

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: March 27, 2020

CLAIM NO. 201787468

STACEY VEREB

PETITIONER

VS. APPEAL FROM HON. JEFF V. LAYSON, III,
ADMINISTRATIVE LAW JUDGE

KENTUCKY ONE HEALTH;
HON. JEFF V. LAYSON, III,
ADMINISTRATIVE LAW JUDGE; AND
HON. ANDY BESHEAR,
ATTORNEY GENERAL

RESPONDENTS

OPINION
AFFIRMING

* * * * *

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

ALVEY, Chairman. Stacey Vereb (“Vereb”) appeals from the Opinion, Order and Award rendered February 16, 2019 by Hon. Jeff V. Layson III, Administrative Law Judge (“ALJ”), awarding her temporary total disability (“TTD”) benefits, permanent partial disability (“PPD”) benefits and medical benefits

for a work-related low back injury she sustained on March 27, 2017. Vereb also appeals from the March 19, 2019 Order overruling her petition for reconsideration.

On appeal, Vereb argues the ALJ erred in retroactively limiting the duration of her PPD benefits pursuant to KRS 342.730(4), effective July 14, 2018. Vereb also argues the retroactive application of KRS 342.730(4) is unconstitutional. We find the ALJ's decision is in conformity with the holding by the Kentucky Supreme Court in Holcim v. Swinford, 581 S.W.3d 37 (Ky. 2019). We also note this Board lacks the authority to make determinations on constitutional issues. Therefore, we affirm.

Vereb filed a Form 101 alleging she injured her low back and left leg on March 27, 2017 as she was moving a patient while working as a radiologic technologist for Kentucky One Health. We will not discuss the medical evidence submitted in this claim since the sole issues on appeal concern the retroactivity and constitutionality of KRS 342.730(4).

Vereb testified by deposition on July 5, 2018 and at the final hearing held December 19, 2018. Vereb resides in Louisville, Kentucky and was born in October 1967. Vereb earned a bachelor's degree in Sociology and an associate's degree in radiologic technology. Vereb began working for Kentucky One Health in June 2009 as a CT technologist, and was located at Saint Mary's Hospital at the time of her work injury. Vereb performed CT scans on in-patients, out-patients, and emergency room patients. Her job duties included assisting patients with getting on and off the scan table and manipulating them into position. Her work schedule included three days per week at Kentucky One Health, and concurrently at First

Urology as a CT technologist two days a week. Kentucky One Health was aware of the concurrent employment.

Vereb testified that on March 27, 2017, she and her supervisor were moving a large emergency room patient from the CT table onto a stretcher by using a sheet placed underneath him. Vereb testified she felt a pop and immediate pain in her back, as well as numbness throughout her entire left leg, when she pulled onto the sheet to move the patient to the stretcher. Afterward, she was sent to Employee Health at Saint Mary's Hospital that day and then referred to U.S. Healthworks. She also treated with Dr. Thomas Becherer, Dr. Rodney Chou, and Dr. Dean Collis.

Following the accident, Vereb worked light duty with Kentucky One Health until June 2017. Vereb continued working at her usual job at First Urology since she was not required to lift or assist patients. Vereb ceased working for Kentucky One Health in June 2017 and for First Urology in July 2017, for reasons unrelated to her work injury. Vereb has not worked since. Vereb continues to experience low back pain, as well numbness and tingling in her left leg. Vereb does not believe she can return to her job as a CT technologist with Kentucky One Health.

A Benefit Review Conference was held on December 6, 2018. The parties identified the following contested issues: work-related injury/causation, permanent income benefits pursuant to KRS 342.730, TTD benefits, wages upon return to work, ability to return to work, exclusion for pre-existing impairment, unpaid or contested medical expenses, injury as defined by the Act, temporary versus permanent injury, and overpayment of TTD benefits.

The ALJ rendered an opinion on February 16, 2019. Relying upon Dr. Gregory Nazar's October 9, 2018 report, the ALJ found Vereb sustained a work-related low back injury on March 27, 2017, warranting an 8% impairment rating. He found Vereb did not have any pre-existing, active impairment prior to March 27, 2017. Based upon the restrictions imposed by Dr. Nazar, the ALJ found Vereb was entitled to the three multiplier contained in KRS 342.730(1)(c)1. The ALJ awarded TTD benefits, PPD benefits and medical benefits. The ALJ noted, "The duration of benefits awarded in this case is subject to the provisions of KRS 342.730(4), in effect as of July 14, 2018."

Vereb filed a petition for reconsideration requesting this statement be amended to state the duration of benefits awarded is subject to the provisions of KRS 342.730(4), in effect as of July 14, 2018, "unless that statute as it existed/exists is ruled not to be retroactive as it relates to any date of injury prior to July 14, 2018 and/or unconstitutional as to any retroactive application of KRS 342.730(4) per the July 14, 2018 amendment." The ALJ denied Vereb's petition in an Order dated March 19, 2019.

On appeal, Vereb argues the ALJ erred in retroactively limiting the duration of her award of PPD benefits pursuant to KRS 342.730(4), effective July 14, 2018. Vereb also argues the retroactive application of KRS 342.730(4) is unconstitutional.

We first note Vereb properly placed the Kentucky Attorney General on notice of the constitutional challenge to KRS 342.730(4) as required by KRS

418.075. We next note, House Bill 2 became effective July 14, 2018. Section 13 of that bill amended KRS 342.730(4) to provide 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 accordance with the holding by the Kentucky Supreme Court in Holcim v. Swinford, supra, we affirm the ALJ's application of KRS 342.730(4) as amended in 2018. There the Kentucky Supreme Court determined the amended version of KRS 342.730(4) regarding the termination of benefits at age seventy has retroactive applicability. We therefore find Vereb's award is governed by the limitations set forth in the amended statute.

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 Vereb's argument regarding the constitutionality of the amended statute. Thus, we affirm.

Accordingly, the February 16, 2019 Opinion, Order and Award and the March 19, 2019 Order on petition for reconsideration rendered by Hon. Jeff V. Layson III, Administrative Law Judge, are hereby **AFFIRMED**.

ALL CONCUR.

DISTRIBUTION:

COUNSEL FOR PETITIONER:

LMS

HON WAYNE C DAUB
600 WEST MAIN ST, STE 300
LOUISVILLE, KY 40202

COUNSEL FOR RESPONDENT:

LMS

HON JOEL W AUBREY
HON MICHELLE ENOCH
11901 BRINLEY AVE
LOUISVILLE, KY 40243

RESPONDENT:

USPS

HON DANIEL CAMERON
KENTUCKY ATTORNEY GENERAL
700 CAPITOL AVE, STE 118
FRANKFORT, KY 40601

ADMINISTRATIVE LAW JUDGE:

LMS

HON JEFF V LAYSON
MAYO-UNDERWOOD BLDG
500 MERO ST, 3rd FLOOR
FRANKFORT, KY 40601