

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: August 6, 2020

CLAIM NO. 201574975

RUSSELL GENTRY

PETITIONER

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

VERTICAL STRUCTURES INC. AND
HON. JONATHAN WEATHERBY,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING

* * * * *

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

BORDERS, Member. Russell Gentry (“Gentry”) seeks review of the Opinion, Award, and Order dated May 22, 2019 rendered by Hon. Jonathan Weatherby, Administrative Law Judge (“ALJ”). The ALJ determined Gentry sustained a work-related low back injury on July 29, 2015 while loading anodes into a tool trailer. The ALJ further determined Gentry was permanently and totally disabled due to his injuries and the accompanying residuals. The ALJ further determined Gentry’s

permanent total disability (“PTD”) benefits would be paid in accordance with the provisions of KRS 342.730(4). Since the issue of retroactivity was preserved as an issue for determination, and because that is the issue raised on appeal, we determine the ALJ inferred the version of that statute in effect on the date of the award applies to this claim.

Neither party filed a Petition for Reconsideration. Gentry thereafter filed an appeal arguing that KRS 342.730(4) is unconstitutional. Again, since that issue is the subject of this appeal, clearly the parties agreed the ALJ’s determination was based upon the version of KRS 342.730(4) in effect at the time of his decision. As this appeal only concerns the constitutionality of KRS 342.730(4), a recitation of the facts considered by the ALJ and his findings regarding the determinations set forth in his opinion is unnecessary.

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, 581 S.W.3d 37 (Ky. 2019), the Kentucky Supreme Court determined the amended version of KRS 342.730(4) effective July 14, 2018, regarding the termination of benefits at age seventy has retroactive applicability. Because the Kentucky Supreme Court has determined the newly

enacted amendment applies retroactively, we affirm the ALJ's decision ordering the PTD benefits are subject to the limitations in KRS 342.730(4), effective July 14, 2018.

We additionally note that this Board, as an administrative tribunal, has no jurisdiction to determine the constitutionality of a statute. Blue Diamond Coal Company v. Cornett, 300 Ky. 647, 189 S.W.2d 963 (1945). Consequently, we are without authority to render a decision upon Gentry's argument regarding the constitutionality of the amended statute. Thus, we affirm.

Accordingly, the May 22, 2019 Opinion, Award and Order, issued by Hon. Jonathan Weatherby, Administrative Law Judge, is hereby **AFFIRMED**.

ALL CONCUR.

DISTRIBUTION:

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