of no lifting, pushing or pulling of more than 10 pounds. He is to alternate sitting, standing, and walking every 30 minutes. He also stated that it is unlikely that Mr. Byrd can complete an [sic] hour day of work.

Both Drs. Jenkinson and Travis state that Mr. Byrd has the physical capacity to return to work at his normal duties that he engaged at the time he was hurt, subject to maybe a 30 pound weight limitation. As the ALJ reads their reports it appears as though they believed that Mr. Byrd was feigning the extent of his injury and that a person with a single level inter-body fusion should be able to bend and go to work. In some cases, the ALJ may be inclined to agree with that premise. However, in Mr. Byrd's case, the ALJ does not find the opinions of Drs. Travis and Jenkinson persuasive on the issue of Mr. Byrd's physical ability to return to work. Every case is different.

From a vocational standpoint, Mr. Jenkinson does not appear to have any transferable skills to a light or sedentary job. The ALJ is not convinced that he could

perform any sedentary job due to his limitations on sitting, bending, standing and walking. His prior work was primarily heavy work.

The ALJ relies on the testimony of Mr. Byrd and Dr. El-Naggar to find that Mr. Byrd does not retain the physical capacity to return to some type of work on a regular and sustained basis in any competitive economy. The ALJ finds that he is totally and permanently disabled. His PTD calculation shall take into account the 30 percent non work-related condition from the motor vehicle accident.

The ALJ also found that since the 1996 version of KRS 342.730(4) was found unconstitutional in Parker v. Webster County Coal, LLC, 529 S.W.3d 759 (Ky. 2017), the tier-down provisions contained in the 1994 version of that statute are applicable. The ALJ also awarded medical benefits pursuant to KRS 342.020 for the work injuries.

Both Byrd and Pulaski County filed petitions for reconsideration. Byrd argued the ALJ erred in apportioning a percentage of his permanent partial disability award to the October 2011 MVA. He argued that pursuant to the holding in Robertson Bros. Coal Co. v. Robinson, 133 S.W.3d 181 (Ky. 2003), any apportionment must be based upon disability, not an impairment rating. He argued that based upon the ALJ's findings, he did not have an occupational disability attributable to the MVA. Byrd argued he is entitled to the entirety of the permanent total disability award with no carve-out or apportionment. Byrd also argued the tier down provision contained in the 1994 version of KRS 342.7430(4) is inappropriate and unconstitutional.

Pulaski County requested the ALJ to make additional findings of fact regarding why Byrd is entitled to permanent total disability benefits, rather than the

application of the three multiplier contained in KRS 342.730(1)(c)1. It also argued the ALJ erred by failing to give it credit for the sums paid in the previous settlement. Finally, it argues that it waived no defenses on reopening by not filing a medical dispute regarding the May 2014 surgery, and the ALJ erred in his determination regarding failure to file a dispute.

In his March 6, 2018 order ruling on the petitions for reconsideration, the ALJ amended his decision and allowed Pulaski County a credit of \$51.46 per week from the date of reopening until the end of the 425-week compensable PPD period for the previous settlement. The ALJ noted he had previously set forth the reasoning for his determination regarding the permanent total disability award, and additional findings were unnecessary. The ALJ also denied Pulaski County's petition regarding the notation in his decision that it had failed to file a medical dispute regarding the May 2014 surgery. As to Byrd's petition, the ALJ determined there was no evidence to support a finding that he sustained a disability from the October 2011 MVA, and he amended the award of permanent total disability benefits to include the thirty percent he had previously excluded. The ALJ denied Byrd's petition regarding the application of the tier-down provision contained in the 1994 version of KRS 342.730(4).

As noted above, on appeal, Pulaski County argues the ALJ erred in finding Byrd is permanently totally disabled due to a worsening of his work-related injuries. It also argues the limitations contained in KRS 342.730(4) effective July 14, 2018 are applicable to this claim. Byrd argues the tier-down provisions contained in the 1994 version KRS 342.730(4) found by the ALJ, is not applicable. Byrd also

argues the application of the 1994 version of KRS 342.730(4) is unconstitutional. Byrd also argues the retroactive application of the version of KRS 342.730(4) effective July 14, 2018 is unconstitutional.

We initially note that as the claimant in a workers' compensation proceeding, Byrd had the burden of proving each of the essential elements of his reopening. *See* KRS 342.0011(1); Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since Byrd was successful in his burden, we must determine whether substantial evidence of record supports The ALJ's decision. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). "Substantial evidence" is defined as evidence of relevant consequence having the fitness to induce conviction in the minds of reasonable persons. Smyzer v. B. F. Goodrich Chemical Co., 474 S.W.2d 367 (Ky. 1971).

In rendering a decision, KRS 342.285 grants an ALJ as fact-finder the sole discretion to determine the quality, character, and substance of evidence. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). An ALJ may draw reasonable inferences from the evidence, reject any testimony, and believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same adversary party's total proof. Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979); Caudill v. Maloney's Discount Stores, 560 S.W.2d 15 (Ky. 1977). Although a party may note evidence supporting a different outcome than reached by an ALJ, such proof is not an adequate basis to reverse on appeal. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974). Rather, it must be shown there was no

evidence of substantial probative value to support the decision. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

The function of the Board in reviewing an ALJ's decision is limited to a determination of whether the findings made are so unreasonable under the evidence they must be reversed as a matter of law. Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000). The Board, as an appellate tribunal, may not usurp the ALJ's role as fact-finder by superimposing its own appraisals as to weight and credibility or by noting other conclusions or reasonable inferences that otherwise could have been drawn from the evidence. Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999).

Permanent total disability is defined as the condition of an employee who, due to an injury, has a permanent disability rating and has a complete and permanent inability to perform any type of work because of an injury. KRS 342.0011(11)(c). "Work" is defined as providing services to another in return for remuneration on a regular and sustained basis in a competitive economy. KRS 342.0011(34). In determining Byrd is permanently totally disabled, the ALJ was required to perform an analysis pursuant to the City of Ashland v. Taylor Stumbo, 461 S.W.3d 392 (Ky. 2015), and Ira A. Watson Department Store v. Hamilton, supra.

In this instance, the ALJ appropriately performed an analysis pursuant to the factors set forth in City of Ashland v. Stumbo, supra, and Ira A. Watson Department Store v. Hamilton, supra. The ALJ took into consideration the correct factors in finding Byrd is permanently totally disabled. The ALJ took into account

Byrd's age, education, and past work experience, along with his post-injury/surgical physical status. The ALJ clearly explained the basis of his decision, and why he found Byrd's testimony and Dr. El-Naggar's opinions more probative than those expressed by Drs. Jenkinson and Travis. The ALJ outlined the evidence he reviewed, and provided the basis for his determination that Byrd is permanently totally disabled due to his work-related injuries. The ALJ properly analyzed the claim, and his decision falls squarely within his discretion. The ALJ's determination on this issue will remain undisturbed.

That said, we agree with Pulaski County that Byrd's award should be limited pursuant to the amended version of KRS 342.730(4) effective July 14, 2018. In Holcim v. Swinford, 581 S.W.3d 37, 41-44 (Ky. 2019), the Kentucky Supreme Court determined the amended version of KRS 342.730(4) regarding the termination of benefits at age seventy has retroactive applicability. However, the Court declined to address the constitutionality of the amended version of KRS 342.730(4) since it was not properly raised as an issue before the Court and the Attorney General had not been timely notified of a constitutional challenge. Id. at 44. Based upon that decision, we must reverse the ALJ's determination regarding the applicability of the 1994 version of KRS 342.730(4), and remand for application of the version of that statutory provision effective July 14, 2018.

Because of our determination regarding the applicability of the 1994 version of KRS 342.730(4), Byrd's arguments on this issue are moot. However, we note Byrd has challenged the constitutionality of the revised version of KRS 342.730(4) effective July 14, 2018. This Board, as an administrative tribunal, cannot

determine the constitutionality of a statute. Blue Diamond Coal Company v. Cornett, 300 Ky. 647, 189 S.W.2d 963 (1945); *See also* Vision Mining, Inc. v. Gardner, 364 S.W.3d 455 (Ky. 2011); Abel Verdon Const. v. Rivera, 348 S.W.3d 749, 752 (Ky. 2011). Because this Board has no authority or jurisdiction to reverse rulings of the Kentucky courts, we can render no determination on this issue, and we are compelled to affirm.

Accordingly, the January 23, 2018 Opinion, Award, and Order, and the March 6, 2018 Order on the Petitions for Reconsideration rendered by Hon. John H. McCracken, Administrative Law Judge, are hereby **AFFIRMED IN PART** and **REVERSED IN PART**. This claim is **REMANDED** for application of the revised version of KRS 342.730(4) effective July 14, 2018.

STIVERS, MEMBER, CONCURS.

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